

**FORESTRY ENGLAND**  
**STANDARD CONDITIONS GOVERNING THE SALE OF STANDING TREES**  
**AND OTHER PRODUCTS TO BE HARVESTED**  
**VERSION 0.1**

You have offered in auction or tender or negotiation to purchase standing trees and/or other Products to be harvested from Forestry England land and Forestry England's acceptance of that offer is subject to the following terms and conditions which will govern the purchase.

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## 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 harvesting and 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 harvesting and 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 standing trees and /or other Products to be harvested 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 doing the Work including but not limited to adequate allowance for the Work 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/timber/contract-documents> and it links directly to these terms and conditions, and to the procedures and administration cost information incorporated into this Contract. For the avoidance of doubt, the documents 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.

**“Contract Start Date”** means the date the Contract comes into force being the date that Forestry England accepts your Bid for any Lot or any other date as may be agreed in writing.

**“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>

“Estimated Quantity” means the estimated quantity of all the material (including the attached bark) contained within the standing trees or other Products to be harvested from the area(s) of forest shown on the map in the Lot information and Conditions. The Estimated Quantity has been or will be determined using the methods of measurement stated in the Lot Information and Conditions, which are set out in the measuring procedures on the Contract Documents Webpage.

“Excluded Products” means the part(s) of the trees specified as such in the Lot Information and Conditions.

“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.

“Forest Mensuration Handbook” means “Forest Mensuration: A handbook for practitioners” ISBN 0 85538 621 5 or such other publication as may amend or replace it from time to time that is in effect at the time of sale.

**“Forestry Works Manager” (FWM)** means the management role that is responsible for commissioning the Work and for discharging all the planning and safety and welfare 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 felling of trees and/or the harvesting and removal of the Products and to be responsible for the planning and execution of all necessary activities in and around the Work Site, Stacking Sites and Access Routes in accordance with the Contract.

**“Harvesting”** means all the forestry work needed to safely make the Products ready to be removed from the work site in accordance with the Contract and may include such operations as tree felling, de-stumping, raking, conversion, processing, chipping, winching, extracting, forwarding, stacking or piling and loading.

**“Harvesting Commencement Date”** means the date specified in the Lot Information and Conditions on which work to fell the trees or otherwise harvest the Products may start.

**“Harvesting Removal Date”** means the date by which all the Products must be removed from the Work Site as specified in the Lot Information and Conditions, any change to which must be agreed in writing by Forestry England.

**“Harvesting Order”** means the sequence in which each part of the Work Site must be felled and /or harvested or the direction in which the felling and /or harvesting must progress as agreed during the Pre-Commencement Procedures or as otherwise agreed in writing by Forestry England.

**“Instalment”** means an amount equivalent to the Price (plus VAT) divided by the number of Instalments.

**“Instalment Dates”** means those dates specified as such in the Lot Information and Conditions.

**“Instalment Number”** means the number of Instalments specified in the Lot Information and Conditions.

**“Load”** means a quantity of Product removed to Your premises or other destination of Your choosing under Forestry England’s Despatch 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 Estimated Quantity (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 trees or 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.

**“Lump Sum Sale”** means a sale of Products where payment is to be made in one or more Instalments, each payment being made in advance of the harvesting of that part of the standing trees or other Products to which it relates.

**“Market Value”** means the current value as reasonably determined by Forestry England, of the standing trees felled by you outside the provisions of this Contract or of the Products that are damaged by You whilst you have control of or access to the Work Site.

**“Operator(s)”** means the workers or individual(s) commissioned or tasked by You (whether an employee contractor or sub-contractor) to undertake specific elements of the Work in strict accordance with their skills, abilities, experience and documented training.

**“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 Harvesting 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 as agreed in accordance with Condition 11.

**“Products”** means the standing trees, and/or those parts of felled trees as specified in the Lot Information and Conditions and identified on the Sale Map including without prejudice to the foregoing generality, the wood and timber represented by those standing trees and/or those parts of felled trees not including the Excluded Products details of which are set out in the Lot Information and Conditions.

**“Products not Recovered”** means the saleable Products included in this Contract which in Forestry England’s reasonable opinion have deliberately or otherwise not been harvested or have been discarded or rendered unsaleable by Your actions or omissions or have not been brought to the roadside such that the saleable Products therein cannot be dispatched, weighed and paid for.

