

# Wood Supply Agreement

Eden Management Area

ALLIED NATURAL WOOD EXPORTS PTY LTD  
AND  
THE FORESTRY CORPORATION OF NSW

Hardwood Forest  
Sawlogs

September 2019



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THIS AGREEMENT is made the 9<sup>th</sup> day of December 2019.

## 1. PARTIES

1.1 **THE FORESTRY CORPORATION OF NSW**, a statutory State-owned corporation constituted by the Forestry Act, 2012 ("FCNSW")

1.2 **ALLIED NATURAL WOOD EXPORTS PTY LIMITED ACN 607 144 089** ("Company")

## 2 DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter -

"**Act**" means the Forestry Act 2012 (NSW) and all regulations made under that Act;

"**Allocation**" for a Year means:

- (i) In the Year of the Commencement Date:- 12,500 cubic metres of Timber;
- (ii) Each Year thereafter:- 25,000 cubic metres of Timber, as that quantity may be amended in accordance with **clause 7.2**;

"**Area of Supply**" means the Eden Management Area;

"**Business Days**" means the days Monday to Friday inclusive but excluding Public Holidays and rostered days off;

"**Change in Control**" of a corporation means change in control of more than 50% of the shares with the right to vote in general meetings of the corporation;

"**Code of Procedure**" means the Code of Procedure set out as **Schedule 8**;

"**Commencement Date**" means the date set out in **Item 1 of Schedule 1**;

"**Compartment**" means an identified administrative area from which FCNSW will make a supply of Timber available to the Company in accordance with a Harvesting Plan;

"**Contract Harvesting**" means the felling, extraction, sorting, processing, grading, loading, hauling, and delivery of Timber and ancillary works including roading, tracking, log dump construction and site rehabilitation by a Contractor engaged by FCNSW;

"**Contract Harvesting Date**" means the date FCNSW intends to commence Contract Harvesting part or whole of the Allocation;

"**Contractor**" includes servants and agents of that contractor;

"**Delivered Cost**" means either:

- (a) in the case of timber being made available by FCNSW issuing licenses under the Act to the Company: - the total of the Stumpage Prices payable on the timber taken and the Company's costs and expenses of harvesting and hauling the timber to the Mill; or

(b) in the case of timber being made available by FCNSW carrying out Contract Harvesting: - the Delivered Prices for the timber.

**"Delivered Price"** means the prices payable for Timber delivered to the Company, in the course of FCNSW conducting Contract Harvesting determined in accordance with **clauses 12.2, 13 and 14.**

**"Delivery Charge"** has the meaning set out in clause 7 of **Schedule 6** and as calculated in accordance with **Schedule 7;**

**"Eden Management Area"** means the area identified as the Eden Management Area on the map annexed as **Schedule 2;**

**"Force Majeure"** means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality, war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause which prevents a party from performing its obligations (in whole or in part) under this Agreement;

**"Integrated Operation" and "Integrated Harvesting"** means a harvesting operation in which two or more types of timber products are harvested and sorted into discrete categories to be supplied to more than one person;

**"Log Dump"** means a place nominated by FCNSW, where timber is stored and serviced prior to delivery to a sawmill or processing plant;

**"Log Sorter"** means log processing machinery located at the Mill for segregating log products of desired quality, lengths and diameters out of raw logs in preparation for sawmilling or other timber processing.

**"Milestone"** means an action to be completed by the Company in order for the Sawmill to be constructed and operational more particularly being the actions set out in **clause 1 of Schedule 9;**

**"Mill"** means the company's timber processing facility at Jews Head, Edrom Road, Eden or such other site as the parties agree upon in writing;

**"Monthly Delivery Schedule"** has the meaning given to that term in **Schedule 6;**

**"Price Schedule"** means a schedule for calculating the Stumpage Price of Timber prepared by FCNSW from time to time in accordance with the principles of The Price System and being at the date of this Agreement **Schedule 4;**

**"Salvage"** means the taking of windthrown timber or damaged timber, pushed over or felled for purposes other than timber harvesting, including road construction, powerline construction and extraction of forest materials;

**"Sawmill"** means the sawmill proposed by the Company to be constructed on the site of the Mill capable of processing at least 25,000 cubic metres of Timber into green sawn

timber products in a 12 month period and after it is constructed and is in operation a reference to the Sawmill also means the Sawmill as constructed;

**"Softwood TSA"** means a timber supply agreement between FCNSW and ANWE or nominee having the same date as this Agreement and a term of at least 3 years under which FCNSW agrees to supply and ANWE or nominee agrees to take each year at least 100,000 tonnes, but not more than 200,000 tonnes, of softwood timber from FCNSW's Bombala Management Area;

**"Specifications"** means the Specifications for timber set out in **Schedule 3**;

**"Stumpage Price"** means the price for Timber taken by the Company under licence issued under the Act determined in accordance with **clause 13**;

**"Term"** means the duration of this Agreement;

**'The Price System'** means a system for determining the Stumpage Price of timber in accordance with particular methodologies and principles adopted by FCNSW more particularly being at the date of this Agreement the system set out in FCNSW document "Price system - NSW Native Forest and Hardwood Plantation Pricing System" and as may be varied from time to time;

**"Timber "** means that hardwood timber which meets the Specifications;

**"Year"** means the 12 month period commencing on 1 July.

2.2 In this Agreement unless the context requires otherwise;

2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;

2.2.2 words and phrases defined in the Act will have the same meanings attributed to those words and phrases in the Act unless the word or phrase is defined in this Agreement in which case the word or phrase will have the meaning attributed to it in this Agreement;

2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;

2.2.4 words importing the singular include the plural and vice versa;

2.2.5 words importing a gender include any gender;

2.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;

2.2.7 a reference to anything includes a part of that thing;

2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit or schedule to this Agreement;

2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;

- 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 2.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.
- 2.2.13 a reference to the Minister is a reference to the Minister acting in his capacity as representative of the Crown in the right of the State of New South Wales but not as a statutory officer under the Act.
- 2.2.14 a reference to FCNSW making Timber available is a reference to making Timber available by either of the methods described in **clause 8**.
- 2.2.15 a reference to the Company taking Timber is a reference to the Company either taking Timber from Crown-timber land under licence or accepting delivery of Timber delivered by FCNSW to the Company in the course of FCNSW conducting Contract Harvesting.
- 2.2.16 a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

### **3. SCOPE OF AGREEMENT**

- 3.1 The operation of this Agreement is subject to and conditional upon FCNSW and ANWE or nominee entering into the Softwood TSA on the same date as this Agreement.
- 3.2 Subject to **clause 3.1** from the Commencement Date FCNSW shall sell and the Company shall purchase timber at the prices provided for in **clause 12** upon the terms and conditions set forth in this Agreement.
- 3.3 **Schedule 9** applies in relation to the construction of the Sawmill.

### **4. DURATION OF AGREEMENT**

- 4.1 Subject to **clause 3.1** this Agreement shall commence on the date of its making and shall remain in force until the expiration of 10 years from the Commencement Date unless sooner terminated or later extended in accordance with this Agreement.
- 4.2 FCNSW may at the request of the Company made by notice in writing to FCNSW negotiate with the Company for the purpose of extending the Term by 5 years. Subject to **clause 4.3** the Term may be extended by more than one 5-year extension.



4.3 A request to negotiate an extension of term may be made by the Company not earlier than 6 years before and not later than 5 years before the end of the Term.

4.4 In the event of a request being made in pursuance of **Clause 4.2** FCNSW shall within three months from the date of the request notify the Company whether it will agree to negotiate with the Company for the purpose of extending the Term.

## **5. SUPPLYING THE ALLOCATION AND USE OF THE ALLOCATION**

5.1 Each Year of this Agreement from the Commencement Date FCNSW must make the Allocation (or such lesser quantity as may be requested by the Company) available to the Company from the Area of Supply.

5.2 Each Year the Company must ensure that that part of the Allocation it takes under this Agreement that is comprised of Timber with a CDUB of 30cms or greater is either processed by the Company into sawn timber products or, if the Company on sells the Timber, that the Timber will be processed into sawn timber products by another entity. For the purpose of this **clause 5.2** sawn timber products includes wood peeled from Timber to be used in the manufacture of composite wood products such as plywood.

5.3 If requested by FCNSW from time to time the Company must provide FCNSW with such information as FCNSW may reasonably request to verify the Company's compliance with **clause 5.2**.

## **6. RIGHT TO SUPPLY FROM OUTSIDE THE AREA OF SUPPLY**

6.1 FCNSW may make the Allocation, or any part thereof, available from any area ("the substituted area") outside the Area of Supply provided always that FCNSW must ensure that the Delivered Cost from the substituted area does not exceed the average Delivered Cost which would be payable if the timber made available was made available from within the Area of Supply.

6.2 Notwithstanding **clause 6.1** and any other provision of this Agreement FCNSW is not obliged to supply the Timber from outside the Area of Supply.

## **7. SHORTFALL**

7.1 Subject to clause 7.6, if for reasons other than Force Majeure or the default of FCNSW, the Company:

a. takes less than 80 per cent of the Allocation for two consecutive Years during the term of this Agreement, FCNSW may:

(i) terminate this Agreement; or

- (ii) amend the Allocation by reducing it to a quantity not less than the Yearly average quantity of Timber taken by the Company during the two consecutive Years.

7.2 Subject to clause 7.6, if for reasons other than Force Majeure or the default of FCNSW, the Company takes less than 70 per cent of the Allocation in any Year, FCNSW may terminate this Agreement.

7.3 Subject to **clause 7.6** if for reasons other than Force Majeure, or the default of FCNSW, the Company fails in any Year ("Undercut Year") to take at least 90% of the Allocation, the Company must pay FCNSW within 90 days of FCNSW' written demand to pay (which may not be served before the end of the Undercut Year) the sum of money equal to the difference between the price that would have been payable had the Company taken 90% of the Allocation and the price paid or payable for the quantity of Timber actually taken by the Company in that Undercut Year. In calculating the price that would have been payable had the Company taken at least 90% of the Allocation the relevant price for the Timber not taken is the weighted average price for the relevant Timber actually taken in the Undercut Year, except if no Timber was taken then the relevant price is highest price payable for the Timber in that Year. Any sum payable by the Company under this clause is payable as pre-estimated and liquidated damages and not as a penalty;

7.4 If in the Year in which the Company makes a payment under **clause 7.3** ("Payment Year") the Company takes a quantity of Timber in excess of 90% of the Allocation ("excess Timber"), the Stumpage Price component of the amount payable by the Company for the excess Timber will be reduced by the Stumpage Price component of the amount of any sum paid under **clause 7.3**. The amount of any reduction allowed must not exceed the Stumpage Price component of the sum that would have otherwise been payable for the excess Timber at the prices applicable for the Payment Year.

