

## TYPE B WSA Class 3 Poles – VARIATION AGREEMENT

THIS AGREEMENT is made the 25<sup>th</sup> day of July 2022

### PARTIES

THE FORESTRY CORPORATION OF NEW SOUTH WALES a statutory State owned corporation constituted by the Forestry Act 2012 (NSW) ('State Forests')

AND

KOPPERS WOOD PRODUCTS PTY LIMITED (ABN 81003947680) ('Company')

AND

THE STATE OF NEW SOUTH WALES ('State of NSW')


### RECITALS

- A. The parties are parties to a Type B Wood Supply Agreement requiring State Forests to supply annual Allocations of Class 3 Hardwood Poles to the Company for a term expiring on 31 December 2023 ("WSA").
- B. The parties previously reached agreement on changes to the Delivered Price Review Mechanism in Schedule 6 of the WSA and confirmed in letters dated 2 October 2012 and 24 September 2015 respectively.
- C. The parties have reached agreement on an extension to the term of the WSA and other amendments to its conditions.
- D. This Agreement sets out the agreed amendments to the WSA.

### 1. OPERATIVE PROVISIONS

#### 1.1 Unless a contrary intention appears in this agreement:

- (a) "Agreement" means this agreement;
- (b) headings are for convenience only and do not affect the interpretation of the Agreement
- (c) words importing the singular include the plural and vice versa;
- (d) words importing a gender include any gender;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
- (g) a reference to a document includes all amendments or supplements or replacements or notations of that document;
- (h) a reference to a party to a document includes that party's successors and permitted assigns;



- (i) 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;
- (j) a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia; and
- (k) a capitalised term in this Agreement has the same meaning as defined in the WSA.

**2. AMENDMENTS**

- 2.1 On and from the date of this Agreement the WSA is amended in accordance with Schedule 1 and except as set out in Schedule 1, all other terms and conditions of the WSA remain the same.

Two handwritten signatures in black ink, one on the left and one on the right, positioned at the bottom right of the page.

EXECUTION

EXECUTED AS A DEED:

EXECUTED for and on behalf of )  
THE FORESTRY CORPORATION )  
OF NEW SOUTH WALES )  
by its delegate )

Anshul Chavdhary )  
in the presence of: CEO )

Witness )

Delegate

EXECUTED by KOPPERS WOOD )  
PRODUCTS PTY LIMITED )  
by a director and )  
its secretary )

Secretary/Director

Director

SIGNED SEALED AND )  
DELIVERED by THE HONOURABLE )  
Dugald Saunders Minister for )  
Agriculture, Minister for Western )  
New South Wales in and for the State )  
of New South Wales for and on )  
behalf of the Crown but not so as to )  
incur any personal liability. )

in the presence of: )

Witness

Minister

## SCHEDULE 1

### Amendments to the WSA

1. In clause 2.1 at the end of the definition of Force Majeure insert the following:  
"and if Contract Harvesting ceases to be a permitted forestry operation within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ("**Act**") or under a relevant Regional Forestry Agreement under the Act, such a determination or change is an event of Force Majeure.
2. In clause 4.1 delete "2023" and insert instead "2028"
3. After clause 17.2 insert a new clause 17.2A as follows:  
17.2A The Delivered Price agreed or determined under clause 17.1 shall be reviewed and varied for each of the second, third and fourth Quarter as set out in Schedule 10. A reference to a Quarter in this clause 17.2A and Schedule 10 is a reference to the 3 month period commencing on 1 July for the fourth Quarter, 1 October for the first Quarter, 1 January for the second Quarter, and 1 April for the third Quarter of each Year.
4. In clause 17.3 delete "and 1 July 2020" and insert instead ", 1 July 2020 and 1 July 2024";
5. After clause 17.3 insert a new clause 17.3A as follows:  
  
17.3A At the same time as the parties conduct a review under clause 17.3 in 2024 the parties must review in good faith the provisions of Schedule 10 to reach agreement if possible regarding amendments to Schedule 10 that may be necessary in order that it more appropriately calculate relative changes to the cost to State Forests of carrying out Contract Harvesting during each DP Year.
6. Delete Schedule 6 and replace with Schedule 6 in **Attachment 1** to this Schedule.
7. After Schedule 9 insert a Schedule 10 as follows:

## SCHEDULE 10

### Quarterly Rate Review

#### Part 1

- (a) The Delivered Prices for the second, third and fourth Quarter of a DP Year shall be the Delivered Prices for the previous Quarter varied by the percentage determined by State Forests by applying the review mechanism set out as Part 2 to this Schedule 10.
- (b) State Forests must within thirty days of the end of each first, second and third Quarter, provide to the Company details of the calculations of the Delivered Prices to apply for the new Quarter.
- (c) If an Indicator referred to in Part 2 is rebased, its calculation varied, ceases to be available, or is superseded by a superior Indicator, State Forests may replace or vary that Indicator with, or to, one which in State Forests opinion is an equivalent and suitable alternative.

