

FORESTRY ENGLAND ETIMBER SALES: USER TERMS AND CONDITIONS

In these Terms, we refer to Forestry England (which is part of the Forestry Commission, a non-ministerial government department and whose address is at 620 Bristol Business Park, Coldharbour Lane, Bristol BS16 1EJ) as "Forestry England", "We", "Us" and "Our" and we refer to the contracting party who accesses the Website and/or places a Bid in relation to a Lot as the "User", or "You", "Your" and "Yourself".

1. DEFINITIONS

1.1 In these Terms, the following terms have the following meanings:

"**Agreement**" has the meaning set out in clause 2.4;

"**Award**" shall have the meaning given to it at clause 8.1 (and "Awarded" and "Awarding" shall be construed accordingly);

"**Bid**" shall have the meaning given to it at clause 6.1;

"**Bid Price**" shall have the meaning given to it at clause 6.1;

"**Clarifications**" means any conditions which You attach to a Bid, as set out in the "clarifications" section of Your Bid;

"**Contract Term**" means the duration and term of a Purchase Contract entered into pursuant to clause 2.5, as outlined in the Lot Information and Conditions (and subject to any early termination or extension in accordance with the terms of the Purchase Contract);

"**Customer**" means the person, firm or company registered with Us pursuant with clause 3 on whose behalf You wish to access the Website and/or place a Bid to purchase the Products, and, where applicable, who shall be the contracting party to any Purchase Contract entered into with Us in respect of a Lot Bid upon by You;

"**Customer Administrator**" means a Customer User who is assigned the role of Customer Administrator either by default in accordance with clause 3.10 or by another Customer Administrator in accordance with clause 3.9, which gives the relevant Customer User the Website functionality to manage the roles and activities of all other Customer Users of the Customer on the Website and to submit and withdraw Bids for and on behalf of the Customer;

"**Customer Registered User**" means a Customer User who is assigned the role of Customer Registered User by a Customer Administrator, which gives the relevant Customer User the Website functionality to submit and withdraw Bids for and on behalf of the Customer;

"**Customer User**" means an individual User whose User account is linked to the Customer in accordance with clause 3.3;

"**Excluded Products**" means the part(s) of the trees or other material specified as such in the Lot Information and Conditions;

"**Extended Term**" shall have the meaning given in clause 6.6.1 or 6.6.2, as applicable;

"**Initial Term**" shall have the meaning given in clause 6.6.1 or 6.6.2, as applicable;

"Long Term Contract" or **"LTC"** shall have the meaning given to it in clause 6.2;

"Lot" means a specified or estimated quantity of Product that is made available for sale by Us by Online Tender;

"Lot Comments" means any comments attached to a Lot by Us via the Website which highlight certain key information or terms relevant to the sale of the Lot or provide clarifications surrounding a term or provision of the Lot Information and Conditions;

"Lot Information and Conditions" means those documents listed on the Website in relation to a particular Lot which detail the description and quantity of Products included in the Lot, as well as all other information (including information regarding those Purchase Terms and Conditions and any other special conditions which shall apply to the sale of the Products under the Purchase Contract) relevant to the sale of the Lot via Online Tender, including any Lot Comments but excluding the Sale Event Documentation;

"Online Tender" means the sale of a Lot conducted by closed bid tender via the Website in accordance with these Terms;

"Products" means all or part of those felled trees or standing trees as are described in the Lot Information and Conditions which Forestry England makes available for sale under the relevant Lot by Online Tender in accordance with these Terms;

"Public Sales Event" shall have the meaning given to it in clause 4.2.2;

"Purchase Contract" shall have the meaning given to it in clause 2.5;

"Purchase Contract Start Date" means the date on which the Purchase Contract is first entered into between the Customer and Us pursuant to clause 8.6;

"Purchase Terms and Conditions" means the relevant Forestry England standard terms and conditions of sale and any other special or additional terms which apply to the sale of the relevant Lot under the Purchase Contract, as set out in the Lot Information and Conditions;

"Reserve Price" means the minimum Bid Price that We will consider for acceptance and Award in relation to the sale of the relevant Lot via Online Tender;

"Restricted Sales Event" shall have the meaning given to it in clause 4.2.2;

"Sales Event" shall have the meaning given to it at clause 4.1;