7.5 If (by reason of FCNSW conducting Contract Harvesting in the Undercut Year) the liquidated damages under **clause 7.3** includes a Delivery Charge component the parties acknowledge that the Company's obligation to pay the Delivery Charge component under **clause 7.3** in relation to an Undercut Year has been provided in this Agreement to offset a reciprocal liability FCNSW may have in that Year under Contract Harvesting Agreements. FCNSW will use reasonable endeavours to limit its said reciprocal liability under the relevant Contract Harvesting Agreements as a result of the Company's failure to take Timber under this Agreement. If the Company makes payment in accordance with **clause 7.3** that includes a Delivery Charge component:

7.5.1 FCNSW must as soon as practicable ascertain whether it has any such reciprocal liability and within 30 days of so ascertaining:

- (a) provided the reciprocal liability is less than the Delivery Charge component of the amount paid under **clause 7.3**, refund the difference; and



(b) provide the Company with evidence of its reciprocal liability.

7.5.2 FCNSW may make no further claim against the Company in respect to the reciprocal liability.

7.6 If the Company makes a payment under **clause 7.3** in respect of an Undercut Year the Undercut Year shall not be taken into account as a Year for the purposes of FCNSW exercising a right to terminate under **clause 7.1** or **clause 7.2**.

## **8. METHOD OF SUPPLY**

8.1 FCNSW may issue licences under the Act enabling the Company to take Timber or it may elect to make Timber available by conducting Contract Harvesting operations or it may elect to do both.

8.2 The provisions of **Schedule 5** shall apply in relation to Timber made available to the Company by FCNSW issuing licences to the Company.

8.3 The provisions of **Schedule 6** shall apply in relation to Timber made available to the Company by FCNSW conducting Contract Harvesting.

## **9. CONTRACT HARVESTING**

9.1 At any time during the Term FCNSW may elect to make any or all of the Allocation available to the Company by Contract Harvesting.

9.2 If FCNSW intends to undertake Contract Harvesting it must, as soon as practicable after it forms the intention, give the Company written notice of its intention, the details of the extent of the prospective operations and when it intends to commence Contract Harvesting ("the Contract Harvesting Date") which in any event must be at least 2 years from the date of the notice.

9.3 The Company warrants that it has not at the date of this Agreement engaged a Contractor for the harvesting or haulage of Timber on terms that both extend into the Term and require 24 months or more notice to terminate the engagement.

9.4 After the execution of this Agreement the Company must not without first obtaining the written consent of FCNSW, engage the services of a Contractor to harvest or haul Timber to be made available under this Agreement, on terms which require 24 months or more notice to terminate the services. FCNSW may not unreasonably withhold consent if the proposed contract will not prejudice FCNSW's engagement of contractors to carry out Contract Harvesting to make the Allocation available.

9.5 FCNSW may after consultation with the Company vary any Plan of Operations to take into account the introduction of Contract Harvesting operations and must where necessary or appropriate to do so submit any varied Plan of Operations to the Harvesting Approval Process for approval or endorsement. FCNSW must provide a copy of any Plan of Operations as varied to the Company as soon as reasonably practicable after it has been so approved or endorsed.

9.6 FCNSW may commence the Contract Harvesting operations at any date after the Contract Harvesting Date.

## **10. TITLE AND RISK**

10.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber.

10.2 The risks of ownership of the Timber will pass to the Company when the Company takes delivery of it.

10.3 The Company will be deemed to have taken delivery of Timber:

10.3.1 if the Timber is harvested by the Company or a person engaged by the Company: - when the Timber has been felled; or

10.3.2 if the Timber is harvested by Contract Harvesting: - when the Timber is delivered to the Delivery Site.

## **11. SPECIFICATIONS**

11.1 FCNSW must make available or supply and the Company must take any timber which conforms with the Specifications and is within other requirements of this Agreement.

11.2 Subject to the Company's right specified in **Schedule 6** to object to timber delivered in the course of Contract Harvesting, Timber will be deemed to conform with the Specifications if the Company takes delivery of it.

11.3 If quantities of Timber which conform to the Specification, and which the Company is entitled to under this Agreement in a Year, are not available in the Year as a consequence of Force Majeure or in breach of this Agreement:

11.3.1 the Company and FCNSW must within a reasonable period of time confer with a view to exploring the possibility of the Company accepting timber from categories of logs which are not within the Specifications, in replacement of the quantities of Timber that are not available. FCNSW must give written notice to the Company as soon as practicable and in any event within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Company to meet with FCNSW and provide particulars of:

(a) the extent and consequences of the shortage;

- (b) details of other timber which FCNSW can supply by way of replacement timber ("Replacement Timber"); and
  - (c) the terms and conditions (including price) on which FCNSW would supply, or make available such Replacement Timber; and
- 11.3.2 The Company will not be entitled to claim any damages for breach against FCNSW unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from Replacement Timber available from FCNSW but outside the scope of the Specifications.
- 11.4 Replacement Timber supplied to the Company under the provisions of **clause 11.3** will be deemed to be Timber supplied under this Agreement.
- 11.5 At the request of the Company, FCNSW must consult with the Company with respect to the terms and conditions (including price) upon which FCNSW is prepared to supply or make available Replacement Timber.
- 11.6 The Company has no obligation to accept Replacement Timber on the terms proposed or at all.
- 12. PRICES**
- 12.1 If FCNSW makes Timber available to the Company by issuing licences under the Act enabling the Company to take Timber the price payable for the Timber shall be the Stumpage Price for the Timber.
- 12.2 If FCNSW makes Timber available to the Company by delivering it to the Company in the course of Contract Harvesting the price payable for the Timber shall be the Delivered Price which shall be the total of:
  - 12.2.1 the Stumpage Price; and
  - 12.2.2 the Delivery Charge;
 for the Timber involved.
- 13. STUMPAGE PRICES**
- 13.1 The Stumpage Price payable from time to time for Timber shall be calculated by reference to the category and rates set out in the Price Schedule for the Timber.
- 13.2 FCNSW may amend or vary the Price Schedule from time to time following a review by FCNSW of the various components of the Price Schedule in accordance with The Price System.
- 13.3 In conducting a review of the Price Schedule FCNSW:
  - 13.3.1 will be subject at all times to the requirements of the Act;

- 13.3.2 must conform with the methodologies and principles set out in The Price System; and
- 13.3.3 will consult with the Company, taking its written representations into account in considering pricing elements, and provide a proper written response to such representations which are relevant to the matters referred to in **clause 13.2** provided that any such response may be part of a generic response to representations by the Company and other recipients of Timber from the Area of Supply.
- 13.4 A Price Schedule which is varied or amended by FCNSW following a review may be implemented at any time during a Year provided that after completion of the requirements of **clause 13.3**, FCNSW gives not less than 28 days prior written notice to the Company of the varied or amended Price Schedule.
- 13.5 FCNSW may review and vary The Price System from time to time. In performing any review of The Price System FCNSW will at all times consult with the Company and be subject to the requirements of the Act.
- 14. DELIVERY CHARGES**
- 14.1 If FCNSW makes Timber available to the Company by delivering it to the Company in the course of Contract Harvesting, Delivery Charges shall be established and varied in accordance with **Schedule 7**.
- 15. PAYMENT**
- 15.1 Each calendar month FCNSW will issue an invoice, or at the option of FCNSW the Company will issue a Recipient Created Tax Invoice, for Timber taken by it in the previous calendar month.
- 15.2 The Company must pay any invoice by the end of the month of its issue.
- 15.3 If any amount of an invoice payable by the Company is not paid within the time specified by **Clause 15.2**, FCNSW may, without limiting the obligations of the Company or FCNSW's rights under **clause 7 or clause 24.1**, after giving to the Company seven (7) days notice in writing of its intention to do so, suspend the Company's rights to Timber under this Agreement until payment has been made.
- 16. GOODS AND SERVICES TAX**
- 16.1 The Stumpage Prices and Delivery Charges and any other consideration for supplies specified in this Agreement do not, subject to the operation of this clause, include any amount in respect of GST unless provided otherwise.

- 16.2 The GST may be imposed on the Stumpage Prices and Delivery Charges for Timber made available under this Agreement.
- 16.3 If GST is or will be imposed on a supply made under this Agreement, the supplier may:
- 16.3.2 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
  - 16.3.2 otherwise recover from the recipient the amount of that GST.
- 16.4 The supplier must ensure that any invoice issued under this agreement in respect of a taxable supply is a Tax Invoice or Adjustment Note as appropriate or, if no invoice is to be otherwise issued under this Agreement, must issue a Tax Invoice or Adjustment Note as appropriate within 7 days of GST being imposed on a taxable supply made under this Agreement. Notwithstanding any other provision of this Agreement the payment of any amount by the recipient in respect of a taxable supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- 16.5 Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit provided that the reimbursement or indemnification does not amount to consideration for a taxable supply.
- 16.6 If the consideration for a supply under this Agreement is calculated by reference to the consideration or value of other supplies, in performing that calculation, the consideration or value for those other supplies excludes any amount in respect of GST payable on those supplies.
- 16.7 In this clause 16:
- 16.7.1 **Adjustment Note** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;
  - 16.7.2 **GST** includes any replacement or subsequent similar tax;
  - 16.7.3 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
  - 16.7.4 **New Tax System changes** has the same meaning as in the Trade Practices Act 1974 (Cth);
  - 16.7.5 **Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises; and
  - 16.7.6 Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

## 17. COMPLIANCE

- 17.1 The Company must comply with:
- 17.1.1 the provisions of the Act;
  - 17.1.2 the Code of Procedure;
  - 17.1.3 conditions of licences issued to the Company under the Act;
  - 17.1.4 the Harvesting Plans; and
  - 17.1.5 the requirements of any person acting in the exercise of statutory powers (State or Commonwealth) enabling them to give directions in connection with or affecting the availability, taking, supply or delivery of Timber.

- 17.2 The Company must ensure that its respective agents, contractors or other persons under their respective control or direction comply with **clause 17.1**;

## **18. DETERMINATION OF QUANTITIES**

- 18.1 The method of determination of the quantity of Timber upon which the price is payable under this Agreement will be as set out in the Code of Procedure. Either party may propose amendments to the Code of Procedure. If a party proposes an amendment the parties must as soon as practicable negotiate in good faith to reach agreement as to the amendment of the Code of Procedure. In default of agreement the Code of Procedure may be amended by FCNSW as may be considered necessary by FCNSW from time to time but FCNSW will consult with and take into account any comments of the Company before any amendments are effected or implemented.
- 18.2 Any determination by FCNSW to amend or not amend the Code of Procedure and the terms of any amendment must be made and conveyed to the Company in writing within a reasonable period after the conclusion of negotiations.
- 18.5 If the Company provides a weighbridge or other measuring device approved by FCNSW, the Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.
- 18.6 FCNSW may from time to time undertake an independent verification of the operation and accuracy of the weighbridge or other device used in the measurement of Timber upon which the price is payable under this Agreement.