#### Part 2

##### Item 1 Definitions

In this Schedule 10 unless the context indicates to the contrary:



## SCHEDULE 1

**"Base Indicator Rate"** for a review means the Indicator Rate which was the Current Indicator Rate for the previous review, except that in the first review, and in the first review following the commencement of each DP Year, it means:

- (a) in the case of Cost Item "CPI" :- the figures last published by the Australian Bureau of Statistics (ABS) prior to the commencement of the Reviewed Quarter;
- (b) in the case of Cost Item "Fuel" :- the Net Fuel Price for the Quarter immediately before the Reviewed Quarter;

**"Cost Item"** means an item set out in column 1 of Part 3;

**"Current Indicator Rate"** for a review means:

- (a) In the case of Cost Item "CPI" :- the figures as last published by the ABS prior to the end of the Reviewed Quarter.
- (b) In the case of Cost Item "Fuel" :- the Net Fuel Price for the Reviewed Quarter;

**"Delivery Charge Weighting"** means the sum of the non-Product Price weightings listed in the Delivered Price Review Mechanism outcome which applied during the Reviewed Quarter.

**"First Quarter"** means the period commencing 1 October 2022 and ending 31 December 2022.

**"Indicator"** means an Indicator of a Cost Item more particularly being any Indicator set out in column 2 of Part 3;

**"Indicator Rate"** means the value or status of an Indicator at a point in time;

**"Indicator Weighting"** means the weighting given to an Indicator for the purpose of calculating the weighted movement across all Indicators during a review. For the first review under this Schedule, the example weighting set out in column 8 of Part 3 will be varied to capture relevant Indicator Rates applicable at the time, in accordance with this Schedule 10;

**"Net Fuel Price"** for a Quarter means the item identified as the Net Fuel Price in Part 3 of this Schedule 10 more particularly being an amount calculated for that Quarter as demonstrated by columns 3 and 4 of that Part;

**"Reviewed Quarter"** means the Quarter that ended immediately before the conduct of a review under this Schedule 10.

### Current Indicator Rates Definitions

Item	Indicator	Source
CPI	CPI	ABS Consumer Price Index Cat No 6401 Tables 1 and 2 (Series ID A2325846C; Index numbers" All Groups CPI: Australia) As last published by the Australian Bureau of Statistics (ABS) at <a href="http://www.abs.gov.au">www.abs.gov.au</a>
Fuel	Terminal Gate Price	Daily weighted average Terminal Gate Price, in dollars per litre (Including GST) of Diesel in Sydney As last published by the Australian Institute of Petroleum (AIP) at <a href="http://www.aip.com.au">www.aip.com.au</a>
	GST	GST as specified by the Australian Tax Office
	On Road Fuel Tax Credit	Fuel Tax Credit Rates applicable to liquid fuels for heavy vehicles travelling on public roads As published at <a href="https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/">https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/</a>
	Off Road Fuel Tax Credit	Fuel Tax Credit Rates applicable to liquid fuels for heavy machinery working off public roads. As published at <a href="https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/">https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/</a>





## SCHEDULE 1

### Item 2 Methodology

The following describes the method of varying the Delivered Prices:

1. Ascertain the level of each Indicator in column 1 of Part 3, expressed in dollars and cents, percentage or as an index (as the case may be) current at the time of the review (**Current Indicator Rate**).
2. Ascertain the movement in each Indicator during the relevant review period by establishing the percentage increase (or decrease) in the Indicator Rate (by dividing the Current Indicator Rate by the Base Indicator Rate and applying any weighting specified in column 6 to that percentage change).
3. Calculate the weighted movement across all Indicators by applying the methodology below:
  - (a) multiply the movement in each Indicator (see clause 2) by the Indicator Weighting
  - (b) the sum of the products of each calculation referred to in clause 3(a) is the weighted movement across all Indicators.
4. The weighted movement across all Indicators calculated in accordance with clause 3 is then multiplied by the Delivery Charge Weighting to determine the overall weighted movement over the Reviewed Quarter.
5. The new Delivered Prices to apply in the Quarter following the Reviewed Quarter are calculated by applying the weighted movement across all Indicators (from clause 4 above) to the current Delivered Prices.
6. For the purposes of the next quarterly rate review, ascertain new column 8 Part 3 Indicator Weightings for each Indicator by multiplying the then current column 8 Indicator Weighting for each Indicator by the movement in the relevant Indicator (see clause 2 above) over the Reviewed Quarter and then dividing the result by the weighted movement across all Indicators (see clause 3 above). This will produce a new table of Indicator Weightings for the next review which sums to 100 percent.

