

## USER TERMS AND CONDITIONS

The following Terms and Conditions will apply to Your use of the Website and the Service:-

### 1. Definitions

In these Terms and Conditions:-

**"Bid"** means a bid for one or more Lots submitted by a Bidder;

**"Bid Page"** means the detail page describing the Lots in the Event in question;

**"Bidder"** means a User who has registered and is authorised to submit Bids;

**"Bidding Rules"** means the bidding rules which apply to a particular Lot, as indicated by the icons on the relevant Bid Page;

**"Closing Date"** means the date and time for cessation of bidding indicated on the Bid Page for the Event in question;

**"Commission"** or **"We"** means Forestry Commission, acting in exercise of the powers contained in the Forestry Act 1967 and having its principal place of business at 231 Corstorphine Road, Edinburgh, EH12 7AT;

**"Event"** means the sale of one or more Lots posted by the Commission on the Website, the format of which will be shown on the Bid Page.

**"Lot"** means an individual quantity of timber listed for sale by the Forestry Commission as part of an Event ;

**"Lot Information and Conditions"** means the detailed information and conditions relating to a Lot, including the relevant online purchase terms and conditions, which are accessible via the link on the Bid Page for the Event in question;

**"Purchaser"** means a Bidder whose Bid has been accepted by the Commission in accordance with these Terms and Conditions;

**"Purchase Contract"** has the meaning given in Condition 4.5;

**"Purchase Contract Terms and Conditions"** means the specific terms and conditions relating to the relevant Lot, as set out in the Lot Information and Conditions;

**"Service"** means the online bidding and purchase service offered on the Website;

**"Terms and Conditions"** means the terms and conditions.

**"User"** means a person whose application for registration has been accepted and not suspended;

**"Viewer"** means a User who has been registered, solely with rights to access and view the Website, and not as a Bidder;

**"Website"** means the part of the Forestry Commission website dedicated to electronic sales. The address of the timber sales homepage being [www.forestry.gov.uk/auctions](http://www.forestry.gov.uk/auctions).

**"You"** means You as browser/User of the Website and/or the Service;

### 2 Registration

- 2.1 Use of the Service and the Website is only available to persons who are capable of forming legally binding contracts under applicable law. The Service is not available to Users who are acting for purposes outside their trade, business or profession, or to minors.
- 2.2 We reserve the right to accept or refuse any application for registration as a User at Our discretion.
- 2.3 You may apply to register as either a Bidder or a Viewer. Only a duly registered Bidder may submit Bids. A Viewer may access and view the Website but shall have no authority to submit Bids.
- 2.4 By registering as a User You agree that You have read these Terms and Conditions, that You understand these Terms and Conditions and that You are bound by the Terms and Conditions in Your use of the Service and the Website.
- 2.5 If We accept Your application for registration We will send You an electronic mail validating Your registration and confirming Your user name [and user password]. You are solely responsible for maintaining the confidentiality of Your user name and user password and shall immediately notify Us in writing or by electronic mail of any authorised use of Your user name or user password.

### **3 Use of the Service**

- 3.1 Access to the Service is entirely at the discretion of the Commission and We reserve the right to temporarily or indefinitely suspend the availability of the Service and/or the Website to You at Our discretion without prior notice.
- 3.2 There may also be circumstances where the Commission is willing to accept Bids from a particular Bidder for individual Lots, but subject to an overall limit on volume bought in relation to a particular Event. Any such Bidder will be advised of the limit before the opening time for bidding
- 3.3 The User agrees to comply with any Bidding Rules or other guidelines relating to use of the Service posted on the Website from time to time.
- 3.4 You acknowledge that You have registered to use the Website and the Service for the purposes of Your trade, business and professional and not as a consumer, and that any Purchase Contracts which You enter into are entered into for such purposes. The User hereby agrees to waive all rights under Regulations [9(1), 9(2) and 11(1)] of the Electronic Commerce (EC Directive) Regulations 2002.
- 3.5 We may change, suspend or discontinue any aspect of the Service including availability of any part of the Service, for any reason whatsoever, without notice. In addition, We reserve the right, in Our sole discretion, to correct any errors or omissions in any portion of the Service or the Website.
- 3.6 You are solely responsible for all usage of the Website and the Service using Your user name and/or Your user password. Your authorisation to use the Service and the Website is personal. You are obliged to complete those transactions that occur using Your user name and user password, whether such transactions are authorised or unauthorised.
- 3.7 You undertake and warrant that:
  - 3.7.1 all information supplied by You to the Commission is, and shall be, true and accurate;
  - 3.7.2 no frivolous or vexatious Bids will be posted using Your user name and user password;