"Sales Event Documentation" means those documents and any additional information listed on the Website in relation to a particular Sales Event which set out all information relevant to the sale of all Lots made available for sale as part of a Sales Event by Online Tender (but excluding any information which is Lot specific which shall be outlined in the Lot Information and Conditions);

"Service" means the Online Tender services provided by Us via the Website;

"Submission" shall have the meaning given to it in clause 9.3;

"Supporting Documentation" means any documentation and/or information, as specified by Us in the Sales Event Documentation and/or Lot Information and Conditions, which We may require You to provide to support Your Bid in accordance with clause 6.5;

"Tender End Date" means the time and date on which the Tender Period ends, as specified in the Sales Event Documentation;

"Tender Period" means the time period, as specified in the Sales Event Documentation, during which Users assigned the roles of Customer Administrators or Customer Registered Customer Users may participate in an Online Tender which is part of the Sales Event by placing a Bid on a Lot via the Website;

"Tender Start Date" means the starting time and date of the Tender Period, as specified in the Sales Event Documentation;

"Terms" means these terms and conditions;

"VAT" means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax;

"Volume Sale" shall have the meaning given to it in clause 12.2.1;

"Website" means any website hosted by Us or Our suppliers on which We host Online Tenders;

"Weight Sale" shall have the meaning given to it in clause 12.2.2;

"Work Site" means the area(s) of Forestry England forest land from which the Products are to be harvested, removed and/or collected by You as specified in the Lot Information and Conditions.

2. BASIS OF CONTRACT

2.1 These Terms govern the relationship between Us and You when You register to access the Website and/or Bid in an Online Tender held by Us via the Website.

2.2 Our Website and Online Tenders are for use and participation by business customers only.

2.3 We may modify these Terms, with immediate effect and without prior notice, to reflect changes in relevant law or regulatory requirements or to make minor changes. Any amendment or variation to these Terms shall be posted on the Website. We can only make material changes to these Terms after You have accepted them if We give You notice and an option to terminate.

2.4 These Terms, Our privacy policy and any Bid You place, together with the Sales Event Documentation and the relevant Lot Information and Conditions constitute the entire agreement between You and Us relating to its subject matter ("**Agreement**").

2.5 Our Online Tenders are unconditional closed bid tenders. This means that immediately on Award, the Customer for and on behalf of whom You place the Bid shall enter into a legally binding contract with Us to purchase the Lot for the Bid Price, subject to the Sales Event Documentation, the Lot Information and Conditions (including the relevant Purchase Terms and

Conditions), any Clarifications outlined by You in Your Bid and, as applicable, Your Submission ("**Purchase Contract**"). The Purchase Contract does not form part of this Agreement.

3. CUSTOMER REGISTRATION AND USER ACCOUNTS

3.1. To access the Website and/or place a Bid in an Online Tender, You will be required to: (i) where not already registered, register the details of the Customer; and/or (ii) register Your details as an individual User and create an individual User account.

3.2. Submission of a Customer registration and/or request to create a User account shall be deemed acceptance of these Terms. If You do not agree with these Terms, then You must not submit any Customer registration, request to create a User account or place a Bid in respect of any Lot. We strongly recommend that You read these Terms in full before accessing the Website, viewing Sales Event Documentation or Lot Information and Conditions or taking part in an Online Tender.

3.3 After You submit Your Customer registration and/or request to create a User account, You will receive an email from Us acknowledging that We have received Your request but please note that this does not mean that Your request has been accepted and We will grant access to the Website. Our acceptance of Your Customer registration and/or request to create a User account will take place as described in clause 3.5. We will only grant You access to the Website on acceptance of Your request to create a User account.

3.4 When creating an individual User account, You will be required to provide the name of the Customer on whose behalf You wish to access the Website and view and/or Bid on Lots on behalf so to enable Us to link Your User account with the relevant Customer's registration. On receipt of Your request to create a User account, We will notify the Customer Administrator(s) of the relevant Customer that a request has been made to link a new User account with the Customer's registration. Only once the Customer Administrator has approved the request will We be able to respond to Your request to create a User account in accordance with clause 3.5.

3.5 Our acceptance of Your Customer registration and/or request to create a User account takes place when We send the email to You to accept it, at which point the Customer shall be formally registered on Our systems and/or Your User account shall be activated and You will be able to access the Website. If We are unable to accept Your Customer registration and/or request to create a User account for any reason, We will inform You of this by email. We reserve the right to reject Your Customer registration and/or request to create a User account for any reason.