### Part 3

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Item	Indicator	Example Base Indicator Rate	Example Current Indicator Rate	Movement	Example Indicator Weighting	Example Weighted Movement	Indicator Weighting for the first review
Item 1: CPI	CPI - All Groups 8 Capital Cities	114.4	118.8	3.80%	81%	3.08%	.....%
Item 2: Fuel	Daily weighted average Terminal Gate Price (TGP) of Diesel in Sydney (AIP)	\$1.2490	\$1.1174				
	Less GST	\$0.1135	\$0.1016				
	Less 66% of the On Road Fuel Tax Credit Rate	\$0.1069	\$0.1100				
	Less 34% of the Off Road Fuel Tax Credit Rate	\$0.1428	\$0.1444				
	Net Fuel Price	\$0.8859	\$0.7615				
					100.0%	0.41%	100.0%

# ATTACHMENT 1

## SCHEDULE 6

### DELIVERED PRICE REVIEW MECHANISM

#### Hardwood Poles Grade 1, 2 and 3 and Non-Standard and Hardwood Piles

##### Part 1: Definitions and interpretation

In this Schedule unless the context indicates to the contrary:

**Base Indicator Rate** for a review means the relevant Indicator Rate for the previous review.

**CPI Indicator Rate** for a review means the ABS 6401.0 Consumer Price Index - Table 1: (Series ID A2325846C - Index Numbers; All Groups; Australia) current as at the first day of the Year in which a review is being conducted.

**Data Source** means the source of where the Indicator rates are generated from, more particularly being any item set out in column 2 of Part 3

**DP Year** means the 12 month period commencing 1 October in any year

**Fuel Indicator Rate** for a review means the value of the daily weighted average Terminal Gate Price over the previous Year, in dollars per litre, of Diesel in Sydney as published by the Australian Institute of Petroleum (AIP), minus the GST, minus the 70% of the Road Transport Fuel Tax Credit (RTFTC), minus 30% of the Forestry Fuel Tax Credit (FFTC), rounded to five decimal places.

**Indicator** means an Indicator set out in column 1 of Part 3

**Indicator Weighting** means the weighting given to an Indicator for the purpose of calculating the weighted movement across all Indicators during a review more particularly being the weighting set out in column 4 of Part 3.

**Product Price Movement** for a Year for a particular pole grade means the movement (expressed as a percentage) over the Year in the CPI Indicator Rate;

**Repairs, Maintenance and Other Indicator Rate** for a review means the ABS 6401.0 Consumer Price Index - Table 1: (All Groups CPI - Index Numbers; weighted average of eight capital cities) current as at the first day of the Year in which a review is being conducted.

**Wages Indicator Rate** for a review means the ABS Labour Price Index Cat No 6345 Table 2b (Series ID A2603609J Quarterly Index ; Total hourly rates of pay excluding bonuses ; New South Wales ; Private and Public ; All Industries) current as at the first day of the Year in which a review is being conducted, rounded to two decimal places.

**Year** means a twelve-month period from July to June.

##### Part 2: Methodology

The following describes the method of varying the Delivered Prices:

1. Ascertain the Indicator Rate of each Indicator current at the time of the review.
2. Ascertain the movement in each Indicator during the relevant review period by establishing the percentage increase (or decrease) in the Indicator Rate by comparing the current Indicator Rate (see clause 1) to the Base Indicator Rate.
3. Calculate the weighted movement across all Indicators by applying the methodology below:
  - a) multiply the movement in each Indicator (see clause 2) by the weighting in column 4 of Part 3;
  - b) the sum of the products of each calculation referred to in clause 3(a) above is the weighted movement across all Indicators.
4. The new Delivered Prices determined under this review mechanism are calculated by applying the weighted movement across all Indicators, from clause 3 above, to the Delivered Price(s)



## ATTACHMENT 1

previously agreed or determined under clause 17.1 for the previous DP Year as per the methodology in the example below:

- (a) assume the weighted movement across all Indicators is +2.5%, and the Delivered Price, previously agreed or determined under clause 17.1 is \$70.00;
  - (b) the new Delivered Price is  $\$70.00 \times 1.025$  which equals \$71.75.
5. For the purposes of the next Delivered Price review under clause 17.1, ascertain new column 4 Part 3 Weightings for each Indicator by multiplying the then current column 4 Part 3 Weighting for each indicator by the period movement in the relevant Indicator (see clause 2 above) and then dividing the result by the weighted movement across all Indicators (see clause 3 above). This will produce a new table of Indicator Weightings which sum to 100 percent. For example:
    - (a) assume Cost Item 1 movement (see clause 2 above) is +4.0%, the weighted movement across all Indicators is +2%, and the weighting for Cost Item 1 (from column 4 of Part 3) is 70%;
    - (b) then the new Indicator Weighting for Cost Item 1 is calculated by the formula;
    - (c)  $70\% \times 1.04 / 1.02$  which equals 71.3%.
  6. For the purposes of calculating the movement in the CPI over the previous Year the relevant figures are the figures last published for the June quarter of the last Year and the figures published for the June quarter in the Year proceeding that Year;
  7. If an unscheduled review is requested in accordance with clause 17.3:
    - (a) for the purposes of establishing the Current Indicator Rates of any Indicator for the review the relevant figures will be the figures last published or otherwise available prior to the commencement of the review; and
    - (b) the Current Indicator Rates so established shall be the Base Indicator Rates for the next scheduled review under clause 17.2.

### Part 3 : Indicators and Weightings

Hardwood Poles Grade 1, 2, 3 and Export Delivered Price Review Mechanism			
Column 1	Column 2	Column 3	Column 4
Indicator	Data Source	Base Indicator Rate 1 July 2021	Weighting at 1 Oct 22
<u>Item 1: Wages</u> Labour Price Index (LPI) – All Industries Australia	<a href="http://www.abs.gov.au">www.abs.gov.au</a> LPI - Cat No 6345 Table 2b (A2603609)	136.5	20.25%
<u>Item 2: Repairs, Maintenance and Other</u>	<a href="http://www.abs.gov.au">www.abs.gov.au</a> CPI – All Groups 8 Capital cities (A2325846C)	118.8	10.05%
<u>Item 3: Fuel</u> Daily weighted average Terminal Gate Price (TGP) of Diesel In Sydney (AIP)	<a href="http://www.alp.com.au">www.alp.com.au</a>		14.16%
	Base Price	\$1.1174	
	Minus GST	\$0.1016	
	Minus 70% of the Public Road RTFTC (federal tax credit)	\$0.1167	
	Minus 30% of the Off Road RTFTC (federal tax credit)	\$0.1274	
	Net Price	\$0.7718	
<u>Item 4: Product Prices</u>	<a href="http://www.abs.gov.au">www.abs.gov.au</a> CPI All Groups 8 Capital Cities (A2325846C)	118.8	55.54%



## ATTACHMENT 1

### Example of Delivered Price Review Mechanism

Delivered Price Review Mechanism - Hardwood Poles - 1 October 2021							
Item	Indicator	Indicator Rate at 1 July 2020	Indicator Rate at 1 July 2021	% Change	Weighting at 1 October 2021	Weighted % Change	Weighting at 1 October 2022
Item 1: Wages Labour Price Index (LPI) – All Industries Australia	<a href="http://www.abs.gov.au">www.abs.gov.au</a> LPI - Cat No 6345 Table 2b (A2603609J)	134.1	136.5	1.8%	20.00%	0.36%	20.25%
Item 2: Repairs, Maintenance and Other	<a href="http://www.abs.gov.au">www.abs.gov.au</a> CPI All Groups 8 Capital Cities	114.4	118.8	3.8%	9.73%	0.37%	10.05%
Item 3: Fuel Daily weighted average Terminal Gate Price (TGP) of Diesel in Sydney (AIP)	<a href="http://www.ala.com.au">www.ala.com.au</a>						
	Base Price	\$1.2490	\$1.1174				
	Minus GST	\$0.1135	\$0.1016				
	Minus 70% of the Public Road RTFIC (Federal Tax Credit)	\$0.1133	\$0.1167				
	Minus 30% of the Off Road RTFIC (Federal Tax Credit)	\$0.1260	\$0.1274				
	Net Price	\$0.8962	\$0.7718	-13.9%	16.52%	-2.29%	14.16%
Item 4: Product Prices	<a href="http://www.abs.gov.au">www.abs.gov.au</a> CPI All Groups 8 Capital Cities	114.40	118.80	3.8%	53.75%	2.07%	55.54%
Delivered Price Review Mechanism adjustment to apply from 1 October 2021						0.5069%	




## VARIATION AGREEMENT

THIS AGREEMENT is made the 27th August day of 2009.