## **19. SALE OF TIMBER ETC TO OTHER PERSONS**

- 19.1 Nothing in the Agreement shall affect the rights, powers and privileges acquired by any person (whether before or after the commencement of this Agreement) under the Act, or any other Act.

- 19.2 Subject to the rights of the Company under this Agreement to take Timber in the Area of Supply nothing in this Agreement shall restrict FCNSW' powers pursuant to the Act, including but not limited to the right to sell to any other company, person or persons or to issue licences to any other company, person or persons, to obtain timber of any kind, products or forest materials, within the Area of Supply.

## **20. INDEMNITY AND INSURANCE**

- 20.1 The Company indemnifies FCNSW against all actions, proceedings, claims, demands and expenses by any person in respect of or arising out of the negligent performance by the Company of its obligations under this Agreement.
- 20.2 FCNSW indemnifies the Company against all actions, proceedings, claims, demands and expenses by any person in respect of or arising out of the negligent performance by FCNSW of its obligations under this Agreement.
- 20.3 The Company will take out and maintain Public Liability Insurance with a licensed insurance company in an amount not less than \$20 million for each and every occurrence and not limited in the aggregate for any one period of claim.
- 20.4 FCNSW will maintain Public Liability Insurance with a licensed insurance company in an amount not less than \$20 million for each and every occurrence and not limited in the aggregate for any one period of claim.

## **21. FORCE MAJEURE**

- 21.1 If FCNSW is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:
- 21.1.1 the Company will have no claim against FCNSW under this Agreement, to the extent that the non-performance is due to the Force Majeure;
- 21.1.2 if FCNSW is unable to resume the performance of its obligations within a period of 12 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') either party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 15 months from the relevant date and in this regard, time will be of the essence; and
- 21.1.3 If due to Force Majeure the amount of Timber available in the Area of Supply is reduced below the level necessary to make the Allocation available to the Company FCNSW may allocate any Timber which is available to the Company



and other persons in a manner which reflects FCNSW functions and obligations under the Act and accords with any directions of the Minister.

- 21.2 If the Company is prevented from taking Timber by Force Majeure and:
- 21.2.1 the Force Majeure was not caused by any unlawful act or omission on the part of the Company or any employee or agent of the Company;
  - 21.2.2 the Company had taken all reasonable or practicable precautions to prevent the Force Majeure; and
  - 21.2.3 the Company has made all reasonable efforts to contain the effect of the Force Majeure,
- then FCNSW will have no claim against the Company for non-fulfilment of the Company's obligations under this Agreement, to the extent that the non-fulfilment is due to the event of Force Majeure;
- 21.3 FCNSW, upon any such application by the Company, shall not unreasonably withhold a suspension of the said obligations affected by Force Majeure or a reasonable modification of their extent or operation or an extension of time for their performance or observance provided always that if the reasons for seeking any suspension or modification will have effect for more than 2 years FCNSW may after consultation with the Company terminate this Agreement at the expiration of the 2 year period by 28 days notice in writing.
- 21.4 A party must give initial notice of the existence or occurrence of the Force Majeure as soon as is practicable to do so and in any case, it must provide a more detailed notice within 28 days of the Force Majeure being apparent which provides clear details of the event or occurrence claimed as Force Majeure and setting out particulars of the likely effects of the event or occurrence in question.

## **22. LIMITATION OF LIABILITY**

- 22.1 Where FCNSW is in breach of this Agreement by reason of any failure to make timber available or to supply or deliver timber any claim for loss suffered by the Company will be limited to the lesser of;
- 22.1.1 the loss, damage or expense which would be incurred by the Company as a direct result of obtaining the timber (which FCNSW failed to make available, supply or deliver) from the most economic alternate source; or
  - 22.1.2 the Company's loss of profits,
- and will not otherwise include any consequential loss.

## **23. ASSIGNMENT**

- 23.1 Subject to **clause 23.3** the Company shall not without the prior consent of FCNSW assign its rights and responsibilities under this Agreement to any person.

- 23.2 If the Company is a corporation, any Change in Control of the Company (or if the Company is a subsidiary, any Change in Control of its holding company) will be deemed to be an assignment of the Company's rights and entitlements under this Agreement.
- 23.3 In considering whether to give its consent to any proposed assignment FCNSW shall have regard to the public interest and in particular may take into account the capacity of the proposed assignee to perform the Company's obligations under this Agreement, the acceptability of the proposed assignee to the State of NSW, the quantum of any consideration paid or to be paid to the Company by the proposed assignee, the likely socio-economic effects of the proposed assignment, possible future developments in the industry and any other matter it thinks fit, provided that its consent shall not be unreasonably withheld.
- 23.4 Any such consent given by FCNSW may be subject to such conditions as may be determined by FCNSW and accepted by the assignee but without limiting the generality of the foregoing shall be subject to the assignee executing all agreements and other documents which FCNSW considers necessary for the purpose of ensuring that the assignee shall be subject to all the obligations and conditions imposed upon the Company by this Agreement so far as they remain in force and are capable of taking effect.

## 24. TERMINATION

- 24.1 If -
- 24.1.1 the Company enters into liquidation (other than by a voluntary liquidation for the purposes of reconstruction and assignment of rights under this Agreement);
- or
- 24.1.2 the Company contravenes or fails to comply with the terms and conditions of this Agreement and such default is not remedied by the Company to the satisfaction of FCNSW, within a period of thirty (30) days (or 60 days in the case of a breach of a provision **Schedule 9**) after notice of same has been served on the Company;
- FCNSW may thereupon terminate this Agreement.
- 24.2 If for reasons other than Force Majeure FCNSW fails for 2 consecutive Years to make 50% or more of the Allocation available to the Company, the Company may, by notice in writing to FCNSW, terminate this Agreement.
- 24.3 The expiration or termination of this Agreement shall not affect the right of either party to enforce any right, obligation or liability previously acquired hereunder.

## 25. RESOLUTION OF DISPUTES

- 25.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement which cannot be settled by the parties within fourteen (14) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the Australian Disputes Centre (ADC) to appoint a mediator and the mediator will be so appointed.

The mediator must conduct proceedings under this Clause in accordance with the Guidelines for Commercial Mediation of the ADC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute.

- 25.2 In the event that the dispute has not been settled within twenty-eight (28) days or such other period as agreed to in writing between the parties, after the appointment of the mediator, the dispute or difference must be submitted to arbitration.

Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request ADC to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to the ADC's Rules for Domestic Arbitration.

- 25.3 The Arbitrator or some person appointed on the Arbitrator's behalf may investigate the Company's and FCNSW' affairs and accounts so far as may be necessary to assist the Arbitrator to determine any matter referred for arbitration. The Company and FCNSW must give the Arbitrator full access to all accounts and papers necessary for that purpose and must afford the Arbitrator full information and assistance.

- 25.4 In so far as the provisions of this **Clause 25** apply to a dispute concerning the determination of Stumpage Prices or Delivery Charges ("the disputed matter") the issue for consideration by any mediation or arbitration, shall be limited to a determination as to whether proper consideration was given to the factors set out in this Agreement to be taken into account in the disputed matter. To avoid any doubt any such arbitration may not review the Stumpage Price or Delivery Charge on its merits and may not determine the Stumpage Price or Delivery Charge which is to apply.

- 25.5 If an arbitration regarding a disputed matter determines improper consideration was given to the factors required to be taken into account, the FCNSW determination of the disputed item will be void ab initio and FCNSW must:
- 25.5.1 promptly re-determine the Stumpage Price or the Delivery Charge as the case may be which will then apply from the first date it was originally intended to apply;
  - 25.5.2 refund to the Company any over payment made as a result of the disputed matter.
- 25.6 Any re-determination under **Clause 25.5** may be subject to arbitration in accordance with **Clause 25.4**.
- 25.7 Any mediation or arbitration must be held in Sydney, NSW and either party may be represented by a legal practitioner.
- 26. VARIATION**
26. No variation or amendment of this Agreement shall be binding unless made in writing and signed by the parties.
- 27. NOTICE**
- 27.1 Any notice required to be served under this Agreement may be served at the places specified for each party as set out in **Item 2 of Schedule 1**.
- 27.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.
- 27.3 A notice under this Agreement must:
- 27.3.1 be in writing and directed to the other party as specified in **clause 27.1** or the address last notified by the intended recipient to the sender; and
  - 27.3.2 forwarded to the address or the email address of that party.
- 27.4 A notice under this Agreement will be deemed to be served:
- 27.4.1 in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;
  - 27.4.2 in the case of delivery by post – within three business days of posting;
  - 27.4.3 in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email at the address identified in Schedule 1.
- 27.5 Despite the preceding clause, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5

pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

**28. INTEREST**

- 28.1 In the event that the Company fails to pay any money due to FCNSW when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest 3% higher than the rate of interest payable at the date of default under section 101 of the Civil Procedure Act 2005 (NSW) in relation to unpaid judgement debts.

**29. GOVERNING LAW**

- 29.1 This Agreement shall be governed by and interpreted in accordance with the Laws of New South Wales.

**30. SEVERABILITY**

- 30.1 If any provisions of this Agreement are held to be invalid, illegal or unenforceable by a Court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

**31. CONFIDENTIALITY**

- 31.1 The parties acknowledge that this Agreement is a class 3 contract for the purposes of section 31 of the Government Information (Public Access) Act 2009 and consequently a copy of this Agreement is required to be included on FCNSW's government contract register.

- 31.2 A party must not disclose:

31.2.1 any information or documents received by it in connection with the negotiation of this Agreement;

31.2.2 any information or documents received by it in connection with or pursuant to the provisions of this Agreement;

without the prior written consent of the other party, except to the extent that:

31.2.3 the information is available to the public generally;

31.2.4 that party is required to make the disclosure by law or to make any filing, recording or registration required by law;

31.2.5 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorisation, approval or licence from any public body or authority;

31.2.6 it is necessary that the disclosure be made to any taxation or fiscal authority;

31.2.7 the disclosure is made on a confidential basis to the professional advisers of that party for the purpose of obtaining advice in relation to this Agreement or

the enforcement of this Agreement or otherwise for the purpose of consulting those professional advisers;

31.2.8 The disclosure is made on a confidential basis to a potential financier of the party, purchaser of the party or shares in the party, or assignee of the party's interest in this Agreement;

31.2.9 the disclosure is required or desirable to be made in pursuance of any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.

31.2.10 in the case of FCNSW the disclosure is for the purpose of briefing the Minister administering the Act or any person nominated by that Minister for the purpose of briefing the State of NSW in relation to the arrangements between FCNSW and the Company.