**“Reasonable Endeavour”** means You must use the most suitable equipment available to You and apply best practice to identify and follow safe working methods whilst meeting all the Conditions of this 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 standing trees and/or those parts of felled trees, paid for or otherwise, that remain on the Work Site or Stacking Sites after the Product Removal Date or upon termination or expiry of the Contract due to Your default under Conditions 10.2, 10.3 or 10.4.

**“Retained Timber Element” (RTE)** means an identified and pre-specified quantity of Product that Forestry England will retain the ownership of.

**“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.

**“Roundwood”** means the utilisable wood and timber lengths cut from the main stem of a tree with the outer bark. It includes millable sawlogs, logs, poles, billets, fuelwood, chipwood and pulpwood but it excludes branch wood and stumps.

**“Sale Map”** means the map or maps that Forestry England provide to You as part of the Lot Information and Conditions showing relevant information for the Contract such as the Location of Work Site, the Stacking Sites, the Authorised Access Routes, the Harvesting Order and the area(s) of forest from which the standing trees or other harvestable Products are to be removed by You.

**“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 permission to dispatch 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 must be temporarily stored 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.

**“UK Forestry Standard”** means the UK Governments' published approach to sustainable forestry, including standards and requirements, regulations, monitoring, and reporting. It is available 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 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 5.1.

**"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 5.2.

**"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.

**"Work"** means all the activities undertaken to complete the Harvesting and removal of Products from the Work Site in accordance with the Contract.

**"Work Site"** means the area(s) of forest land from which the standing trees or other Products are to be harvested including any Authorised Access Routes and Stacking Sites identified as such on the Sale Map.

**"You"** means the purchaser of the trees or 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 and any Excluded Products 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 all the standing trees and other Products to be harvested from the Work Site. You must harvest the whole of the area indicated on the Sale Map. The Estimated Quantity is only an indicative quantity and for the purposes of the Contract there is no guarantee given by Forestry England that the actual quantity that We will sell and You will buy under this Contract will accord with the Estimated Quantity (i.e. it could be more or it could be less).
- 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.

### **RETAINED TIMBER ELEMENT**

- 2.5 Where a Retained Timber Element (RTE) is specified within the Lot Information and Conditions, Forestry England will not pay You for the RTE and so the costs of harvesting the RTE and extracting it and stacking it at roadside for Forestry England's use must be wholly incorporated within the Price that You offer Forestry England for the Lot.
- 2.6 You must produce the RTE to Forestry England specification, as provided for in the Lot Information and Conditions and make it available for collection in the quantities and timings that We agree with you in writing.

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

- 3.1 The Harvesting Commencement Date, Harvesting Removal Date and Harvesting Order shall be as indicated in the Lot Information and Conditions, or as otherwise agreed in writing by Forestry England after consultation with You.
- 3.2 For the purposes of the Contract and save as otherwise provided herein Forestry England shall allow You access to and egress from the Work Site only to harvest and/or remove the Products in accordance with the Contract.
- 3.3 Under the terms of the Contract, You shall have access to the Work Site 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 7.
- 3.4 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**

- 3.5 You shall appoint an individual employed or engaged by You to be the person responsible for the felling of trees and /or the harvesting and 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 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.

- 3.6 The Work shall commence on or after the Harvesting Commencement Date and shall continue until all the Work is complete or until the Harvesting Removal Date whichever is earlier. All Work shall be undertaken in accordance with the Harvesting Order.
- 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 Harvesting Commencement Date up until the Harvesting Removal Date You will not temporarily or otherwise vacate the Work Site or cease or curtail the activities on the Work Site until all required Work has been completed and the Products removed from the Work Site unless You give Forestry England written notice requesting a cessation of any Work together with a firm date for Work 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 all Work 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 notify Forestry England in writing of Your intentions and planned methods of Work and the training details of Your Operators and You shall not change those methods or those Operators unless You first notify Forestry England of the intended change in writing.
- 3.11 You shall not use any vehicle, machine or method of working which in Forestry England's opinion causes, or is likely to cause, avoidable harm or damage to standing trees or any road, path, track or drain, or to people, property, living organisms or the environment.