3.6 If You are assigned the role of Customer Administrator, You may create a User account on another User's behalf by adding a new User account to the Customer registration. You may do this only if: (i) You obtain the relevant individual's express written consent to open a new User on their behalf; and (ii) You procure that the individual has agreed to these Terms.

3.7 You shall ensure that all information provided when submitting a Customer registration and/or creating a User account is up to date, accurate and complete. Before You submit a Customer registration, You shall ensure that you have obtained the Customer's express written authority to do so.

3.8 We reserve the right to cancel a Customer registration and/or to suspend or terminate Your User account and/or Your ability to place a Bid in the event of any breach of clause 3.6 or clause 3.7.

3.9 All User accounts must be linked to one or more registered Customers. A User account may be linked to more than one Customer. Once linked to a Customer, a User may be allocated the role of Customer Administrator or Customer Registered User by a Customer Administration of the Customer.

3.10 The first Customer User to be linked to a Customer upon Customer registration shall automatically be allocated the role of Customer Administrator. Once further Customer Users have been linked to the registered Customer, the role of Customer Administrator can be allocated to another User(s) by the Customer Administrator. Customer Administrators shall have the ability to:

3.10.1 allocate and manage the roles of Customer Users (including closure of a Customer User's account on the relevant User's behalf); and

3.10.2 place and withdraw Bids for and on behalf of the Customer.

3.11 Any Customer User appointed the role of Customer Registered User shall have the ability to place and withdraw Bids for and on behalf of the business.

3.12 All Customer Users shall:

3.12.1 have access to view the Website (including Sales Events, Sale Event Documentation and Lot Information and Conditions); and

3.12.2 receive notifications relating to new Sales Events.

3.13 Unless appointed the role of either Customer Administrator or Customer Registered User by a Customer Administrator, a Customer User shall not have the ability to place and/or withdraw Bids on behalf of the Customer via the Website.

3.14 Where linked to more than one Customer, the User must select the Customer on whose behalf the User wishes to access the Website and/or place a Bid during the relevant browsing session at the beginning of it. If You are assigned the role of Customer Administrator or Registered Customer User such assignment shall apply only in relation to Your activities on the Website for and on behalf of the relevant Customer.

3.15 It is Your responsibility to maintain the confidentiality of Your User account username and password and You are responsible for all activity that occurs under such username and passwords. **We will not be liable where Your password is used by someone else. You should notify Us immediately of any unauthorised use of passwords and any breach of security as soon as You become aware of it.**

3.16 You shall take all reasonable steps to check that the details that You provide in relation to Your User account and any Bid that You place are complete, accurate and correct. **We shall have no liability for errors or omissions in information provided by You or on Your behalf or from Your failure to check that the Bid relates to the correct Lot or Customer prior to placing or withdrawing a Bid or carrying out any other activity via the Website.**

3.17 On creating a User account, You can manage Your User and notification preferences via Your User account.

4. SALES EVENTS

4.1. We may make one or more Lots available for sale by Online Tender during a sales event ("**Sales Event**"). All Lots made available for sale during a Sales Event shall have the same Tender Period.

4.2 A Sales Event shall be:

4.2.1. either a national or local Sales Event; and

4.2.2. either:

a. visible and open to all Users to view and, where so authorised, place Bids on any Lot included in the Sales Event (a "**Public Sales Event**"); or

b. visible and open to only the Customer Users of the Customer who has been Awarded a Long Term Contract in relation to the Sales Event to view and/or, where so authorised, place Bids on any Lot included in the Sales Event (a "**Restricted Sales Event**").

4.3 Subject to clause 4.2.2, all live Sales Events are listed on the Website.

4.4 We shall make the following information available on the Website during the Tender Period:

4.4.1 the Sales Event Documentation; and

4.4.2 the Lot Information and Conditions of each Lot of the Sales Event.

4.5 The Sales Event Documentation shall be available on the Website for the duration of the relevant Tender Period. We may update all or any part of the Sales Event Documentation at any time prior to the Tender End Date. Any amendment to the Sales Event Documentation shall be posted on the Website as soon as practicable. You are responsible for checking for updates to the Sales Event Documentation relevant to any Lot on which You wish to place or have placed a Bid.

4.6 Before placing a Bid on any Lot during a Sales Event We strongly recommend that You read the Sales Event Documentation and any additional documents listed against the relevant Sales Event.