31.3 The parties acknowledge that a disclosure in breach of this clause will prejudice their respective legitimate business, commercial, professional and financial interests and will found an action for breach of confidence


**EXECUTED AS A DEED**

**EXECUTED** for and on behalf of  
the **FORESTRY CORPORATION**  
OF **NEW SOUTH WALES**  
by its delegate

.....  
in the presence of:



.....  
Witness



.....  
Signature

**N.J.V. Rossetti**

.....  
Delegate Name

**EXECUTED** by **ALLIED NATURAL**  
**WOOD EXPORTS PTY LIMITED**  
by two directors.



.....  
Signature

**MALCOLM D MCCOMB**

.....  
Director Name



.....  
Signature

**IAN SEDGWICK**

.....  
Director Name



## SCHEDULE 1

### PARTICULARS

#### ITEM 1

Commencement Date: 1 January 2020
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#### ITEM 2 – CONTACT DETAILS OF THE PARTIES

##### (a) Company

Company Name: Allied Natural Wood Exports Pty Ltd	
Name(s) of Principal(s):	Paul Heubner
Australian Company Number:	ACN 607 144 089
Australian Business Number	ABN 65 607 144 089
Business Address:	JEWS HEAD, EDROM ROAD, EDEN NSW 2551 AUSTRALIA
Telephone Number(s):	03 9621 7900
E-mail	<a href="mailto:info@anwe.com.au">info@anwe.com.au</a> ,

##### (b) FCNSW

Title:	THE GENERAL MANAGER – HARDWOOD FORESTS
Business Address:	THE FCNSW, PO Box 100, BEECROFT NSW 2119
Telephone Number:	02 9872 0111
Email	<a href="mailto:martin.grealy@fcnsw.com.au">martin.grealy@fcnsw.com.au</a>

### AREA OF SUPPLY

Forestry Corporation

0 5 10  
Kilometers  
1:600,000

[illegible]

**Roads**

- Highway
- Main Road
- FCNSW Maintained Roads

— Main Rivers

Water Bodies

Management Area

Forst Management Zone 1

Native Forests

Planted Forests

Built Up Area

National Park & Nature Reserve

24

### SCHEDULE 3

### SPECIFICATIONS

<b>Species</b>	All hardwood species suitable for sawmilling
<b>Minimum Log Length</b>	2.4m
<b>Centre Diameter UB</b>	≥ 40 cm High Quality Large Sawlog and < 40 cm High Quality Small Sawlog.
<b>Minimum Toe Diameter UB</b>	25 cm
<b>Minimum Butt Diameter - High Quality Small Sawlogs UB</b>	40cm for logs less than 4.0m 36cm for logs greater than or equal to 4.0m
<b>Maximum Length Allowance with Maximum Pipe</b>	20%
<b>Maximum Defect % with Maximum Pipe</b>	See Table below
<b>Spiral Grain</b>	Maximum slope of 1 in 8
<b>Sweep</b>	Maximum is 20% (1 in 5) of mid diameter over any 2.4 m section of log

Log/end Diameter (cm)	Max Pipe (cm)	Maximum % Defect	Log/end Diameter (cm)	Max Pipe (cm)	Maximum % Defect
24	4	23	88	56	62
26	6	25	90	58	62
28	8	28	92	58	62
30	10	31	94	60	62
32	12	34	96	62	62
34	14	37	98	64	62
36	16	40	100	64	63
38	18	42	102	66	63
40	20	44	104	68	63
42	22	46	106	68	63
44	22	47	108	70	63
46	24	48	110	72	64
48	26	50	112	74	64
50	28	52	114	74	64
52	30	52	116	76	64
54	30	53	118	78	64
56	32	54	120	80	64
58	34	55	122	80	64
60	36	56	124	82	64
62	38	56	126	84	64
64	38	57	128	84	64
66	40	57	130	86	65
68	42	58	132	88	65
70	42	58	134	90	65
72	44	58	136	90	65
74	46	59	138	92	65
76	48	59	140	94	65
78	48	59	142	94	65
80	50	60	144	96	65
82	52	60	146	98	65
84	54	61	148	100	65
86	54	61	150	100	65

# SCHEDULE 4

## STUMPAGE PRICE SCHEDULE

ITEM 1 – HIGH QUALITY SAWLOG STUMPAGE PRICE \$/M3 (EXC GST) – 1ST OCTOBER 2019

Price Zone	Species Group	Size Classes (CDUB)						
		20-29	30-34	35-37	38-39	40-49	50-69	70+
Eden	Select Hardwoods							
	Key Hardwoods							
	High Value Hardwoods							
	Mixed Hardwoods							
	Tableland Hardwoods							
	High Country Hardwoods							
	Ash							

## SCHEDULE 5

### COMPANY HARVESTING AND HAULAGE CONDITIONS

#### 1. Definitions

##### 1.1 In this **Schedule 5** unless a contrary intention appears:

**'Harvesting Approval Process'** means any procedure to regulate, review or approve Harvesting Plans or draft Plans of Operations;

**'Harvesting Plan'** means an operational plan for harvesting Timber from a specified Compartment or Compartments prepared by FCNSW;

**'Plan of Operations'** means a plan prepared by FCNSW indicating the proposed quantity of the Allocation to which the Plan applies, the Compartments from which it is proposed the Allocation be harvested and the order of working those Compartments, reviewed and approved in accordance with a Harvesting Approval Process;

#### 2. Source of Timber

##### 2.1 The Company must take the Timber as directed by FCNSW from time to time from any source including (without limitation):

- 2.1.1 Integrated Operations whether or not the operations are conducted by the Company;
- 2.1.2 Thinning Operations; and
- 2.1.3 Salvage operations.

##### 2.2 Under Integrated Operations conducted by the Company, sawlog timber shall be removed to a log dump as directed by FCNSW and other timber not suitable for timber processing and not meeting the Specifications shall, as far as is practicable, be left at the stump unless otherwise directed by FCNSW.

#### 3. Plan of Operations

##### 3.1 No later than 30 May in each Year and after consultation with the Company, FCNSW will prepare and supply to the Company a draft Plan of Operations for the following Year. In the course of such consultation the Company must advise in writing the quantity of Timber it proposes to take in the following Year.

##### 3.2 FCNSW will submit the draft Plan of Operations for approval in accordance with any required Harvesting Approval Process applicable from time to time.

##### 3.3 FCNSW will provide the Company with a copy of the Plan of Operations when approved and any Plan of Operations as may be varied from time to time.

##### 3.4 From time to time during the term of this Agreement the Company may request FCNSW by notice in writing to consider any modification or change to a Plan of Operations which the Company believes is necessary to enable or facilitate the taking of any Timber. If FCNSW is satisfied that the requested modification or changes are necessary and reasonable, with due regard to the practicalities and the rights of other persons supplied with Timber by FCNSW, FCNSW must amend or vary the Plan of Operations in the manner requested by the Company and if necessary seek approval through the Harvesting Approval Process.

##### 3.5 If FCNSW considers a modification or variation of a Plan of Operations is necessary to enable or facilitate the taking of any Timber under this Agreement, FCNSW will consult with the Company in respect of the proposed modification or variation and take into account its views. After doing so it may modify or vary the Plan of Operations to enable or to facilitate the taking of any Timber and where necessary seek approval through the Harvesting Approval Process for a variation of the Plan of Operations. Nothing in this clause will relieve FCNSW of its obligations under **clause 6.1**.

##### 3.7 Where any Timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause or access to the Compartment is otherwise effected by Force Majeure FCNSW must review any Plan of Operations to evaluate whether it is possible to harvest Timber from the damaged forest by way of Salvage operations or whether any other Compartment is able to be made available. If FCNSW

## SCHEDULE 5

considers a variation of a Plan of Operations is necessary, FCNSW will consult with the Company and take into account its views and may modify or vary the Plan of Operations and where necessary seek approval through the Harvesting Approval Process for a variation of the Plan of Operations.

- 3.8 The Company recognises that the Plan of Operations may schedule Integrated Operations.

### 4. Harvesting Plan

- 4.1 FCNSW must prepare and issue to the Company Harvesting Plans applicable to the taking of the Allocation. A Harvesting Plan must detail conditions relevant to the supply of Timber under this Agreement as determined by FCNSW.
- 4.2 The Company must not conduct any harvesting operations except in accordance with a Harvesting Plan issued by FCNSW.

### 5. Construction of Roads and Log Dumps

- 5.1 FCNSW shall construct and maintain those forest roads depicted as "FCNSW" on the electronic data layer titled "*Eden Roads*". This layer titled "*Eden Roads*" will be supplied to the Company prior to the Commencement Date and is referred to in **Schedule 9**. These roads will conform to a minimum standard of all-weather to a general maximum grade of twelve and one half per cent with a permissible grade up to twelve and one half per cent for distances not exceeding 500 metres, and will be of a minimum formation width of 4.2 metres and a pavement width of 3.0 metres and of at least twenty kilometres per hour design speed standard as determined by FCNSW. If State forest road access is not available to enable Timber to be harvested from a specified Compartment or Compartments, FCNSW must use reasonable endeavours to investigate and negotiate alternative access arrangements.
- 5.2 The Company will construct and/or maintain all roads depicted as "ANWE" in the electronic data layer titled "*Eden roads*" and Log Dumps necessary to take the timber, at its own expense and as directed by FCNSW. FCNSW will provide design and environmental specifications for these roads in Harvesting Plans. The location design and construction of these roads shall be subject to the approval of FCNSW; provided that FCNSW, or any person authorised by it, shall be empowered to use such roads and dumps at any time and for any purposes.
- 5.3 FCNSW shall maintain Imlay and Edrom Road, while they remain State forest, at its existing design standard and in a reasonable and stable condition. Upgrading and reconstruction will be at FCNSW' discretion.
- 5.4 FCNSW shall construct all drainage feature crossings on those forest roads depicted as "FCNSW" in the electronic data layer titled "*Eden roads*".
- 5.5 The Company shall construct all drainage feature crossings on those forest roads depicted as "ANWE" in the electronic data layer titled "*Eden roads*", unless FCNSW determines that they will construct the crossing on the grounds of a high environmental risk. Under that circumstance FCNSW will consult with the Company and will invoice the Company for full costs. Itemised invoices will be submitted monthly by FCNSW to the Company for these works.
- 5.6 The electronic data layer titled "*Eden roads*" can be amended by FCNSW after commencement of this Agreement following consultation with the Company.

### 6. Silviculture

- 6.1 The Company must place all harvesting debris in a stump to stump line around boundaries during harvesting operations to facilitate post-harvest burning.

### 7. Other Works

- 7.1 The Company shall be responsible for forest health wash-down procedures as specified in Harvesting Plans.