#### **PRE-COMMENCEMENT**

- 3.12 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 includes a meeting on the Work Site with Forestry England's Contract Manager or any other nominated Forestry England employee and Your FWM and if Forestry England request it, any or all of the operators who will undertake the harvesting and/or removal of the Products.
- 3.13 You agree that Your rights under the Contract to access the Work Site, Stacking Sites or Authorised Access Routes and undertake the Work will only start when Forestry England confirms in writing that the Pre-Commencement procedures have been completed.

#### **ACCESS BETWEEN THE WORK SITE AND THE AUTHORISED ACCESS ROUTE**

- 3.14 Where it appears to You that the access within the Work Site or at the point of extraction to the Authorised Access Routes is not sufficient to enable You to comply with the terms of the Contract, You may apply in writing to Forestry England for consent to cut, fell and remove other trees owned by Forestry England as is solely necessary to enable the required access. Such consent shall not be unreasonably withheld, and it shall be confirmed on such

terms as Forestry England may at its sole discretion determine and which will include payment for the additional trees at their Market Value. Any such consent shall be given or withheld in writing and Forestry England shall endeavour to provide same within ten Business Days of application, but a failure to provide the notice within that timescale shall not be deemed to be consent.

### **RAMPS**

- 3.15 Temporary earth or stoned ramps to facilitate forestry machine access to and from the Work Site may only be formed in places, and by methods, and from materials agreed in advance by Forestry England. Where Forestry England requests it, these must be removed by You and made good at your expense before leaving the Work Site.

### **STUMPS**

- 3.16 All trees felled shall be severed close to the ground in accordance with common forestry industry practice and all branch wood and lop and top or Excluded Product is to be treated in accordance with the methods specified in the Lot Information and Conditions.

### **UREA**

- 3.17 Unless otherwise directed by Forestry England, You shall treat the stump of each conifer tree that You fell with urea or such other substance as may be specified by Forestry England (the "Treatment") within 20 minutes of the felling thereof. The Treatment will be supplied at Forestry England's expense and made available at such locations and in such form as specified in the Lot Information and Conditions. The collection of the Treatment from the designated location (using suitable bundled containers) and the application of such Treatment shall otherwise be at Your cost.

### **STACKING**

- 3.18 You will stack the Products in a secure and orderly manner on the Stacking Sites marked in the Lot Information and Conditions, and at all times 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(s) for stacking and loading.

### **DAMAGE TO OR UNAUTHORISED REMOVAL OF OTHER TREES**

- 3.19 If You fell, cut, remove or damage in any way any standing tree not intended to be felled, cut or removed (i.e. not included in the Lot Information) pursuant to this Contract (other than as provided for in Condition 3.14) then You shall pay to Forestry England immediately on demand three times the current Market Value of those trees so damaged or removed plus Forestry England's reasonable costs of recovering that sum from You. You agree that this represents a fair and reasonable estimate of Forestry England's losses taking account of the current value and the loss of future income from those grown trees.
- 3.20 If You shall again fell, cut or remove or damage in any way any standing tree not intended to be felled, cut or removed pursuant to this Contract after having been previously notified of a requirement to pay under Condition 3.19 or Condition 3.22 then You shall be deemed to be in breach of the Contract and Forestry England may in its absolute discretion terminate the Contract forthwith in accordance with Condition 8.3 and claim compensation from You in respect of any expenses, costs, losses and damages incurred by Forestry England as a consequence of any standing tree being felled, cut, removed or damaged which was not intended to be pursuant to the Contract.

### **OPERATOR SELECTED THINNING**

- 3.21 Where trees are to be removed as a silvicultural thinning, but they are not individually marked by Forestry England the selection of trees for removal is to be performed by the Operator as described in the Lot Information and Conditions. You must follow Forestry England's instructions and directions in this matter and You agree that Forestry England will check Your work as it progresses and will provide feedback and instruction to allow You to perform the silvicultural thinning to Forestry England's satisfaction.

- 3.22 Where Forestry England has provided feedback and instruction in accordance with Condition 3.21 and in its opinion (at all times acting reasonably) You or Your operators by act or omission have failed to reasonably respond to said feedback and instruction Forestry England, without prejudice to any other remedies that are available to Forestry England under the Contract, reserve the right to require You to make good and re-work the site to Forestry England's satisfaction and at Your cost and /or to treat the failure as a breach of the terms of Condition 3.20 above.