5. LOT INFORMATION

5.1. Following acceptance by the Seller of your application for registration as a Customer, you shall be entitled to bid for Lots at an Event, in accordance with the Bidding Rules and subject to these Terms and Conditions.

5.1 All Lots made available for sale by Online Tender during a Sale Event shall be listed on the Website against the relevant Sale Event. Each Lot shall be given a Lot number.

5.2 The Products available for sale under each Lot (including the type, description and quantity of Products sold and the point of sale) are as described in the Lot Information and Conditions of the relevant Lot.

5.3 You acknowledge and agree that We sell both felled and standing timber Products via Online Tender and the point of sale (i.e. whether the Product is sold as felled or standing timbe/timber products) is outlined in the Lot Information and Conditions. You are responsible for checking both the point of sale and location of the Products included in a Lot prior to placing a Bid. Unless otherwise stated in the Lot Information and Conditions, You shall be responsible for all costs associated with harvesting and removal of the Products (where applicable) and/or collecting the Products from the specified area of the Work Site in accordance with the Purchase Terms and Conditions.

5.4 The Lot Information and Conditions of each Lot sets out the Purchase Terms and Conditions which shall apply to the Purchase Contract on Award, together with all other information relevant to the sale. Before placing a Bid on a Lot We strongly recommend that You read the relevant Lot Information and Conditions and any Lot Comments which may be listed against a Lot.

5.5 The Lot Information and Conditions of each Lot shall be available on the Website for the duration of the relevant Tender Period. We may update all or any part of the Lot Information and Conditions at any time prior to the relevant Tender End Date. Any amendment to the Lot Information and Conditions shall be posted on the Website as soon as practicable. You are responsible for checking for updates to the Lot Information and Conditions of the Lot on which You wish to place or have placed a Bid.

5.6 We may update the Reserve Price and/or the Tender End Date at any time, including during the Tender Period. If You place a Bid on a Lot, We will notify You (and all Customer Administrators and Registered Customer Users) by email if the Tender End Date is subsequently updated. In no circumstances is the Reserve Price of a Lot or the Bid Price of another Customer made available to Users prior to the Tender End Date.

5.7 It is your responsibility to review the entirety of the relevant Lot Information and Conditions and Sales Event Documentation prior to placing a Bid. Should You wish to raise additional enquiries regarding the Lot, any such enquiries should be made to Us (and responses obtained) prior to placing a Bid on the Lot.

6. PLACING A BID

6.1 A "**Bid**" constitutes an offer by You on behalf of the Customer to purchase the Products included in the Lot from Us at the price outlined in Your Bid ("**Bid Price**") in accordance with these Terms, the Sales Event Documentation, the Lot Information and Conditions and any Clarifications specified by You in Your Bid. Only submitted Bids will be considered for Award.

6.2 The Online Tender in respect of a Lot shall begin on the Tender Start Date. Customer Administrators and Customer Registered Users may place a Bid on the Lot during the relevant Tender Period only. To create a draft Bid and/or place a Bid on a Lot You must be appointed as either a Customer Administrator or Registered Customer User.

6.3 Once created, a draft Bid can be edited and/or submitted by any Customer Administrator or Registered Customer User of the relevant Customer. You may create draft Bids against any number of Lots within a Sales Event.

6.4 Each Bid must set out the following information:

6.4.1 the Bid Price; and

6.4.2 any Clarifications which You wish to attach to Your Bid.

6.5 In relation to certain Sale Events or Lots, We may require that You also upload Supporting Documentation at the time of placing Your Bid. Where Supporting Documentation is required, this will be stated in the Lot Information and Conditions and/or Sales Event Documentation (which will also detail the nature and/or content of any Supporting Documentation required, which may include (but shall not be limited to) evidence that You hold relevant licences) and You will not be able to submit Your Bid until such Supporting Information has been uploaded. If, when reviewing and assessing Your Bid, We identify that the Supporting Documentation provided is incorrect or incomplete We shall notify all Customer Users of the relevant Customer of such fact and provide an opportunity for the Customer to provide the correct Supporting Documentation. If the correct Supporting Documentation is not provided within the timescales specified by Us in Our notification, We may reject the relevant Bid(s).