### PARTIES

**THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 (NSW) trading as **FORESTS NSW** ('Forests NSW')

**KOPPERS WOOD PRODUCTS PTY LTD** (ABN 81 003 947 680) ('Company')

**THE STATE OF NEW SOUTH WALES** ('State of NSW')

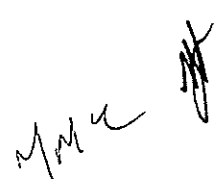
### RECITALS

- A. On 21 September 2004 the parties entered into 4 wood supply agreements (collectively "the WSA's") for a term expiring on 31 December 2023 namely:
- 2.1.1 an agreement entitled "Type B-Export Poles Wood Supply Agreement" ("the Export Poles WSA");
  - 2.1.2 an agreement entitled "Type B-Poles Class 1&2 Wood Supply Agreement" ("the Class 1&2 Poles WSA");
  - 2.1.3 an agreement entitled "Type B-Piles Wood Supply Agreement" ("the Piles WSA");
  - 2.1.4 an agreement entitled "Type B-Poles Class 3 Wood Supply Agreement" ("the Class 3 Poles WSA");
- each being an agreement under which Forests NSW is to supply the Company an annual supply of the particular type of timber specified in the agreement.
- B The parties have reached agreement on the adjustment of the Company's entitlement to an annual supply of timber under each of the WSA's on the terms and conditions set out in this agreement.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless a contrary intention appears in this agreement:
- 1.3.1 "Agreement" means this agreement;
  - 1.3.2 headings are for convenience only and do not affect the interpretation of the Agreement;
  - 1.3.3 words importing the singular include the plural and vice versa;
  - 1.3.4 words importing a gender include any gender;



- 1.3.5 a reference to anything includes apart of that thing;
- 1.3.6 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
- 1.3.7 a reference to a document includes all amendments or supplements or replacements or notations of that document;
- 1.3.8 a reference to a party to a document includes that party's successors and permitted assigns;
- 1.3.9 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;
- 1.3.10 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.

## **2. AMENDMENTS AND TERMINATION**

- 2.1 The parties have reached agreement on the adjustment of the Company's entitlement to an annual supply of timber under three of the WSA's.
- 2.2 This Agreement effects each of the WSA's to give effect to the agreed adjustments if any as contained in this Agreement.
- 2.3 Taking effect from 1 July 2008:
  - 2.3.1 the Export Poles WSA is amended in accordance with Schedule 1;
  - 2.3.2 the Class 1&2 Poles WSA is amended in accordance with Schedule 2;
  - 2.3.3 the Piles WSA is terminated and each of the parties releases and discharges each of the others, from all actions, suits, causes of action, claims, demands, costs, charges and expenses whatsoever which the party now has or at any time hereafter may have in respect of the Piles WSA; and
  - 2.3.4 the Class 3 Poles WSA is unaffected by the arrangement set out in this Agreement.
- 2.4 The Parties agree that the amendments, termination and the acknowledgement that one agreement is not amended or terminated are Variations for the purposes of clause 33.2 of each WSA.

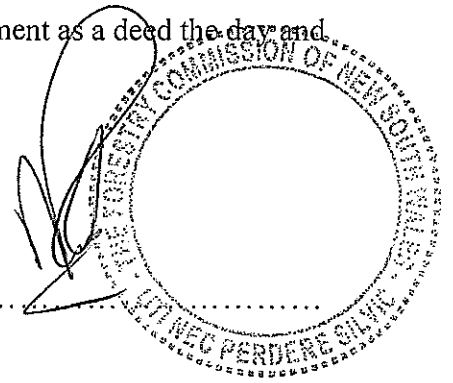


IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and year first hereinbefore written.