- 3.7.3 You will make no attempt to manipulate the bidding process at any time;
- 3.7.4 any Bid posted using Your user name and user password is and will be posted with Your actual authority;
- 3.7.5 no Bid or other material posted on the Website or otherwise provided by You shall be discriminatory, obscene, illegal or infringe the intellectual property of any third party or shall contain viruses, worms, trojans or other items of a destructive nature.

#### **4 Sales Events**

- 4.1 Following registration as a Bidder You are entitled to bid for Lots at an Event , in accordance with the Bidding Rules and subject to these Terms and Conditions.
- 4.2 Events posted on the Website, and the individual Lots within each Event, are in the form of an invitation to treat. A Bid posted by You shall constitute a binding offer for the Lot(s) in question, capable of acceptance by Us in whole or in part, subject to the Bidding Rules and any volume limit specified by a Bidder.
- 4.3 Each Event shall close without the need for notice to Users at the Closing Date, or of bids being accepted (as the case may be).
- 4.4 The Commission shall be under no obligation to accept the highest or any Bid. Acceptance of Bids shall be entirely at the discretion of the Commission and the Commission may, for a short period, continue to accept postal Bids. Where no Bid satisfactory to the Commission is received by the Commission the Commission may, at its discretion, either re-advertise the relevant Lot(s) (either as one Event, separately or as part of other Events), or approach an individual Bidder or Bidders and attempt to negotiate a sale. While any such approach shall be at the discretion of the Commission, the initial approach will normally be to the Bidder offering the highest price in the initial Bids.
- 4.5 Acceptance by the Commission of the successful Bid for a Lot shall be notified in accordance with Condition 10 by electronic mail to the Bidder in question, normally within twenty four hours of the Closing Date or of the Bid being accepted or on completion of negotiations (as the case may be). Confirmation of a successful bid will also be exhibited in the 'My Activities' section of the Website, under the 'My Contracts' link. Such notification of acceptance shall create a binding purchase contract ("Purchase Contract") between the Commission and the successful Bidder and such contract shall be deemed to incorporate the Lot Information and Conditions including the relevant Purchase Contract Terms and Conditions .
- 4.6 Unless otherwise requested the Commission will notify unsuccessful Bidders by electronic mail, normally within twenty four hours of the Closing Date.

## **5 Termination**

- 5.1 We expressly reserve the right to terminate any User's right to use the Service and the Website at Our discretion, for any reason and without notice.
- 5.2 In addition, You may notify us [see [www.forestry.gov.uk/auctions](http://www.forestry.gov.uk/auctions) for contact details] at any time of Your wish to terminate Your use of the Website and/or the Service, in which case We shall within four days revoke Your access rights to the Website and / or the Service and confirm to You that Your right to use the Website and the Service has been terminated.