6.6 Once submitted, a Bid can be edited or withdrawn at any time by any Customer Administrator or Registered Customer User of the relevant Customer until the relevant Tender End Date. On receipt of Your instruction to edit or withdraw a Bid, We will email all Customer Users confirming Your instruction. A Bid cannot be edited or withdrawn after the Tender End Date. Before editing or withdrawing any Bid, You must ensure that You have obtained the express written authority of the Customer to do so.

6.7 Each Customer may place only one Bid per Lot. If You wish to place a Bid on a Lot to which another Customer User of the Customer has already submitted a Bid, You must either edit the existing Bid or withdraw the existing Bid and place a new Bid in respect of the relevant Lot.

6.8 The Bid Price must be given in pounds sterling and excludes VAT which We reserve the right to charge in addition in accordance with the Purchase Contract.

6.9 Lots are sold either on the basis of a Volume Sale or a Weight Sale. The Bid Price submitted must be reflective of the basis on which the relevant Lot is sold. You are responsible for satisfying Yourself as to the basis to which the Lot is sold prior to submitting a Bid.

6.10 Where the Lot relates to standing timber, unless otherwise stated in the Lot Information and Conditions, the Bid Price is exclusive of all costs of harvesting, removing and transporting the Products from the Work Site. Where the Lot relates to felled timber, unless otherwise stated in the Lot Information and Conditions, the Bid Price is exclusive of all costs of removing and/or transporting of the Products from the Work Site. In no circumstances shall We be liable for any costs incurred by You in performing such activities, unless expressly stated in the Lot Information and/or Conditions.

6.11 Before submitting a Bid, We will ask You to confirm the details of Your Bid. By placing a Bid, You confirm that You:

6.11.1 have read these Terms, the Lot Information and Conditions and any Clarifications specified by You in Your Bid;

6.11.2 have obtained the express written authority to enter into this Agreement and place a Bid on behalf of the Customer;

6.11.3 have satisfied Yourself as to the description, quantity, point of sale and location of the Products included in the Lot which You wish to Bid upon; and

6.11.4 understand and accept that should We accept Your Bid and Award the Lot to the Customer, the Customer will immediately enter into a Purchase Contract with Us in respect of the sale of the Products outlined in the Lot.

6.12 We will notify all Customer Users by email to confirm that Your Bid has been received but please note that this does not mean that Your Bid has been accepted. Our acceptance of Your Bid (and Award of the Lot) will take place as described in clause 8.6.

6.13 Unless the Online Tender is terminated earlier or extended in accordance with these Terms, the Online Tender in respect of all Lots within a Sales Event shall end on the Tender End Date. We shall not accept any further Bids in relation to any applicable Lot after the Tender End Date.

6.14 We may cancel an Online Tender at any time (including during the Tender Period). If We cancel an Online Tender We shall notify all Customer Users of those Customers who have placed a Bid on the relevant Lot at the cancellation date by email and We shall not Award the Lot to any customer. **In the event that an Online Tender is cancelled, We shall not have any liability to You arising from or in connection with the cancelled Online Tender or failed purchase of any Lot.**

7. CUSTOMER VOLUME LIMITS

7.1 A Customer Administrator or Registered Customer User may set a volume limit on the total quantity of standing and/or felled timber Products which the Customer wishes to purchase across all Lots in any Sales Event ("**Customer Volume Limits**").

7.2 Where a Customer Volume Limit has been set in relation to a Sales Event, We will use reasonable endeavours to take such Customer Volume Limits into consideration when evaluating those Bids submitted by a Customer and Awarding Lots in a Sales Event. We cannot, however, guarantee that We will always be able to apply a Customer Volume Limit when Awarding Lots in relation to a Sales Event.

8. AWARD OF LOT

8.1 At the end of the Tender Period, Our panel shall review and assess all Bids received in relation to each Lot in the Sales Event and agree which Customer's Bid to accept and award the Lot to ("**Award**").

8.2 We may take the following factors into consideration when assessing each Lot:

8.2.1 the Bid Price;

8.2.2 the Reserve Price;

8.2.3 the date the Bid is submitted;

8.2.4 any Clarifications attached to the Bid;

8.2.5 any Customer Volume Limit set by the Customer in relation to the relevant Sales Event;

- 8.2.6 any Customer credit issues identified by Forestry England's credit manager;
- 8.2.7 previous conduct of the Customer (e.g. breaches under a previous contract);
- 8.2.8 where applicable, the Customer's Submission and/or any interview of the Customer conducted by Us; and

8.3 We may reject a Bid for any reason at Our sole discretion.

8.4 If either:

8.4.1 none of the Bids received in relation to a Lot meet the Reserve Price; and/or

8.4.2 a Customer has attached Clarifications to a Bid which We do not accept, however, the Bid Price is acceptable,

then We may contact, as applicable, the customer who submitted the Bid with the highest Bid Price in relation to the Lot and/or the Customer who submitted the Bid which attached the relevant Clarification(s) and seek to negotiate a revised Bid which is acceptable to Us. If We seek to negotiate a revised Bid, such negotiations will usually take place via telephone.