I, N.J.V. Koppers )  
(name) )

CEO )  
(position) )

have hereunto affixed the  
Seal of the **FORESTRY COMMISSION**  
**OF NEW SOUTH WALES**  
in the presence of: )



Witness

[Signature]

**EXECUTED BY KOPPERS)**  
**WOOD PRODUCTS PTY LTD**  
by [two directors] or [a director and  
its secretary] or [its sole director]

) [Signature] )  
) director )

[Signature]  
director/secretary

**SIGNED SEALED AND DELIVERED by**  
**THE HONOURABLE IAN MACDONALD**  
MLC Minister for Primary Industries  
in and for the State of New South Wales  
for and on behalf of the Crown (but not  
so as to incur any personal liability) in the  
presence of:

) [Signature] )  
) Minister for Primary Industries )

[Signature]  
Witness



**SCHEDULE 1**  
Amendments to the Export Poles WSA

At the end of Schedule 2 of the Export Poles WSA insert the following:  
“Despite any of the above in this Schedule 2:

1. Allocation 1 for the Year commencing 1 July 2008 and each Year thereafter until 30 June 2023 shall be 1268 m<sup>3</sup>;
2. Allocation 1 for the Year commencing 1 July 2023 shall be half Allocation 1 for the Year commencing 1 July 2022;
3. Allocation 2 for the Year commencing 1 July 2008 and each Year thereafter until 30 June 2023 shall be 422m<sup>3</sup>; and
4. Allocation 2 for the Year commencing 1 July 2023 shall be half Allocation 2 for the Year commencing 1 July 2022.”

**SCHEDULE 2**  
Amendments to the Class 1&2 Poles WSA

At the end of Schedule 2 of the Class 1&2 Poles WSA insert the following:  
“Despite any of the above in this Schedule 2:

1. Allocation 1 for the Year commencing 1 July 2008 and each Year thereafter until 30 June 2023 shall be 12593 m<sup>3</sup>;
2. Allocation 1 for the Year commencing 1 July 2023 shall be half Allocation 1 for the Year commencing 1 July 2022;
3. Allocation 2 for the Year commencing 1 July 2008 and each Year thereafter until 30 June 2023 shall be 4197m<sup>3</sup>; and
4. Allocation 2 for the Year commencing 1 July 2023 shall be half Allocation 2 for the Year commencing 1 July 2022.”

A handwritten signature in black ink, appearing to be 'Mark', located in the bottom right corner of the page.



# **WOOD SUPPLY AGREEMENT**

**(TYPE B – CLASS 3 POLES)**

**KOPPERS WOOD  
PRODUCTS PTY LTD**

**July 2004**

## TABLE OF CONTENTS

1.	PARTIES .....	3
2.	DEFINITIONS AND INTERPRETATION.....	3
3.	SCOPE OF AGREEMENT.....	8
4.	DURATION OF AGREEMENT .....	9
5.	ALLOCATIONS .....	9
6.	SPECIAL CONDITIONS REGARDING ALLOCATION 2 .....	10
7.	SHORTFALL.....	11
8.	METHOD OF SUPPLY .....	13
9.	ANNUAL DELIVERY PLAN.....	13
10.	MONTHLY DELIVERY SCHEDULES.....	14
11.	AMENDMENT OF ANNUAL DELIVERY PLAN OR MONTHLY DELIVERY SCHEDULES.....	15
12.	DELIVERY .....	16
13.	TITLE AND RISK.....	16
14.	SPECIFICATIONS.....	16
15.	DETERMINATION OF QUANTITY OF TIMBER .....	18
16.	DELIVERED PRICE.....	18
17.	DELIVERED PRICE REVIEW .....	19
18.	INFORMATION.....	20
19.	PAYMENT .....	20
20.	GOODS AND SERVICES TAX .....	21
21.	COMPLIANCE.....	22
22.	SALE OF TIMBER TO OTHER PERSONS .....	22
23.	SECURITY.....	22
25.	LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY .....	24
26.	ISSUE OF REQUIRED LICENCES.....	24
27.	DEFAULT OR INSOLVENCY .....	25
28.	RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION .....	26
29.	ASSIGNMENT.....	27
30.	MINISTER'S APPROVAL FOR ASSIGNMENT.....	28
31.	ASSESSMENT OF VALUE ADDED PERFORMANCE .....	29
32.	AMENDMENT OF THE ALLOCATIONS .....	29
33.	VARIATION .....	31
34.	INTEREST .....	31
35.	NOTICE.....	31
36.	GOVERNING LAW .....	32
37.	SEVERABILITY .....	32
38.	GENERAL.....	32
39.	CONFIDENTIALITY.....	33
40.	OBLIGATION TO CONSULT.....	33

ERROR! BOOKMARK NOT DEFINED.ERROR! BOOKMARK NOT DEFINED.ERROR! BOOKMARK NOT DEFINED.ERROR! BOOKMARK NOT DEFINED.ERROR! BOOKMARK NOT DEFINED.