#### **ROAD CONDITION AND REPAIR**

- 3.23 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.
- 3.24 Where it can be established to the satisfaction of Forestry England that any Authorised Access Route requires repair through no fault of Yours, Forestry England shall (where practicable within ten Business Days of that fact being made known to it) 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:
- 3.24.1 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.
- 3.24.2 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 except to remove debris and soil that has accumulated on the road surface whilst removing the Products. Removal of said material shall be in a manner that shall cause no damage to the road surface. Without prejudice to any other remedies that are available to Forestry England under the Contract, You will be liable for the full costs of any repairs necessary to the Authorised Access Roads where Your careless removal of said material or a failure by You to remove an excessive build-up of said material causes or leads to such damage.

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

- 3.25 Forestry England reserves the right at its sole discretion to temporarily close all or part of Work Site including the Stacking Sites and /or Authorised Access Routes during periods of severe weather conditions if in its opinion Work under those conditions is likely to cause or lead to unacceptable ground or road damage.
- 3.26 You shall take every reasonable precaution to prevent any damage to the Work Site, 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.
- 3.27 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.
- 3.28 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 which 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 such damage including that covered by Condition 3.26.

### **DAMAGE TO PROPERTY**

- 3.29 In undertaking the Works and accessing the Work Site, You shall take all necessary precautions to prevent damage (wilful, reckless or negligent or otherwise) to any and all buildings, archaeological sites, walls, gates, fences, hedges, drains, watercourses including groundwater, roads, rides, tracks, soil profiles, vegetation, people, living organisms or the environment.
- 3.30 No unauthorised or unlawful discarding of waste or discharges shall be made as a result of the 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.
- 3.31 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 Work to take all reasonable precautions and to meet Forestry England's reasonable requests to prevent deep rutting or other damage to the natural and man-made surfaces on the Work Site, Stacking Sites and the Authorised Access Routes including preventing the unwarranted impedance of any associated natural and man-made drainage.
- 3.32 You shall repair or make good any damage, referred to within Conditions 3.29, 3.30 and 3.31, 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 makes 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 repair 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**

- 3.33 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 Work. If You do not, in Forestry England's opinion, adequately manage or supervise the Work, Forestry England may provide direction or supervision to Your Operators to protect people or living organisms or the environment or to prevent harm, damage or loss to any of 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**

- 3.34 If at any time it appears to You that Forestry England has omitted to inform you of a significant physical hazard on the Work Site, Stacking Sites or Authorised Access Routes and that hazard can reasonably be shown to have existed before the Harvesting Commencement Date and it is such that Your method of working first notified to Forestry England is no longer considered by You to be a safe method of working on the affected part of the Work Site, Stacking Sites or Authorised Access Routes You may give notice to Forestry England to that effect.
- 3.35 Upon receipt of such notice from You Forestry England will, acting reasonably, decide whether to enter into negotiations with You to agree adjustments to this Contract for the affected area. Any negotiated changes to the Contract as a result of Your notice under Condition 3.34 may include reasonable adjustments to the Harvesting Removal Date and /or Expiry Date and must be agreed in writing by Forestry England. Any renegotiation under this Condition 3.35 that results in a change to the Price or the Estimated Quantity or any other condition of this Contract must be agreed in writing and shall be deemed to form part of the Contract.
- 3.36 Notwithstanding the provisions of Conditions 2.3 and 3.35 Forestry England reserves the right to decline to negotiate amendments to this Contract following Your notice under

Condition 3.34. Forestry England reserves the right to remove all or part of the relevant Work Site, Stacking Site or Authorised Access Route that is the subject of Your notice from the Contract along with the associated quantity of Products. In this event Forestry England will not be held to be in breach of the Contract and You will not be liable to pay for the quantity of Products removed from the Contract.

- 3.37 If at any time, in Forestry England's opinion, the execution of the Work under the Contract 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 all or part of Your work under this Contract and require at Your cost such remedial works to mitigate or remove those risks before the Work may continue.
- 3.38 Where in Forestry England's opinion the actions or omissions of the individual responsible for fulfilling the role 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 Work 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 that same individual is responsible for fulfilling the role of Your FWM.
- 3.39 Forestry England will not be liable for any of Your costs or losses arising from Forestry England exercising its right to pause Work under the Red-Amber-Green (RAG) Procedures.
- 3.40 Forestry England may, without prejudice to any other remedies available to it under this Contract, provide written notice to You that no Work may continue 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 Work as determined at Forestry England's reasonable but sole discretion. On receipt of such a notice You shall stop all Work immediately.
- 3.41 Forestry England shall have the right to notify You that no Work may continue 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 Work immediately and You shall not recommence Work 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 Work Site 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. MEASUREMENT OF THE PRODUCTS**