8.5 If We agree a new Bid with You during any negotiation ("**Negotiated Bid**"), We will confirm such Negotiated Bid (including the revised Bid Price) with You by email which shall be sent to the Customer Administrators and Registered Customer Users of the Customer. Our confirmation email shall also include a link via which You may accept the Negotiated Bid on Our Website. Only when You accept the Negotiated Bid on the Website will You enter into a Purchase Contract with Us in respect of the relevant Lot.

8.6 If We Award the Lot to You, We shall promptly notify all Customer Users by email and the Customer shall immediately enter into a legally binding Purchase Contract with Us to purchase the Lot for the Bid Price.

9. LONG TERM CONTRACTS

9.1 We may make certain Lots available for sale by Online Tender as a Long Term Contract sale (as opposed to a one time sale).

9.2 Lots made available for sale as a Long Term Contract shall consist of the opportunity to purchase up to a prescribed quantity of those Products outlined in the Lot Information and Conditions each year of the Contract Term at the Bid Price provided the Customer meets its commitments to Forestry England as set out in its Submission ("**Long Term Contract**" or "**LTC**").

9.3 To place a Bid on a Lot sold as a Long Term Contract ("**LTC Lot**") You must also prepare and submit a submission ("**Submission**") alongside Your Bid which details:

9.3.1 the information requested by Us in the Lot Information and Conditions, including, as applicable, Your proposed solutions and commitments to Us (which shall be become binding on Award of the LTC) in response to any specific issues raised by Us in the Lot Information and Conditions; and

9.3.2 any Clarifications which You wish to attach to Your Bid (including alternative specifications of the Product(s) and any corresponding adjustment to the Bid Price).

9.4 We will not accept Your Bid in respect of an LTC Lot unless You have attached a Submission which includes the information outlined in the Lot Information and Conditions.

9.5 At the end of the Tender Period of an LTC Lot We shall review and assess all Bids (and accompanying Submissions) received and We shall score each Bid and accompanying Submission to assess which one, subject to clause 9.8, offers the best opportunity to Forestry England (both to achieve to best price for the Products and, as applicable, to address those issues raised by Us in the Lot Information and Conditions). The LTC Lot shall be Awarded to the highest scoring Customer. The Customer to whom the LTC Lot is Awarded to shall be notified in accordance with clause 8.7.

9.6 Before Awarding an LTC Lot We may contact You to clarify any aspect of Your Bid and/or We may invite all or a shortlist of those Customers whom placed a Bid on the relevant LTC Lot to interview prior to Award of the LTC Lot. Where interviews are carried out, We shall score each Bid, the accompanying Submission and the relevant Customer's performance at interview before Awarding the LTC Lot in accordance with clause 9.5.

9.7 Where We obtain clarifications from You in accordance with clause 9.6 We will confirm these in writing with You prior to Award of the LTC Lot.

9.8 We shall not award more than 66.6% of the total available quantity of any one type of Product available for sale by LTC within any Forest District at any one time to the same Customer.

9.9 The Contract Term of an LTC Lot shall be as outlined in the Purchase Information and Conditions. If no Contract Term is specified, then:

9.9.1 in relation to LTC Lots which consist of standing timber: the Contract Term of an LTC Lot shall be five years from the Purchase Contract Start Date ("**Initial Term**") after which it shall terminate automatically without notice, unless no later than 3 months before the end of the Initial Term (or any Extended Term), Forestry England issue notice extend the Contract Term at the end of the Initial Term for a further period of 12 months ("**Extended Term**"), subject to a maximum Contract Term of 10 years from the Purchase Contract Start Date.