### Schedules

- Schedule 1 Specifications
- Schedule 2 Allocation
- Schedule 3 Plan of Management Areas
- Schedule 4 Code of Procedure
- Schedule 5 Delivered Price Schedule
- Schedule 6 Delivered Price Review Mechanism
- Schedule 7 Delivery Site and Delivery Hours

**TYPE B – POLES CLASS 3  
WOOD SUPPLY AGREEMENT**

**THIS AGREEMENT** is made the 21 day of SEPTEMBER 2004

**1. PARTIES**

- 1.1 **THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 (NSW) trading as **STATE FORESTS** ('State Forests')
- 1.2 **KOPPERS WOOD PRODUCTS PTY LTD** (ABN 81 003 947 680) ('Company')
- 1.3 **THE STATE OF NEW SOUTH WALES** ('State of NSW')

**2. DEFINITIONS AND INTERPRETATION**

- 2.1 In this Agreement unless a contrary intention appears:

'Act' means the Forestry Act 1916 (NSW) and all regulations made under that Act;

'Allocation 1' for a Year means the volume of Timber set out as Allocation 1 in Part 1 of Schedule 2 for that Year;

'Allocation 2' for a Year means the volume of Timber set out as Allocation 2 in Part 1 of Schedule 2 for that Year;

'Allocations' means Allocation 1 and Allocation 2;

'Allocation' means Allocation 1 or Allocation 2 as the case may be;

'Allocation Distribution Table' means the table attached as Part IV Schedule 2 (as may be amended in accordance with clause 5.5);

'Annual Delivery Plan' means a schedule prepared by State Forests for the Year to which it applies which must provide for the supply of the Allocations (or such lesser volume as the Company requests or which is in accordance with clause 6 in relation to Allocation 2) and which sets out relevant information regarding:

- (i) the various Compartments from which that supply is intended;
- (ii) the forest types of the various Compartments and the expected yields of Timber; and
- (iii) the monthly volumes of Timber proposed to be delivered to the Delivery Site.

'Area of Supply' means the Crown-timber lands within State Forests North East, Mid North Coast and Hunter Regions more particularly being described on the plan attached as Schedule 3;

'Available HQL Resource' for a period means the maximum volume of HQL sawlogs (including any HQL Equivalent Volume) which State Forests (acting reasonably) determines is reasonably available to be supplied from the Area of

*Q*



Supply under all Type B Agreements during the period after taking into account State Forests obligations to supply all of the timber it is obliged to supply under the Type A Agreements (including any timber which is to be supplied in that Year under a clause in a Type A Agreement identical to or having similar effect to **clause 14.6** of this Agreement) during that period;

**'Available HQL Production'** for a Year means the volume of HQL sawlogs (including any HQL Equivalent Volume) harvested in the Area of Supply in the Year that is in excess of the Total Priority HQL Volume for the Year;

**'Available HQS Production'** for a Year means the volume of HQS sawlogs (including any HQS Equivalent Volume) harvested in the Area of Supply in the Year that is in excess of the Total Priority HQS Volume for the Year;

**'Available HQS Resource'** for a period means the maximum volume of HQS sawlogs (including any HQS Equivalent Volume) which State Forests (acting reasonably) determines is reasonably available to be supplied from the Area of Supply under all Type B Agreements during the period after taking into account State Forests obligations to supply all of the timber it is obliged to supply under the Type A Agreements (including any timber which is to be supplied in that Year under a clause in a Type A Agreement identical to or having similar effect to **clause 14.6** of this Agreement) during that period;

**'Base Indicator Rate'** see **Schedule 6**;

**'Class'** means a class of Timber categorised by reference to kilonewtons and length. The Classes of Timber relevant to this Agreement are specified in the Allocation Distribution Table;

**'Code of Procedure'** means the Code of Procedure attached as **Schedule 4** as may be amended from time to time in accordance with this Agreement;

**'Commencement Date'** means 1 July 2004;

**'Company'** means the Company and includes all employees, servants and agents of the Company;

**'Company's HQL Percentage Share'** means the percentage described in **Part III** of **Schedule 2** as the Company's HQL Percentage Share;

**'Company's HQS Percentage Share'** means the percentage described in **Part III** of **Schedule 2** as the Company's HQS Percentage Share;

**'Compartment'** means an identified geographic administrative area from which State Forests may supply Timber to the Company;

**'Contract Harvesting'** means the felling, extraction, sorting, processing, grading, loading, hauling, delivery and distribution of Timber by a Contractor engaged by State Forests necessary to deliver the Allocations to the Company;

**'Contractor'** means a person under contract with State Forests to conduct forestry operations and includes principals, employees and agents of the Contractor;