### 8. Safety Requirements

- 8.1 In this clause 8 of this Schedule 5:

## SCHEDULE 5

**“Safety Management System”** means a documented system for the management of all matters relating to Workplace Health and Safety including, but not limited to induction records, emergency procedures, inspections, consultation, training programs, incident reporting, accident records, safe working systems, hazard management and performance monitoring.

**“Workplace Fatality”** means a fatality that occurs during the taking or removal of Timber supplied under this Agreement.

**“Notifiable Incident”** means an incident notifiable under Work Health and Safety Act 2011 to the regulator (WorkCover NSW). This includes a dangerous incident or the death, serious injury or illness of a person.

**“Lost Time Incident”** means an incident during the taking or removal of Timber supplied under this Agreement where an employee or sub-contractor is injured and as a result is unable to perform normal duties for more than one working day after the day of injury.

**“Medical Treatment Incident”** means an incident during the performance of this Agreement where an employee or sub-contractor is injured and requires professional medical treatment.

**“Reportable Incident”** means an event that took place during the taking or removal of Timber supplied under this Agreement that either caused harm or had the potential to cause harm to a person.

**“Equipment”** means the machinery, vehicles and plant used in the taking or removal of Timber supplied under this Agreement.

- 8.2 The Company must ensure its harvesting and haulage contractors must have functioning Safety Management Systems. The Company must provide details of these Safety Management Systems to FCNSW or its agent as requested.
- 8.3 The Company must notify FCNSW:
- i) Immediately of a Workplace Fatality or Notifiable Incident occurring during the taking or removal of Timber supplied under this Agreement;
  - ii) Within twenty-four (24) hours of a Loss Time Incident or Medical Treatment Incident occurring during the taking or removal of Timber supplied under this Agreement.
  - iii) Within seven (7) days of a Reportable Incident, the Company must forward a written incident report and if requested by FCNSW a written incident investigation report within twenty-one (21) days. FCNSW may request to participate in or observe the Company investigation or undertake its own investigation. The Company must assist FCNSW to complete its own investigation.
- 8.4 The Company must ensure its harvesting and haulage contractors maintain Equipment in good, safe running order and condition. The Equipment must comply at all times with the relevant legislation, Codes, and any other specification reasonably nominated by FCNSW, in particular but not limited to, regarding operator protective structures.
- 8.5 The Company must ensure that all personnel engaged in its harvesting and haulage operations are properly trained and hold relevant national competency accreditation for the equipment which they operate and the tasks which they perform, except in relation to operators in training where the Company must ensure these persons are provided with adequate instruction and supervision. All competency assessment must be conducted by a person who is suitably qualified to undertake such assessments and records must be available upon request.
- 8.6 FCNSW may conduct audits and inspections of the Company's harvesting and haulage operations to check for compliance with the relevant legislation and operational standards. If requested in writing by FCNSW the Company must provide FNSW with certified copies, or other evidence as reasonably required, to demonstrate compliance.

### 9. Integrated Operations

- 9.1 In this clause 9 of this Schedule 5:

**“Condition Principles”** means the principles set out in clause 9.7 of this **Schedule 5**;



## SCHEDULE 5

**"Delivery Conditions"** means the conditions of a Delivery Contract;

**"Delivery Contract"** means an arrangement or a series of arrangements between the Company and a Third Party under which the Third Party either:

- (a) engages the Company to provide timber to the Third Party arising from Integrated Operations conducted by the Company; or
- (b) the Third Party provides Timber to the Company that the Third Party has harvested in Integrated Operations conducted by the Third Party;

**"Independent Expert"** means a person having expertise in the area of contracts for and the costs of harvesting and hauling native forest timber appointed by agreement by the Third Party and the Company or in default of agreement appointed by FCNSW;

**"Third Party"** means a third party with whom FCNSW has entered a contract under which either:

- (a) The third party may be required to take timber products that arise from the Integrated Operations conducted by the Company; or
- (b) The third party may be required to conduct Integrated Operations and provide timber to the Company or other parties;

**"Third Party's Timber"** means the timber products FCNSW has contracted to supply a Third Party that may be supplied out of Integrated Operations conducted by the Company.

A reference to the Company includes a reference to a contractor that the Company has procured to perform its obligations under this clause 9 of **Schedule 5**.

- 9.2 If FCNSW directs the Company to take Timber from Integrated Operations (whether or not the operations are conducted by the Company) then subject to clauses 9.3 and 9.4 of this **Schedule 5** the Company must, if required by FCNSW from time to time, enter into a Delivery Contract with any Third Party nominated by FCNSW.
- 9.3 The delivery point for the Third Party's Timber or the Timber (where the Third Party is to provide Timber to the Company) must be within 200km or by negotiation with the Company if longer than 200km from the point of harvesting.
- 9.4 FCNSW must ensure that any Third Party nominated by it is bound by provisions reciprocal to those set out in clauses 9.5 to 9.8 inclusive of this **Schedule 5**.
- 9.5 The Company must negotiate in good faith with the Third Party to reach agreement upon the Delivery Conditions.
- 9.6 In default of agreement upon any or all of the Delivery Conditions within 21 days of commencing negotiations the Delivery Conditions shall be those conditions determined by an Independent Expert in accordance with clause 9.8 of this **Schedule 5**.
- 9.7 Any agreement or Independent Expert determination on Delivery Conditions must meet the following requirements:
  - 9.7.1 must result in the Third Party, or the Company as the case may be, receiving timber from the party conducting the Integrated Operations, paying fair and reasonable rates taking into account the Delivery Contract as a whole;
  - 9.7.2 must recognise the cost to the party conducting the Integrated Operations of administering the delivery arrangements including costs associated with that party's work health and safety and heavy vehicle transport chain of responsibility obligations arising from the Delivery Contract but otherwise the Delivery Contract may not provide for that party to profit from those arrangements;
  - 9.7.3 must recognise the respective work health and safety and heavy vehicle transport chain of responsibility obligations of the both parties to the Delivery Contract;
  - 9.7.4 must if the Delivery Contract is for a period in excess of a year make provision for the annual review of rates which fairly and reasonably gives effect to possible changes to the costs associated with the harvesting and delivering timber.
- 9.8 If any Delivery Conditions are to be referred to an Independent Expert the following shall apply:

## SCHEDULE 5

- 9.8.1 The Company (or its contractor, as the case may be) and the Third Party must attempt to reach agreement upon an Independent Expert and in default of agreement within 7 days of so attempting the Company must promptly request FCNSW to nominate the Independent Expert.
- 9.8.2 The referral to the Independent Expert:
  - (a) must request that the Independent Expert determine those Delivery Conditions the Company and the Third Party are unable to agree upon taking into account the Condition Principles;
  - (b) must allow for each of the Company and the Third Party to make written submissions to the Independent Expert (which are to be served on each other).
- 9.8.3 A decision of the Independent Expert must be made within one (1) month of the appointment of the expert.
- 9.8.4 A decision of the Independent Expert will be final and binding on the parties.
- 9.8.5 The cost of the Independent Expert must be shared equally by the parties.
- 9.9 Prior to commencement of Integrated Operations under this clause 9 FCNSW and the Company will confer to negotiate in good faith an amendment to the Code of Procedure contemplated by Schedule 8 in relation to Integrated Operations and supplying a Third Party or receiving Timber from a Third Party.

## SCHEDULE 6

### CONTRACT HARVESTING CONDITIONS

#### 1. Definitions

1.1 In this **Schedule 6** unless a contrary intention appears:

**'Annual Delivery Plan'** means a schedule prepared by FCNSW for the Year to which it applies which must provide for the supply of the Annual Quantity under Contract Harvesting and which sets out relevant information regarding:

- (i) the various Compartments from which that supply is intended;
- (ii) the monthly quantities of Timber proposed to be delivered to the Delivery Site.

**"Annual Quantity"** means the quantity of Timber proposed to be made available to the Company in a Year by FCNSW carrying out Contract Harvesting. The Annual Quantity for a Year may not exceed the quantity of Timber the Company advises FCNSW prior to the commencement of the Year that it proposes to take in that Year.

**'Base Indicator Rate'** see **Schedule 7**;

**'Cost Item'** see **Schedule 7**;

**'Current Indicator Rate'** see **Schedule 7**;

**'Delivery Hours'** means:

- (i) 0700 hours to 1700 hours Mondays to Fridays inclusive except on public holidays and mill maintenance or shut periods. Such maintenance or shut periods to be advised to FCNSW at least 2 weeks prior to the event unless outside the control of ANWE;
- (ii) Such hours (if any) as may be agreed between the parties for public holidays and Saturdays and Sundays;

**'Delivery Charge Review Mechanism'** means the mechanism and procedures set out in **Schedule 7** as amended in accordance with this Agreement;

**'Delivery Charge Schedule'** means the schedule of the Delivery Charges prepared and amended from time to time in accordance with **clause 20 of this Schedule 6**;

**'Delivery Site'** means the Mill;

**"DC Year"** means the 12 month period commencing 1 September in any Year.

**'Indicator'** see **Schedule 7**;

**'Indicator Rate'** see **Schedule 7**;

**'Indicator Weighting'** see **Schedule 7**;

**'Monthly Delivery Schedule'** means a schedule stating the quantity of Timber to be delivered by FCNSW under Contract Harvesting to the Delivery Site. The quantity will be based on, but not bound to, the indicative information in the Annual Delivery Plan for that month, and must:

- (i) provide for the need for the Company to stockpile Timber in some months to compensate for events preventing Contract Harvesting;
- (ii) provide for the need for the Company to otherwise manage its mill site stockpiles to control inventory costs and minimise deterioration in the quality of stockpiled Timber; and
- (iii) take into account the cumulative performance of monthly deliveries against the Annual Delivery Plan;

**'Price Zone'** means an area of land (whether Crown-timber land or any other type of land) within the Area of Supply nominated by FCNSW from time to time as a Price Zone for the purposes of setting Delivery Charges and being a generally contiguous geographical area of forest which in the opinion of FCNSW is suitable for uniformity in pricing of Timber;

## SCHEDULE 6

**'Turnaround Time'** means:

- (i) In the case of Timber delivered by 6 axled haulage vehicles: - 45 minutes;
- (ii) In the case of Timber delivered by 9 axled haulage vehicles: - 60 minutes; and
- (iii) In the case of Timber delivered by 12 axled haulage vehicles: - 90 minutes.