9.9.2 in relation to LTC Lots which consist of felled timber: the Contract Term of an LTC Lot shall be four years from the Purchase Contract Start Date ("**Initial Term**") after which it shall terminate automatically without notice, unless no later than 3 months before the end of the Initial Term (or any Extended Term), Forestry England issue notice extend the Contract Term at the end of the Initial Term for a further period of three years ("**Extended Term**"), subject to a maximum Contract Term of 10 years from the Purchase Contract Start Date.

9.10 On Award of an LTC Lot, We shall provide the Customer with the opportunity to purchase up to the prescribed annual quantity of the Products at the Bid Price through Lots which shall be made available as Restricted Sales Events on a periodic basis throughout the course of the relevant 12 month ("**LTC Sales Lots**").

9.11 Bids can be placed on LTC Sales Lots in accordance with clause 6, save that the relevant Sales Event shall be a Restricted Sales Event and only accessible by the relevant Customer.

10. PURCHASE CONTRACT

10.1 You acknowledge and agree that the Customer shall be bound by the terms of the Purchase Contract immediately on Award pursuant to clause 8.6.

10.2 Transfer of title and risk in the Products shall only transfer in accordance with the terms of the Purchase Contract. You shall have no right to enter or occupy Our sites for the purpose of harvesting, removing, collecting or otherwise taking possession of the Products other than is outlined in the relevant Purchase Contract.

11. HARVESTING AND COLLECTION OF PRODUCTS

11.1 Where You place a Bid on a Lot which includes Products which are standing timber, unless otherwise stated in the Lot Information and Conditions, On Award You shall be responsible for harvesting, removing and collecting the Products from the Work Site in accordance with the relevant Purchase Terms and Conditions.

11.2 Where You place a Bid on a Lot which includes Products which are felled timber Products, unless otherwise stated in the Lot Information and Conditions, On Award You shall be responsible for removal and collection of the Products from Work Site in accordance with the relevant Purchase Terms and Conditions.

11.3 Unless otherwise stated in the Lot Information and Conditions, You shall be responsible for all costs incurred in harvesting, removing and/or collecting the Products in accordance with the Purchase Terms and Conditions.

11.4 You shall comply with all rules and requirements imposed by Us under the Lot Information and Conditions surrounding the harvesting, collection and removal of the Products from the Work Site.

12. PRICE AND PAYMENT

12.1 On Award, the price payable for the Products included in a Lot shall be the Bid Price.

12.2 The Bid Price shall be either:

12.2.1 the total price outlined in the Bid (being the total price payable for the specified quantity of Products outlined in the Lot Information and Conditions), payable by lump sum or in instalments, as specified in the Lot Information and Conditions ("**Volume Sale**"). In such circumstances the quantity of Products made available for sale by Us shall be calculated in accordance with the methods stated in the Lot Information and Conditions; or

12.2.2 calculated based on the net weight of the Products (to be measured by the Customer in accordance with the Purchase Contract) and the price per unit of measurement outlined in the Customer's Bid ("**Weight Sale**").

12.3 You are responsible for checking the basis upon which the Bid Price shall be calculated (i.e. whether on the basis of a Volume Sale or a Weight Sale) prior to placing a Bid. Where placing a Bid on a Lot sold as a Weight Sale, You shall be responsible for weighing the Products in accordance with the terms of the Purchase Contract (and all associated costs) unless otherwise outlined in the Lot Information and Conditions.

12.4 The Bid Price is exclusive of Value Added Tax which the Customer shall additionally be liable to pay to Us at the prevailing rate, subject to the receipt of a valid VAT invoice.

12.5 In relation to LTCs, the price payable for the Products shall be the Bid Price accepted by Us under the relevant LTC Lot in relation to the [first period of supply for each Lot only, as set out in the Lot Information and Conditions]. Thereafter, the price of the Goods paid under subsequent LTC Sales Lots shall be [the revised price agreed in accordance with the LTC price procedures outlined in the Lot Information and Conditions of the LTC Lot].

12.6 Payment of the Bid Price shall be made in accordance with the payment terms outlined in the Lot Information and Conditions.

13. TERMINATION AND WITHDRAWAL BY YOU

13.1 You may terminate this Agreement at any time (and withdraw any Bid that You have placed), however, Your rights and responsibilities when You terminate the Agreement will depend when You decide to terminate it and whether We are in breach of the Agreement or not:

13.1.1 if You want to terminate the Agreement because We are in breach of the Agreement or because of something We have done or have told You We are going to do, see clause 13.2;

13.1.2 in all other cases, see 13.3.