- 5.1 The Estimated Quantity of material upon which the payment is calculated for a Volume Sale shall be determined by Forestry England as described in the Lot Information and Conditions unless the Products are to be sold by weight under Condition 5.2.
- 5.2 Except where otherwise provided in this Condition 5, 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.
- 5.3 You shall remove all Roundwood Products from the Work Site and weigh each Load of said Roundwood Products no later than six weeks after the trees have been felled. For all other Products You shall remove them from the Work Site and weigh each Load of said Products no later than four weeks after the Products have been brought to the Stacking Sites or Authorised Access Routes for dispatch.

### **LOG / STACK MEASURES**

- 5.4 If You fail to meet Condition 5.3 in respect of some or all of the Products Forestry England reserves the right, at all times acting reasonably, to estimate the weight of any Product that has not been weighed from measurements of the logs and/or the stacks at roadside made using the measurement 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 12 (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.

### **DISPATCH PROCEDURES**

- 5.5 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 and / or unweighed Loads

### **WEIGHT TICKETS**

- 5.6 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 5.7.

### **EFIDS**

- 5.7 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 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)**

- 5.8 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.

## **MEASURED LOADS**

- 5.9 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 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.

## **UNWEIGHED LOADS**

- 5.10 If in respect of a Weight Sale You fail to weigh any Load (unless Condition 5.9 applies) or fail to return to Forestry England a valid Weight Ticket for any Load in accordance with Condition 6.5 (unless Condition 5.7 applies) Forestry England shall be entitled to terminate the Contract forthwith in accordance with Condition 10.3 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 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 10.3

## **PRODUCTS NOT RECOVERED**

- 5.12 Should You deliberately or carelessly or otherwise fail to bring saleable Products to the roadside, which in Forestry England's opinion can be reasonably recovered and measured or weighed for sale and you do not take action to recover those Products within the period Forestry England specifies upon giving You written notice to do so, Forestry England reserves the right to estimate the quantity of the Product not recovered from the Work Site using any reasonable method that Forestry England deems appropriate for the circumstances, and to invoice You at the Price for that estimated quantity plus Forestry England's additional costs and expenses.
- 5.13 Payment shall be made by You within 10 Business Days of Your receipt of the notice referred to in 5.12 and title in any such Products that You pay for on the basis of this Condition 5.13 shall not pass to You until you remove them from the Work Site before the Harvesting Completion Date but the risk in those Products will in such cases fall to you whilst they remain on the Work Site.
- 5.15 The estimated value of any Products Not Recovered and any payment made or demanded by Forestry England or costs incurred by Forestry England in dealing with the Products Not Recovered will be included in Forestry England's consideration of the value of any Remaining Products after the Expiry Date or earlier termination of the Contract under the provisions of Conditions 10.9, 10.10, 10.11 and 10.12.

## **6. RISK AND PROPERTY**

- 6.1 The risk in the Products shall pass to You on the Harvesting Commencement Date and You shall be wholly liable for any loss or harm or damage to or caused by the trees or Products from such date as a result of any act or omission by You.
- 6.2 Notwithstanding the passing of risk under Condition 6.1, unless and until You have paid Forestry England all sums due for any Product removed from the Work Site or You have removed from the Work Site all Products You have paid for pursuant to the Contract, property in and title to all such Products purchased and sold shall remain with Forestry England and the following Conditions shall apply.
- 6.2.1 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 Forestry England or You to be located, and to inspect and/or remove the Products at any time while they remain Forestry England's property.

- 6.2.2 In the event that any of the Products are no longer in Your occupational control, 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 Forestry England's property.
- 6.2.3 All costs incurred by Forestry England in repossessing the Products whether or not they are still under Your control shall be borne by You.

## **7. DURATION**

- 7.1 This Contract shall come into force on the date that We accept Your bid and shall end on the Expiry Date, unless terminated earlier in accordance with the terms of this Contract.