### **3. Annual Delivery Plan**

- 3.1 Not less than 3 months prior to the Contract Harvesting Date, FCNSW and the Company must confer and negotiate in good faith to reach agreement on the Annual Delivery Plan to apply to the period from the Contract Harvesting Date until the end of the Year in which the Contract Harvesting Date occurred. In default of agreement within 28 days of the Contract Harvesting Date FCNSW may determine the Annual Delivery Plan for that period.
- 3.2 No later than April in each Year after the Contract Harvesting Date, FCNSW and the Company must confer and negotiate in good faith to reach agreement on the Annual Delivery Plan for the following Year. In default of agreement by the end of April FCNSW may determine the Annual Delivery Plan for the following Year.
- 3.3 In the course of negotiation of an Annual Delivery Plan the Company must specify in writing the quantity of Timber it intends to take under this Agreement during that Year
- 3.4 Any agreement or determination of the Annual Delivery Plan must recognise:
  - 3.4.1 the need for the Company to stockpile Timber in some months to compensate for events preventing delivery such as wet weather or mechanical breakdowns preventing harvesting of Timber; and
  - 3.4.2 the need for the Company to otherwise manage its mill site stockpiles to control inventory costs and minimise deterioration in the quality of stockpiled Timber.
- 3.5 FCNSW must provide the Company with a copy of the Annual Delivery Plan for a Year not less than 21 days before the commencement of the Year to which it applies.
- 3.6 The parties acknowledge that each Annual Delivery Plan contains indicative information and the parties must co-operate in the implementation of each Annual Delivery Plan and each must use their reasonable endeavours to comply with it.

### **4. Monthly Delivery Schedule**

- 4.1 Each Year FCNSW will use reasonable endeavours to ensure that the Annual Quantity is delivered substantially in accordance with the Monthly Delivery Schedules for that Year.
- 4.2 Each calendar month no later than 7 days prior to the next month the parties must confer and negotiate in good faith to reach agreement on the Monthly Delivery Schedule for the next month. In default of agreement the Monthly Delivery Schedule for the next month will be determined by FCNSW provided:
  - 4.2.1 FCNSW will have due regard to the Company's requests; and
  - 4.2.2 If the Company has a special requirement regarding quantity in a particular month FCNSW will, with due regard to the practicalities and the rights of other persons supplied with Timber by FCNSW, use all reasonable endeavours to meet the Company's request.
- 4.3 If FCNSW or the Company wishes to vary a current Monthly Delivery Schedule, it must notify the other party as soon as practicable and FCNSW and the Company must negotiate in good faith to reach agreement on an amended Monthly Delivery Schedule. In default of agreement the original Monthly Delivery Schedule shall apply.

### **5. Amendment of Annual Delivery Plan or Monthly Delivery Schedules**

- 5.1 From time to time during the term of this Agreement the Company may request FCNSW, by notice in writing, to consider any modifications or change to an Annual Delivery Plan which the Company believes is necessary to enable or facilitate the Contract Harvesting of any Timber under this Agreement. If FCNSW is satisfied that the requested modification or changes are necessary and reasonable, with due regard to the practicalities and the rights of other persons supplied with Timber by FCNSW, FCNSW must amend or vary the Annual Delivery Plan in the manner requested by the Company.

## SCHEDULE 6

- 5.2 If FCNSW considers a modification or variation of an Annual Delivery Plan is necessary to enable or facilitate the Contract Harvesting of Timber under this Agreement, FCNSW will consult with the Company in respect of the proposed modification or variation and take into account its views. After doing so it may modify or vary the Annual Delivery Plan to enable or to facilitate the Contract Harvesting. Nothing in this clause will relieve FCNSW of its obligations under **clause 6.1**.
- 5.3 Where any timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause or access to a Compartment intended to supply the Allocation is otherwise prevented by Force Majeure, FCNSW may, after consultation with the Company, amend any Annual Delivery Plan or Monthly Delivery Schedule as it deems necessary to facilitate Salvage operations or to adjust to the unavailability of timber in Compartments. Subject to Force Majeure nothing in this clause will relieve FCNSW of its obligations under **clause 6.1**.
- 5.4 FCNSW must provide the Company with a copy of any varied Annual Delivery Plan or Monthly Delivery Schedule for period to which it applies:
- 5.4.1 in the case of an Annual Delivery Plan or Monthly Delivery Schedule varied under **clause 5.3 of this Schedule 6**: - as soon as practicable and in any event before the commencement of the period to which it applies; and
- 5.4.2 in any other case: - at least 28 days before the commencement of the period to which it applies.
- 6. Delivery**
- 6.1 FCNSW must effect delivery of Timber by delivering it:
- 6.1.1 to the Delivery Site; and
- 6.1.2 during the Delivery Hours and
- the Company may not refuse Timber or fail to unload Timber delivered to the Delivery Site:
- 6.1.3 in accordance with this **clause 6**;
- 6.1.4 substantially in accordance with the relevant Monthly Delivery Schedule; and
- 6.1.5 otherwise in accordance with this Agreement.
- 6.2 Except where the parties have agreed that FCNSW' contractors will unload the Timber (in which case **clause 6.3 of this Schedule 6** shall apply) the Company must:
- 6.2.1 promptly unload Timber delivered to it in accordance with this Agreement with due regard to the practicalities and available unloading equipment, but in any event within the Turnaround Time for the particular haulage vehicle; and
- 6.2.2 ensure that all unloading operations carried out by it at the Delivery Site are performed in a safe manner in accordance with:
- (a) any relevant code issued by New South Wales WorkCover or other relevant agency which replaces or exercises the functions carried out by New South Wales WorkCover; and
- (b) the Company's safety policies for the Delivery Site.
- 6.3 If the parties have agreed that FCNSW' Contractors are to unload the Timber FCNSW must ensure that its Contractors:
- 6.3.1 promptly unload Timber for delivery in accordance with this Agreement with due regard to the practicalities and available unloading equipment; and
- 6.3.2 ensure that all unloading operations carried out by them at the Delivery Site are performed in a safe manner in accordance with:
- (a) any relevant code issued by New South Wales WorkCover or other relevant agency which replaces or exercises the functions carried out by New South Wales WorkCover; and
- (b) the Company's safety policies for the Delivery Site.
- 6.4 If Timber is delivered to the Company in the course of Contract Harvesting the Timber will be deemed to conform with the Specifications if it is unloaded at the Delivery Site in accordance with this Agreement and that Company does not object to its failure to meet Specifications by notice in writing to FCNSW within seven days of its delivery.
- 6.5 If the Company objects to timber in terms of **clause 6.4 of this Schedule 6** it must set the timber aside for inspection. FCNSW must arrange for the inspection of the timber by a suitably qualified FCNSW officer, in company with a representative of the Company, within 7 days after receipt of the objection. The

## SCHEDULE 6

adjudication of the disputed timber must be dealt with in accordance with the Code of Procedure. Despite the foregoing the FCNSW' officer must provide a written determination in respect of the adjudication of the disputed timber.

- 6.6 A decision of a suitably qualified FCNSW officer that the timber is Timber, will (except in the case of manifest error) be accepted by the parties as final and binding on the parties. If a party disputes the adjudication on the grounds of manifest error the provisions of **clause 28** shall apply to the adjudication.
- 6.7 If the suitably qualified FCNSW officer decides that any timber does not meet the Specifications and the parties cannot agree on terms upon which the Company agrees to purchase the timber, FCNSW must within 7 days remove that timber from the Delivery Site at its own cost.
- 7. Delivery Charge**
- 7.1 A Delivery Charge for Timber harvested from a Price Zone and hauled to the Delivery Site will be the total of:
- 7.2.1 A cost per tonne for the type of Timber being an aggregate of costs for the various items of work comprising the Contract Harvesting necessary to harvest and haul the Timber from the particular Price Zone to the Delivery Site; and,
- 7.2.2 A cost per tonne for FCNSW' management and administration of the Contract Harvesting involved which the parties agree at the Commencement Date this Agreement takes effect is \$3.77 per tonne.
- 7.2 If FCNSW elects to undertake Contract Harvesting then, as soon as practicable after FCNSW informs the Company of its election FCNSW and the Company must confer and negotiate in good faith to reach agreement on the Delivery Charges to apply. In default of agreement by 30 days prior to the Contract Harvesting Date, FCNSW may determine the Delivery Charges to apply and prepare the Delivery Charge Schedule accordingly.
- 7.3 Any agreement or determination of a Delivery Charge under **clauses 7.2** of this **Schedule 6** must take into account the following factors:
- 7.3.1 the market rates for the various items of work comprising the Contract Harvesting necessary to harvest and haul the Timber involved from the particular Price Zone to the particular Delivery Site being considered provided:
- (a) those rates are comparable, having regard to the type of Timber produced, the yield per hectare, operation type, physical circumstances of harvesting and haulage and the particular Price Zone and Delivery Site being considered;
- (b) the party tabling rates as relevant must verify them to the reasonable satisfaction of the other parties;
- 7.3.2 the costs to FCNSW of managing and administering the Contract Harvesting necessary to harvest and haul the Timber involved from the particular Price Zone to the particular Delivery Site;
- 7.3.3 the benefits to the Company which arise because FCNSW' conduct of the Contract Harvesting has relieved the Company of liabilities associated with their conduct of harvesting and haulage operation including without limitation liabilities related to Work Health and Safety obligations, workers compensation, environmental compliance obligations, and contractual arrangements with harvesting and haulage contractors; and
- 7.3.4 the benefits to FCNSW or the Company, as the case be, arising because the other party has introduced measures related to the harvesting haulage or delivery of Timber resulting in efficiency gains.
- 7.4 In each Year and commencing no later than the end of July the parties must confer to review the Delivery Charge Schedule and must negotiate in good faith to reach agreement on amendments to the Delivery Charge Schedule to apply for the following Year. In default of an agreement on the required amendments by one week prior to the commencement of the following Year FCNSW may determine which amendments it considers are necessary. FCNSW may amend any of the rates specified in the Delivery Charge Schedule in accordance with the agreement of the parties or the determination of FCNSW as the case may be, and those rates will apply from the first day of the following DC Year.
- 7.5 Any agreement or determination under **clause 7.4 of this Schedule 6** must take into account:
- 7.5.1 changes in the level of the costs of conducting Contract Harvesting which have occurred during the preceding 12-month period, as determined by the Delivery Charge Review Mechanism; and

## SCHEDULE 6

At the request of either party the agreement or determination must also take into account:

- 7.5.2 Changes in the physical circumstances of harvesting, including yield per hectare, timber piece size, slope and ground conditions, forecasted to apply in the relevant Year when compared to those physical circumstances forecasted in the last review to apply in the Year prior to the relevant Year;
- 7.5.3 Changes in the physical circumstances of haulage, including average lead distance to the Delivery Site, road classifications, delivery hours and unloading times at the Delivery Site, forecasted to apply in the relevant Year when compared to those physical circumstances forecasted in the last review to apply in the Year prior to the relevant Year;
- 7.5.4 the market rates for the various items of work comprising the Contract Harvesting under this Agreement provided:
  - (c) those rates are comparable, having regard to the type of Timber produced and the physical circumstances of harvesting and haulage referred to in **clauses 7.5.2 and 7.5.3 of this Schedule 6**;
  - (d) the party tabling rates as relevant must verify them to the reasonable satisfaction of the other party;
  - (e) any comparison between market rates and Delivery Charges must take into account the cost to FCNSW of administering and managing Contract Harvesting associated with this Agreement,
- 7.6 If the Company disputes a determination by FCNSW under **clause 7.2, or 7.4 of this Schedule 6** on the grounds that an amendment to the Delivery Charge determined by FCNSW is, when compared to the matters referred to in **clause 7.2, or 7.4 of this Schedule 6** as the case may be, fair reasonable and competitive, it may not, in the course of dispute resolution under **clause 25**, rely upon information which it has not provided to FCNSW under **clause 7.3.1 or 7.5.4 of this Schedule 6** as the case may be, during the relevant review.
- 7.7 Commencing 6 months prior to each of the 5<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> anniversary of the Contract Harvesting Date FCNSW and the Company must meet to review in good faith the matters set out under **clause 7.5 of this Schedule 6** and to reach agreement if possible regarding amendments to those matters (if any) necessary to ensure they result in amendments to the Delivery Charge which are reasonable in relation to the requirements of **clause 7.10 of this Schedule 6** including:
  - 7.7.1 the addition of other matters to be taken into account;
  - 7.7.2 the deletion or modification of existing considerations;
  - 7.7.3 amendments to the Delivery Charge Review Mechanism to vary the weight given to any Cost Item or Indicator by the mechanism;
  - 7.7.4 amendments to the Delivery Charge Review Mechanism to include any cost factor;
  - 7.7.5 the replacement of the Delivery Charge Review Mechanism; or
  - 7.7.6 Any or all of the above.
- 7.8 If FCNSW and the Company are unable to reach agreement on appropriate amendments referred to in **clause 7.7 of this Schedule 6** within 3 months of the commencement of the review FCNSW may determine the amendments it considers necessary and implement those amendments in time to be taken into account in the review of the Delivery Charge Schedule to apply in the following DCYear. If the Company disputes any such amendment **clause 25** will apply and for the purposes of **clause 25.5** the matters to be taken into account in determining the amendments are whether they are reasonable relation to the requirements of **clause 7.10 of this Schedule 6**.
- 7.9 FCNSW may from time after consultation with the Company amend the area of any Price Zone or to introduce a new Price Zone. At any time FCNSW advises the Company it intends to amend the area of any Price Zone or to introduce a new Price Zone, FCNSW and the Company must review the Delivery Charge Schedule and negotiate in good faith to reach agreement on amendments if any to the Delivery Charge Schedule. In default of agreement FCNSW may determine amendments if any to apply. Any amendments agreed or determined shall apply from the date the amended or new Price Zone takes effect.
- 7.10 FCNSW must ensure that the Delivery Charges which it determines under this **clause 7 of this Schedule 6** are fair, reasonable and competitive.
- 7.11 FCNSW must promptly provide the Company with a copy of the Delivery Charge Schedule as amended from time to time.



## SCHEDULE 7

### DELIVERY CHARGE REVIEW MECHANISM

#### ***Part 1 – Definitions***

In this Schedule 7 unless the context indicates to the contrary:

**‘Base Indicator Rate’** means the percentage, index, or value, as specified in Column 3 of the table annexed in Part 3 of Schedule 7, to be used in calculating the Base Item Rate.

**‘Base Item Rate’** means those listed in Column 6 of the table annexed in Part 3 of Schedule 7 calculated in accordance with Column 5 of the table annexed in Part 3 of Schedule 7, using the Base Indicator Rates.

**‘Base Item Weighting’** means those listed in Column 7 of the table annexed in Part 3 of Schedule 7.

**‘Current Item Rate’** means the percentage, index, or value to be used in calculating the Rate Review Factor as calculated in accordance with Column 5 of the table annexed in Part 3 of Schedule 7, using the Current Indicator Rates.

**‘Current Indicator Rate’** means the percentage, index, or value, as specified in Part 2 of Schedule 7, to be used in calculating the Current Item Rate.

**‘DC Year’** means the 12 month period commencing 1 September in any Year.

**‘Indicator’** means an Indicator of an Item, more specifically being any Indicator set out in column 2 of the tables annexed in Parts 2 and 3 of Schedule 7.

**‘Item’** means a factor relevant to the cost of Harvesting Operations or Haulage Operations, more specifically being any item set out in Column 1 of the table annexed in Part 3 of Schedule 7.

**‘Item Weighting’** for the first rate review under this agreement the Item Weighting means the Base Item Weighting. For all subsequent Rate Reviews the Item Weighting will be ascertained by calculating what percentage each Item contributed to the Rate Review Factor in the most recent Rate Review as described in Part 5 of Schedule 7.

**‘Movement Factor’** for all rate reviews under this agreement means those listed in Column 8 of the table annexed in Part 3 of Schedule 7.

**‘Previous Item Rate’** for the Rate Review used to calculate the Delivery Charges to apply in the first rate review means the Base Item Rate. For all subsequent rate reviews the Previous Item Rate means the rate assigned to an Item in the most recent Rate Review.

**‘Rate Review Factor’** means the value calculated by the method described in Part 4 of Schedule 7.

**‘Year’** means a period of twelve months commencing on 1 July in any year

## SCHEDULE 7

### Part 2– Current Indicator Rates Definition

Item	Indicator	Source	Period to use
CPI	CPI	<p>ABS Consumer Price Index Cat No 6401 table 1 and 2 (Series ID A2325846C; Index Numbers; All groups; Australia)</p> <p>As published by the Australian Bureau of Statistics (ABS) at <a href="http://www.abs.gov.au">www.abs.gov.au</a></p>	<p>The index for the quarter ending 30<sup>th</sup> of June in the Year, prior to the Year in which the rates calculated in the Rate Review will take effect.</p> <p>For example: When calculating the Delivery Charge that will apply to the DC Year starting 1<sup>st</sup> September 2018, use the indices for the period 1<sup>st</sup> April 2018 to 30<sup>th</sup> June 2018 being the June Quarter 2018.</p>
Fuel	Terminal Gate Price	<p>Daily average Terminal Gate Price, in dollars per litre (including GST), of Diesel in Sydney</p> <p>As published by the Australian Institute of Petroleum (AIP) at <a href="http://www.aip.com.au">www.aip.com.au</a></p>	<p>Average price for the Year previous to the Year in which the rates calculated in the Rate Review will take effect. For clarity this will be an average of all days within the specified period where the AIP has reported and recorded the Terminal Gate Price of Diesel in Sydney.</p> <p>For example: When calculating the Delivery Charge that will apply to the DC Year starting 1<sup>st</sup> September 2018, average those daily prices reported during the period 1<sup>st</sup> July 2017 to 30<sup>th</sup> June 2018.</p>
	GST	GST as specified by the ATO	Average rate during the period determined for the Terminal Gate Price.
	On Road Tax Credit	<p>Fuel Tax Credit rates applicable to liquid fuels for heavy vehicles traveling on public roads</p> <p>As published at <a href="http://www.ato.gov.au">www.ato.gov.au</a></p>	Average rate during the period determined for the Terminal Gate Price.

## SCHEDULE 7

### Part 3 – Base Item Rates

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Item	Indicator	Base Indicator Rate	Base Indicator Date	Calculation	Base Item Rate	Base Item Weighting	Movement Factor
Item 1: CPI	CPI	TBA	June Quarter 2015	None Required	TBA	80.0%	90%
Item 2: Fuel	Terminal Gate Price	TBA	Average 1/7/14 to 30/6/15	Terminal Gate Price Minus GST Minus the On Road Tax Credit	TBA	20.0%	100%
	GST	TBA	Average 1/7/14 to 30/6/15				
	On Road Tax Credit	TBA	Average 1/7/14 to 30/6/15				
Total						100.0%	

### Part 4 – Formulas used to calculate the Rate Review Factors

$$R = \left( \frac{C_1 - P_1}{P_1} \times W_1 \times M_1 \right) + \left( \frac{C_2 - P_2}{P_2} \times W_2 \times M_2 \right)$$

where;

R = the Rate Review Factor;  
C<sub>1</sub> = the Current Item Rate for CPI;  
P<sub>1</sub> = the Previous Item Rate for CPI;  
W<sub>1</sub> = the Item Weighting for CPI;  
M<sub>1</sub> = the Movement Factor for CPI;  
C<sub>2</sub> = the Current Item Rate for Fuel;  
P<sub>2</sub> = the Previous Item Rate for Fuel;  
W<sub>2</sub> = the Item Weighting for Fuel;  
M<sub>2</sub> = the Movement Factor for Fuel;

### Part 5 – Formulas used to calculate the Item Weightings to use during the next Rate Review

$$I_1 = \frac{W_1 \times \left( 1 + \frac{C_1 - P_1}{P_1} \times M_1 \right)}{1 + R}$$

$$F_1 = 1 - I_1$$

where;

I<sub>1</sub> = the Item Weighting to use for CPI during the next Rate Review;  
F<sub>1</sub> = the Item Weighting to use for Fuel during the next Rate Review;  
R = the Rate Review Factor;  
C<sub>1</sub> = the Current Item Rate for CPI;  
P<sub>1</sub> = the Previous Item Rate for CPI;  
W<sub>1</sub> = the Item Weighting for CPI;  
M<sub>1</sub> = the Movement Factor for CPI;

## SCHEDULE 7

### ***Part 6 – Rate Review Calculation***

The formula in Part 4 of Schedule 7 will be used to calculate the Rate Review Factor.

The Delivery Charge listed in the previous DC Year's Delivery Charge Schedule, will be multiplied by the Rate Review Factor plus one, to produce the new Delivery Charge to list in the Delivery Charge Schedule.

For removal of doubt the Delivery Charge will be calculated as follows:

$$\text{New Delivery Charge} = \text{Previous Delivery Charge} \times (1 + \text{the Rate Review Factor})$$

### ***Part 7 – Rounding***

The purpose of this clause is to ensure that sufficient information is given to enable the delivery charge calculations to be reconciled against advice provided in hard copy.

- The Current Indicator Rate for both the Terminal Gate Price and the On Road Tax Credit will be presented in dollar value and rounded to 5 decimal places before being used in subsequent calculations. For example, \$1.23456
- The Current Item Rates will be rounded to 5 decimal places before being used in subsequent calculations. They will remain rounded to 5 decimal places when they become Previous Item Rates when used in subsequent Rate Reviews.
- The Rate Review Factor will be rounded to 3 decimal places before being used in subsequent calculations. For example a Rate Review Factor of 0.0236872 would be rounded to 0.024 and would appear as 2.4% signifying a 2.4% rate increase.
- The Item Weightings will be rounded to 3 decimal places before being used in subsequent calculations. They will remain rounded to 3 decimal places when they are used in subsequent Rate Reviews. For example a Rate Review Factor of 0.7236872 would be rounded to 0.724 and would appear as 72.4%.
- The New Delivery Charge, as described in Part 6 of Schedule 7, will be rounded to 2 decimal places for application. It will remain rounded to 2 decimal places when it is subsequently used as the Previous Delivery Charge.