13.2 If You wish to terminate the Agreement for any of the reasons set out at clause 13.2.1 to clause 13.2.3 below, the Agreement will end immediately when You notify Us and any Bid placed by You at the time of termination shall be cancelled (and no further sums shall be payable by You). The reasons are:

13.2.1 We have told You about an upcoming change to these Terms which you do not agree to (see clause 2.3);

13.2.2. We have suspended, delayed or cancelled an Online Tender for technical or other reasons, or notify You we are going to suspend it, in each case for a period of more than [five days]; or

13.2.3 We have committed a material breach of any term of this Agreement and We have failed to remedy that breach within 24 days of You telling Us about it.

13.3 If You do not have a right to terminate the Agreement under clause 13.2, You can still terminate the Agreement at any time, but if, at the time of termination, You have submitted a Bid in a Sales Event for which the Tender Period has ended but the Lot has not yet been Awarded, You may have to pay Us the Bid Price.

13.4 If You wish to terminate the Agreement under this clause 13, please contact Us to let Us know.

13.5 Termination of this Agreement shall not affect any Purchase Contract which has already been entered into between the parties. To terminate a Purchase Contract You must terminate the relevant Purchase Contract in accordance with its terms.

14. TERMINATION BY US

14.1 We may terminate the Agreement at any time by notifying You in writing for any reason, including:

14.1.1 You do not, within a reasonable time of Us asking for it, provide Us with information that is necessary for Us to provide Our Services;

14.1.2 You act in breach of these Terms or the terms of the Purchase Contract;

14.1.3 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

14.1.5 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.

15. OUR LIABILITY : YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

15.1 **Our liability to You.** Except in respect of the losses described in clause 15.2:

15.1.1 We shall not be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Agreement; and

15.1.2 Our total liability to You for all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the sum of £500,000.

15.2 **Losses We never limit or exclude.** Nothing in these Terms shall limit or exclude Our liability for:

15.2.1 death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors (as applicable);

15.2.2 fraud or fraudulent misrepresentation;

15.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or

15.2.4 any matter in respect of which it would be unlawful for Us to exclude or restrict liability.

16. EVENTS BEYOND OUR CONTROL

Neither party to the Agreement shall be liable for any delay or failure to perform their obligations caused by any circumstance beyond their control, and such party shall be entitled to a reasonable extension of time for the performance of such obligation.

17. ASSIGNMENTS AND SUBCONTRACTING

17.1 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 Agreement to the Reorganised Business which shall be entitled to enforce those rights as if the Agreement were made between You and the Reorganised Business.

17.2 You shall not assign Your rights or liabilities under the Agreement without Forestry England's consent in writing and this consent shall not be unreasonably withheld.

17.3 We may authorise or allow Our contractors and other third parties to provide to Us and/or to You services necessary or related to the Online Tender and to perform Our obligations and exercise Our rights under these Terms.

18. DISPUTE AND ARBITRATION

18.1 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 this Agreement or concerning the rights and liabilities of the parties under it.

18.2 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.

18.3 Any reference under this clause to "arbitration" 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.

19. RELATIONSHIP OF THE PARTIES

19.1 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:

19.1.1 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;

19.1.2 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; or

19.1.3 to pledge or purport to pledge Forestry England's credit; or

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

20. REWARDS

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 Agreement.

21. THIRD PARTY RIGHTS

Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

22. WAIVER

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

23. SEVERANCE

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement. If any provision of the Agreement is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. ENTIRE AGREEMENT

24.1 The Agreement constitutes the entire agreement between the parties relating to its subject matter.

24.2 Each party acknowledges that in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement or the accompanying documents.

25. NOTICES

25.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:

25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at:

- a. Forestry England at: the address set out at the beginning of these Terms;
- b. You: the postal address specified in Your user profile section of the Website or to such other postal address as has been last notified to Forestry England in writing for that purpose.

25.1.2 sent by email to:

- a. Forestry England at: etimber.sales@forestryengland.uk ;

b. You: the email address specified in Your user profile section of the Website or to such other emails address as has been last notified to Forestry England in writing for that purpose.

25.2 Any notice shall be deemed to have been received:

25.2.1 if delivered by hand, at the time the notice is left at the proper address;

25.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

25.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

25.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. GOVERNING LAW AND JURISDICTION

This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be construed according to and governed by the law of England and Wales and each of the parties hereby irrevocably agrees that that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.