### **CHANGE OF EXPIRY DATE**

- 7.2 If either party wishes to change the Expiry Date, that party shall make a request in writing to the other party at least 20 Business Days before the Expiry Date.
- 7.3 Any change to the Expiry Date shall only be effective if agreed by both parties, with such Contract recorded in writing. Agreement to any such requested change may not be unreasonably withheld or delayed by the other Party.
- 7.4 Forestry England shall not on the basis of Condition 7.3 be required to agree to extend the Expiry Date if the applicable delay has resulted from a breach by You of the Contract or is due to Your wilful, reckless or negligent actions or omissions.
- 7.5 If You request to change the Expiry Date, Forestry England shall have the right to grant any approval subject to such terms as Forestry England in the circumstances deem reasonable including setting a new Harvesting Removal Date. and /or giving You notice to recover any Product Not Recovered in accordance with Conditions 5.13 and 5.14. and /or to remove any Product not yet removed from the Work Site in accordance with Conditions 5.2 or 5.3. and the requirement on You to pay Forestry England's additional costs as described on the Contract Documents Webpage.
- 7.6 In the case of a change to the Expiry Date of a lump sum sale, Forestry England shall have absolute discretion in setting a new Harvesting Removal Date and Expiry Date in deciding whether to add any volume increment occasioned by further tree growth. In this case the increment will be calculated in accordance with Forestry Commission Field Guide "Timber Measurement" (ISBN 978-0-85538-749-5) or other such publication as may replace it from time to time.

### **CURTAILED ACCESS**

- 7.7 In the event that access and or egress to or from the Work Site and or Authorised Access Routes has been significantly curtailed as a consequence of circumstances pertaining to Conditions 3.24 or 3.25, Forestry England will agree to such extension of the duration of the Contract and applicable timescales provided for in the Contract as is reasonable, and a new Expiry Date.

## **8. RENEGOTIATION**

- 8.1 In addition to the provisions of Conditions 3.34, 3.35 and 3.36 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 Work and /or the Work Site has changed such that the Products cannot be harvested and /or removed in a safe manner under the existing terms.
- 8.2 Forestry England will not be bound by Condition 8.1 if You have breached Condition 3.8 or if Your act or omission or Your failure to complete the Work within the original period of the

Contract (subject to the provisions of Condition 8.3) is in Forestry England's reasonable opinion a contributing factor in the occurrence of the event or events provided for in Condition 8.1.

- 8.3 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.
- 8.4 Any renegotiation under Condition 8.1 or Condition 8.3 that results in a change to the Price or the Estimated Quantity or any other term must be agreed in writing and shall be deemed to form part of the Contract.

## **9. SANCTIONS AND SUSPENSION**

- 9.1 You agree that Forestry England shall have the right to apply the Sanctions Procedures set out on the Contract Documents Webpage in relation to breaches of the Dispatch Procedures and over-weight Loads to temporarily suspend Your access to the Work Site, 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.
- 9.2 Without prejudice to any other remedies that Forestry England may have under this Contract in the event of a breach by you of Conditions 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.18, 3.23, 3.26, 3.28, 3.31, 3.33, 5.2, 5.6, 5.7, 5.8, 5.14, 6.2, 12.2.1, 12.6, 12.9, 13.3 and 23.2, Forestry England shall have the right to suspend Your rights under the Contract to access the Work Site, 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.
- 9.3 The rights of Forestry England referred to in Conditions 9.1 and 9.2 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 discontinue all Work on the applicable Forestry England Land and remove all equipment and personnel (employees, contractors and subcontractors) within 20 Business Days.
- 9.4 In the event of the issue of a notice in accordance with Condition 9.3, the suspension shall apply until the Contract and /or any other applicable contract between You and Forestry England has terminated or all relevant breaches have been remedied (where capable of remedy) in accordance with the requirements of Conditions 10.6 and 10.7.
- 9.5 You accept that on the basis of this Condition 9 Forestry England has the right to suspend your rights of access under this Contract to the Work Site, 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.