## SCHEDULE 8

### CODE OF PROCEDURE

#### SECTION 1: MEASURING AND MARKING OF SAWLOGS

##### 1.1 Sale Mechanism

The Company must ensure that sawlog products which are produced in the course of harvesting operations are correctly measured in accordance with Table 1.

**Table 1: Sawlog Measurement**

PRODUCT	MEASUREMENT TYPE	MEASUREMENT DESCRIPTION
High Quality Sawlogs	Sale by Volume	<p>LENGTH: Actual length in decimetres rounded down to the next whole decimeter.</p> <p>DIAMETER: Actual centre diameter under bark in centimetres rounded down to the next whole centimeter</p> <p>SPECIES: The species code is recorded on each sawlog.</p>

##### 1.2 Sale by Volume

High Quality Sawlogs, meeting specification, must be identified with a log tag or marked at the end of each sawlog prior to being taken from the forest. The log tag or marking must be legible and record the following details.

###### 1.2.1 Sawlog Product

Product code must be identified and recorded on each sawlog.

###### 1.2.2 Species

Species must be correctly identified and recorded on each sawlog using the Species Code provide in Table 2.

**Table 2: Species Code**

Species Code	Delivery Docket Symbol	Species
1	IBK	Ironbark
3	GBX	Grey Box
4	BG	Blue Gum
6	SG	Spotted Gum
8	BBT	Blackbutt
9	RM	Red Mahogany
10	MM	Messmate
11	FAS	Fastigata
12	VIM	Viminalis
15	TRP	Turpentine
16	GG	Grey Gum
17	WM	White Mahogany
18	WS	White Stringybark
20	RG	Forest Red Gum
22	HWD	Hardwoods mixed
23	BLW	Bloodwood
24	BLS	Blue Leaf Stringy
25	PEP	Peppermint
26	QBX	Whitetopped box
28	SBA	Smoothbark Apple
31	YBX	Yellow Box
39	DAL	Moutain Gum
40	BAN	Bangalay

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Species Code	Delivery Docket Symbol	Species
41	YS	Yellow Stringy Bark
42	YER	Yertchuk
43	STA	Siliver Top Ash
44	SHG	Shinning Gum
45	WA	White Ash
46	WBT	Woolly Butt
47	MKG	Monkey Gum
50	MDG	Maiden Gum
51	ASH	Alpine Ash

### 1.2.3 Sawlog dimensions

The length and diameter must be measured in accordance with the measurement manual. The actual sawlog length must be identified on each sawlog in decimeters. The actual sawlog diameter must be identified on each sawlog in centimetres.

### 1.2.4 Log Tags

Where the Company chooses to use log tags for sawlogs sold by volume each log must be tagged, with the following data recorded against each tag:

- Species
- Product
- Length
- Diameter
- Log Grader
- Cpt/SF

Log tags will be applied to the large end of each sawlog with two staples, one at each end of the tag.

### 1.3 Sale by Weight

The parties will revise the Code of Procedure to account for additional factors should the requirement arise for the supply of log products under a sale by weight arrangement.

## SECTION 2: DELIVERY DOCKETS

Load details will be recorded on a Delivery Docket prior to removal of log products from the loading point and a copy of the Delivery Docket will be carried with the load. Delivery Dockets take the form of either an Electronic Docket (E-Docket) or a Manual Delivery Docket from a Delivery Docket Book.

### 2.1 Completion of Delivery Dockets

The Company is responsible for issuing and completing delivery dockets. Each delivery docket must contain the following details and the Company must ensure each detail is completed where relevant:

- Customer/Location
- Date
- Time
- Region
- State forest
- Harvesting Plan No
- Age Class (where relevant)
- Compartment
- Operation Type (Where relevant)
- Product (Where relevant)
- Grade (Where relevant)
- Species (Where relevant)

## SCHEDULE 8

- Count (Where relevant)
- Harvest, Load and Haulage Contractor
- Truck & Trailer Registration Number
- Truck Type
- Name of Truck Driver and Log Grader,
- Gross, Tare and Net Weight (where weight sales are by truck scales) Tare weight will be predetermined at the commencement of each quarter on the basis of a certified weighbridge).

Where logs are to be accounted for by volume, the following additional details must be recorded for each log on the load:

- Length
- Diameter
- Species Code
- Product Code

### **2.2 Receipt of Delivery**

Upon receipt of a load of sawlogs at the Delivery Site the following is to occur:

- where the Company is receiving sawlogs sold by volume, the delivery docket must be signed and the original returned to FCNSW weekly.
- where the Company is receiving sawlogs sold by weight, the load must be weighed on the Companies weighbridge and an electronic copy of the docket information created. The electronic dockets will be forwarded to FCNSW weekly in a format agreed by both parties.
- where the Company is receiving sawlogs to be scanned, the load must be scanned and an electronic docket of the scanned load created. The electronic dockets will be forwarded to FCNSW weekly in a format agreed by both parties.

### **2.3 Docket Errors**

In the event of a Delivery Docket error being identified prior to Delivery, or at the Delivery Site the docket must be registered as a dispute by the Company.

Errors relating to log grade are to be treated separately as a disputed log as these changes can only be made by a FCNSW Officer.

### **2.4 Basis of Accounts**

Dockets or electronic dockets will form the basis of accounts

The outcome of docket errors and disputed logs / loads may be used to vary the information initially submitted on a docket. In those cases the docket data as varied will be the basis of accounts.

Docket errors are errors made on the docket that do not affect the log or load details. Disputed logs/loads are errors on the docket that do.

## **SECTION 3. DISPUTED LOGS**

### **3.1. Disputed Logs**

A disputed log is a log where the Company disagrees with either the log details or the grade of the whole or part of the log whether in the forest or at the delivery site.

The Company, if disagreeing with log details or grade, must notify FCNSW of the disputed log within three business days of the delivery of the log. Notification will be on the delivery docket, with a reason for the dispute recorded (see Table 5) and the docket sent to FCNSW.

The disputed log must be set aside in a place that it can be readily and safely inspected.

**Table 3: Reasons for Dispute**

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Dispute Description	Means (depending on species and specifications)
Log missing (LM)	A log recorded on the Delivery Docket is not on the load.
Log extra (LX)	A log on the load is not recorded on the Delivery Docket.
Docket Error (DE)	Some docket information is wrong (not necessarily log related).
Measurement (M)	Measurements are wrong or load or proportion of load does not satisfy diameter or length specification.
Species (SP)	Species ID is wrong.
Servicing (SV)	Machine damage or poor servicing.
Crooked/Sweep (CS)	Query grade due to crookedness/sweep or load or proportion of load does not satisfy sweep specification. Includes double sweep or change of direction.
Lumps, Limbs & Knots (LLK)	Query grade due to lumps, limbs or knots, or load or proportion of load does not satisfy knot specification.
Centre Defect (CD)	Query grade due to centre defect such as rings & pipe, rot, grub holes or dry heart (Cypress).
Insect Damage (ID)	Query grade due to non-termite related insect damage. E.g. Ambrosia.
Gum Vein (GV)	Query grade due to gum related defect (other than Centre defect). E.g. loose gum vein in alpine ash and gum pockets in blue gum.
Spiral Grain (SG)	Query grade due to spiral grain or load or proportion of load does not satisfy spiral grain specification.

A FCNSW Officer will inspect the log within five working days of being notified wherever practical.

Where the FCNSW Officer determines that the disputed timber fails to meet the Specifications or that there has been an error on the Delivery Docket the required docket changes will be completed by the FCNSW officer. Any dispute over a decision made by a FCNSW Officer regarding disputed logs should be referred to the Harvesting Manager for resolution.

### SECTION 4: REVIEW AND AMENDMENT OF THIS CODE OF PROCEDURE

FCNSW may, after consultation with the Company, review and amend any aspect of this Code of Procedure from time to time as determined by FCNSW.

#### Schedule of Amendments [Copies Attached]

Amendment No:	Date	Clauses Amended

### SECTION 5: ACKNOWLEDGEMENT OF AGREEMENT

FCNSW and ANWE

Hereby agree to this Code of Procedure.

For and on behalf of

FCNSW

Date: 09/12/2019

For and on behalf of

ANWE

Date: 04/12/2019



## SCHEDULE 9

### SAWMILL CONSTRUCTION

1. In this Agreement the Milestones are:
  - (a) Log Sorter Feasibility Completed
  - (b) Sawmill Feasibility Completed
  - (c) Lodgement of application for development approval for the Sawmill as required by the Environmental Planning and Assessment Act 1979;
  - (d) ANWE Board Approval to proceed with Log Sorter
  - (e) Detailed Planning and Design of Sawmill completed
  - (f) Jews Head master site plan completed and viable, inclusive of environmental management, land sufficiency, water, electricity and security.
  - (g) Finalisation of site master plan including environmental licenses to operate
  - (h) Log Sorter Equipment ordered
  - (i) Final planning and design of Log Sorter
  - (j) Sawmilling equipment ordered
  - (k) Pouring of Sawmill slab
  - (l) Log Sorter Construction commences
  - (m) Log Sorter Commissioned
  - (n) Sawmill Commissioned
2. The Company warrants that at the date of this Agreement the Milestones set out in clause 1(a) and (b), (d) to (f) and (h) to (j) inclusive of this Schedule 9 have been completed.
3. The Company must complete the following Milestones by the date indicated for the Milestone:

(a) Lodgement of application for development approval for the Sawmill as required by the Environmental Planning and Assessment Act 1979	January 2020
(b) Finalisation of site master plan including environmental licences to Operate	December 2019
(c) Pouring of sawmill slab	30 June 2020
(d) Log Sorter construction commences	01 March 2020
(e) Log Sorter Commissioned	31 December 2020
(f) Sawmill Commissioned	31 December 2020
4. If the Company is prevented from completing a Milestone within the period specified for its completion by Force Majeure and:
  - (a) the Force Majeure was not caused by any unlawful act or omission on the part of the Company or any employee or contractor or other agent of the Company;
  - (b) the Company had taken all reasonable or practicable precautions to prevent the Force Majeure; and
  - (c) the Company has made all reasonable efforts to contain the effect of the Force Majeure,then subject to clause 5 of this Schedule 9 the period specified for completion of the Milestone shall be extended by the period during which the Company is prevented from completing the Milestone by the Force Majeure.
5. Despite any other provision of this Agreement the maximum time a date for completion of a Milestone may be extended by reason of Force Majeure and the maximum time the Company may claim Force Majeure in relation to a failure to complete a Milestone is 6 months.