## **6 Liability**

- 6.1 Except in respect of death or personal injury caused by the Commission's negligence, or as expressly provided in these Terms and Conditions, the Commission shall not be liable to Users by reason of any representation (unless fraudulent), or any implied warranty, condition or other term or any duty at common law or as a result of breach of contract and hereby exclude liability to the fullest extent permitted by law. Without prejudice to the foregoing generality the Commission shall have no liability for any of the following:-
- 6.1.1 indirect or consequential loss including without limitation, loss of profit, contract, information, anticipated savings or opportunity;
- 6.1.2 interruption to the Service (including any failure to send any notification to a User) or access to the Website.
- 6.2 Given the nature of the world wide web, which is beyond the reasonable control of the Commission, the Commission does not guarantee that the Website or the Service will be available continuously and free from faults. In addition We may need to carry out maintenance of the Website from time to time and/or to suspend operations but in doing so shall attempt to keep any disruption to a minimum.
- 6.3 Users accept full responsibility for the protection of their computer systems including hardware, software and stored data from viruses, worms, trojans or other items of a disruptive nature which may be downloaded or otherwise received from the Website. You must not attempt to interfere with the proper working of Our Website or the Service and, in particular, You must not attempt to circumvent security, tamper with, hack into or otherwise disrupt any computer system, server, website, router or any other internet connected device.
- 6.4 Where the Commission communicates with or sends notifications to You by electronic mail, We will use reasonable endeavours to communicate information as soon as practicable, however Users hereby acknowledge that electronic mail deliveries may be delayed or lost, but the Commission accepts no liability in respect of any delay or loss in the receipt by the User of any notifications.

## **7 Data Protection and Confidentiality**

- 7.1 Details of Bids received are confidential and information contained in Bids shall not be divulged by the Commission to other Bidders other than as set out in this Condition 7. An unsuccessful Bidder will, upon request, be advised by electronic mail of the reason why his Bid was not successful, and the name of the successful Bidder, but no other Bid information will be divulged to such an unsuccessful Bidder.
- 7.2 Users acknowledge that all or any information provided by them whether during registration, an update of registration or within particular Bids, may contain data protected by the Data Protection Act 1998 and that they have no objection to the display of and dealing with any such information for the purpose of the Service. The User warrants that

it has obtained all necessary consents in respect of the use of any such data which relates to third parties and its disclosure to the Commission.

- 7.3 The Commission may use information provided by a User to contact the User by electronic mail, text message, telephone, fax or post with information on the Service. Users may advise the Commission at any time that they do not wish their information to be used for such purposes by contacting the Commission [see [www.forestry.gov.uk/auctions](http://www.forestry.gov.uk/auctions) for contact details].
- 7.4 The Commission may use information provided by Users to compile, use and to provide third parties with, aggregate statistics about the Service and related site information, but these statistics will not contain information about Users from which Users could be identified.

## **8 General**

- 8.1 The Commission may amend, modify or supplement these Terms and Conditions, and the Purchase Contract Terms and Conditions, at any time by posting the amended, modified or supplemented terms on the Website. The amended, modified or supplemented terms of use and Contract Terms and Conditions shall be automatically effective five days after being posted on the Website. The foregoing shall not affect any transactions which are in progress as of the date and time of such amendment, modification or supplementing, which transactions shall continue to be governed by the previous Terms and Conditions and relevant Purchase Contract Terms and Conditions.
- 8.2 Nothing in these Terms and Conditions or a Purchase Contract shall create, or be deemed to create, a partnership or relationship of employer and employee between the Commission and the Users.

## **9 Governing Law and jurisdiction**

- 9.1 These terms and conditions, use of the Website and the Service shall be governed by and construed in accordance with Scots law. Every auction, tender or negotiation shall be deemed to be performed in Scotland. The Scottish courts shall have jurisdiction in any dispute between Us.

## **10 Notices**

- 10.1 Save as otherwise provided notices under these Terms and Conditions shall be in writing and may be served by either by sending the notice by electronic mail or facsimile transmission or by post addressed to the other party at the address provided or such other address as that party shall from time to time give to the other party for the purpose of service of notice hereunder and every such notice shall be deemed to have been served at the earlier of receipt of such notice or if served by post at the expiry of four days after despatch or if sent by electronic mail or facsimile transmission at 10.00 am local time on the next normal business day of the recipient following despatch and in proving service it shall be sufficient to show in the case of an electronic mail that no failed delivery notice is received, in the case of a facsimile transmission a positive confirmation slip and in the case of a letter that the same was duly addressed, pre-paid and posted in the manner aforesaid.