## **10. TERMINATION**

- 10.1 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 10.2 are to Your knowledge considered likely to arise.
- 10.2 Either party shall be entitled to terminate the Contract forthwith by written notice to the other if:

- 10.2.1 The holder of any security takes possession or a receiver is appointed over any of the property or assets of the other party.
- 10.2.2 The other party makes any voluntary arrangement with its creditors or becomes subject to any administration order.
- 10.2.3 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.
- 10.3 Forestry England shall be entitled to terminate the Contract forthwith by written notice to You, if You commit any breach of Conditions 3.9, 3.13, 3.20, 3.27, 3.30, 3.40, 3.41, 4.1, 5.5, 5.10, 10.8, 12.2.3, 12.12, 12.15, 13.2, 16, 17, 18 and 20.
- 10.4 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 10.2 or 10.3 and is not a Remediable Breach as defined in Condition 10.6.
- 10.5 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**

- 10.6 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.
- 10.7 A breach shall be considered to be remediable if:
  - 10.7.1 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 agree to change the Expiry Date.
  - 10.7.2 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**").
- 10.8 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 10.3 above.
- 10.9 Upon termination of the Contract whether by written notice or expiry of time, You shall immediately cease Work unless Forestry England agrees in writing to a further period to allow you to remove in accordance with the Contract any Remaining Products which have already been harvested or processed and to pay for them.

#### **REMAINING PRODUCTS**

- 10.10 On the later of termination or expiry of any further period granted under Condition 10.9 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.
- 10.11 You shall take all necessary steps including execution of documentation to facilitate title to the Remaining Products referred to in Condition 10.10 transferring to Forestry England.
- 10.12 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.

- 10.13 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**

- 10.14 Within one calendar month of the termination (for whatsoever reason) or expiry of the Contract You shall remove any buildings, erections, materials, waste or equipment You may have placed or left on Forestry England Land and in respect of which there is no valid occupancy agreement with Forestry England that would allow You right of occupancy post the termination date or the Expiry Date (whichever is applicable).
- 10.15 If You fail to comply with the requirement of Condition 10.14, 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**

- 10.16 As security for the performance of Your obligations under Conditions 10.10, 10.12, 10.13 and 10.14, You hereby irrevocably appoint Forestry England as Your attorney to execute all documents and to do all things within the scope of Conditions 10.9, 10.11, 10.13 and 10.14 on Your behalf.

### **11. PRICE**

- 11.1 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 account on eSales. The Price does not include Value Added Tax.
- 11.2 In the case of an LTC, Condition 11.1 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.
- 11.3 No trees may be felled or Products harvested until a revised Price for each subsequent Lot is agreed. In the event that a revised Price for any subsequent Lot is not agreed in accordance with the LTC price procedures set out on the Contract Documents Webpage then You agree that the Estimated Quantity offered in said Lot will 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.

### **12. PAYMENT**

- 12.1 Subject always to the provisions of this Condition 12, 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.
- 12.2 For Lump Sum Sales.
- 12.2.1 Forestry England will issue invoices in advance of each Instalment and you shall be required to pay each Instalment on or before the Instalment Dates set out in the Lot

Information and Conditions or in advance of commencing Work whichever is earlier. You shall not be entitled to start or continue Work until the relevant Instalment has been paid in full.

- 12.2.2 In the event that Forestry England agrees an extension to the Expiry Date and /or the Harvesting Removal Date in accordance with Condition 7 You may request that Forestry England appropriately reschedules any outstanding Instalments.
  - 12.2.3 If the whole or part of any instalment shall not be paid by the applicable Instalment 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 such Instalment was due until the payment in full of the Instalment sum including any costs incurred by Forestry England in recovery of such late payment.
  - 12.2.4 In the event that Condition 12.2.3 results in termination Forestry England will have the right to allow a further period for You to remove any harvested products and after that period has lapsed, the right to treat any Products not Recovered in accordance with Conditions 5.13 and 5.14 and any Remaining Products in accordance with Conditions 10.9, 10.10, 10.11 and 10.12.
  - 12.2.5 Late payments (referred to in Condition 12.2.3 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 12.2.3 and then against the principal debt in the form of the Instalment sum.
- 12.3 For Weight Sales:
- 12.3.1 Unless Forestry England has agreed credit arrangements with You as described in Conditions 12.4 to 12.10, 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. Only upon payment being made of the invoiced sum shall You then 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 advance payment made by You.
  - 12.3.2 This payment process will repeat until the Contract 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**

- 12.4 If You have a credit facility agreed with Forestry England You shall be permitted to fell standing trees and /or harvest and 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.
- 12.5 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.
- 12.6 Where Forestry England has agreed in writing that You may produce the invoices for the Instalments or 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 12.5.

- 12.7 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.
- 12.8 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 work or Product removal against this Contract and against 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.
- 12.9 Notwithstanding the provisions of Condition 12.8 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.
- 12.10 Any late payment referred to in Condition 12.8 will be allocated in accordance with Condition 12.2.5.
- 12.11 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 Work Site 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 further payment to ensure Your credit limit is not at risk of being exceeded.
- 12.12 If Forestry England issues a notice to You under Condition 12.11 you will not thereby be relieved of any of Your obligations under the Contract or any other contract between You and Forestry England including, without prejudice to the generality of the foregoing, the obligation to remove the Products before the Harvesting Removal Date.

## **DEPOSITS**

- 12.13 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.
- 12.14 Where Forestry England requires payment of a deposit in accordance with Condition 12.11 (and without prejudice to any other remedies available to Forestry England under the Contract or otherwise) You shall have no right to access the related Work Sites, Stacking Sites or Authorised Access Routes to harvest or remove Products until You have made the relevant deposit payment.
- 12.15 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 12.11 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.
- 12.15.1 You failing to pay in full any sums due under the Contract.
- 12.15.2 Forestry England incurring costs or suffering losses as a result of You failing to perform Your obligations under the Contract.

## **13. ASSIGNMENTS AND SUBCONTRACTING**

- 13.1 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 ("the 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.

- 13.2 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.
- 13.3 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.
- 13.4 Subcontractors appointed by You as general service providers for the servicing and repair of Your machines, vehicles 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.
- 13.5 Notwithstanding any Forestry England acceptance of any subcontracting of the Work You shall remain fully responsible for the Works and for any failure to undertake them in compliance with the requirements of the Contract.

#### **14. FORCE MAJEURE**

- 14.1 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.
- 14.2 On the giving of such notice by either party the liability of the party serving notice to make available or purchase the standing trees or other harvestable Products as appropriate 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 Estimated 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 Harvesting Completion Date and the Expiry Date as set out in the Lot Information and Conditions may be extended as in Condition 7.
- 14.3 If a Force Majeure event which gives rise to relief from liability under this Condition 14 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.

#### **15. DISPUTE AND ARBITRATION**

- 15.1 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.
- 15.2 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.
- 15.3 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.

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

- 16.1 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.
- 16.2 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.
- 16.3 Subject to Condition 16.4 below, Forestry England's liability under the Contract shall not exceed the total Price and where the Price is based on Condition 11.2 that shall be the total Price for the year in which the liability accrued.
- 16.4 Nothing in this Contract will operate to exclude or restrict any Liability of a party;
- 16.4.1 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.
- 16.4.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable.
- 16.4.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979.
- 16.4.4 for breach of its obligations arising under section 2 Supply of Goods and Services Act 1982. or
- 16.4.5 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 16.5 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.
- 16.6 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.
- 16.7 You shall not do, or omit to do, or permit or suffer to be done, or to be omitted from the Work Sites, Stacking Sites or the Authorised Access Routes or otherwise anything that may render the policy or policies of insurance effected in accordance with Condition 16.2 void or voidable.

## **17. RELATIONSHIP OF THE PARTIES**

- 17.1 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:
- 17.1.1 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.
- 17.1.2 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.

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

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

## **18. CONFIDENTIALITY**

18.1 Subject to Condition 18.2, 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.

18.2 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 18.1 or of any of Forestry England's other obligations under the Contract.

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

19.1 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.

19.2 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.

## **20. REWARDS**

20.1 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.

## **21. WAIVER**

21.1 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.

## **22. NOTICES**

22.1 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:

22.1.2 In Your case to Forestry England's Contract Manager specified in the Lot Information and Conditions.

- 22.1.3 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.
- 22.2 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.

## **23. COSTS AND EXPENSES**

- 23.1 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.
- 23.2 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.
- 23.2.1 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.
- 23.2.2 Forestry England's intervention on Your Worksite (or in any of 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 standing trees or other Products to be harvested.
- 23.2.3 Making good, making safe or remedying any breach of the provisions of this Contract by You should You fail to do so.
- 23.2.4 Forestry England's additional actions to measure or estimate quantities of Product in order to determine payments for Products that you have not recovered or have not measured in breach of the Contract or to preserve Forestry England's rights under the Contract.
- 23.3 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 information set out on the Contract Documents Webpage.

## **24. SET OFF**

- 24.1 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.

## **25. GOVERNING LAW AND JURISDICTION**

- 25.1 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.