**'Cost Item'** see **Schedule 6**;

Q

**'Current Indicator Rate'** see **Schedule 6**;

**'Delivered Price Review Mechanism'** means the mechanism and procedures set out in **Schedule 6** as amended in accordance with this Agreement;

**'Delivered Prices'** means the prices payable for Timber delivered to the Company under this Agreement determined in accordance with **clauses 16, and 17**;

**'Delivered Price Schedule'** means the schedule attached as **Schedule 5** for calculating the Delivered Price as prepared and amended from time to time in accordance with **clause 17**;

**'Delivery Hours'** means the hours specified in **Schedule 7**;

**'Delivery Site'** means the location identified in **Schedule 7** as the Delivery Site;

**'DP Year'** means the 12 month period commencing 1 October in any year;

**'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 (other than State Forests), 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;

**'HQL sawlogs'** means timber described in **Schedule 8** as HQL sawlogs;

**'HQL Equivalent Volume'** means State Forests' determination (acting reasonably) of the volume of that part of larger high quality logs such as Timber that could be converted into HQL sawlogs. For example the HQL Equivalent Volume of a volume of Timber would be determined by State Forests dividing that volume by the HQL/Timber Conversion Factor;

**'HQL/Timber Conversion Factor'** means the figure specified as the HQL/Timber Conversion Factor in Part V of **Schedule 2**;

**'HQS sawlogs'** means timber described in **Schedule 8** as HQS sawlogs;

**'HQS Equivalent Volume'** means State Forests' determination (acting reasonably) of the volume of that part of larger high quality logs such as Timber that could be converted into HQS sawlogs. For example the HQS Equivalent Volume of a volume of Timber would be determined by State Forests dividing that volume by the HQS/Timber Conversion Factor;

**'HQS/Timber Conversion Factor'** means the figure specified as the HQS/Timber Conversion Factor in Part V of **Schedule 2**;

**'Indicator'** see **Schedule 6**;

**'Indicator Rate'** see **Schedule 6**;

**'Indicator Weighting'** see **Schedule 6**;

**'Minister'** means the Minister administering the Act;

**'Monthly Delivery Schedule'** means a schedule stating the Monthly Quantity and the Compartments from which the Monthly Quantity is to be harvested during the month to which it applies, together with any special delivery requirements for that month. The Monthly Quantity and area 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;
- (iii) take into account the cumulative performance of monthly deliveries against the Annual Delivery Plan; and
- (iv) specify the volume of each of the Classes to be delivered during the month;

**'Monthly Quantity'** means the volume of Timber specified in a Monthly Delivery Schedule to be delivered to the Delivery Site during the month to which the Monthly Delivery Schedule applies;

**'Northern Region'** means all the land within the area identified as the Northern Region on the plan attached as **Schedule 3**

**'Region'** means the Crown-timber lands within the geographical area identified as a State Forests region in **Schedule 3**;

**'Required Licences'** means licences which are required under the Act to permit the processing of Timber by the Company in the exercise of its rights under this Agreement and any other licences required under the Act from time to time by the Company to enable it to exercise its rights under this Agreement;

**'Salvage operations'** means the harvesting of windthrown timber or damaged timber;

**'Specifications'** means the specifications for the hardwood timber set out in **Schedule 1**;

**'Timber'** means the timber detailed in the Specifications;

**'Total Type B Agreement HQL Volume'** for a period means the aggregate of all the HQL sawlogs, including HQL Equivalent Volume, State Forests may be required to supply under the Type B Agreements during that period;

**'Total Type B Agreement HQS Volume'** for a period means the aggregate of all the HQS sawlogs, including HQS Equivalent Volume, State Forests may be required to supply under the Type B Agreements during that period;

**'Total Priority HQL Volume'** for a Year means the total of:

- (a) 245,922 m<sup>3</sup> of Timber being the volume of HQL sawlogs specified for supply in a Year under the Type A Agreements;
- (b) 5,742 m<sup>3</sup> of Timber being the volume of HQL Equivalent Volume specified for supply in a Year as Allocation 1 under the Type B Agreements as varied at the same time and in the same proportion as Allocation 1 may vary in accordance with **clause 32**; and
- (c) any volume of HQL sawlogs which is to be supplied in that Year under a clause in a Type A Agreement identical to or having similar effect to

**clause 14.6** of this Agreement;

**'Total Priority HQS Volume'** for a Year means the total of:

- (a) 57,759 m3 of Timber being the volume of HQS sawlogs specified for supply in a Year under the Type A Agreements;
- (b) 23,325 m3 of Timber being the volume of HQS sawlogs and HQS Equivalent Volume specified for supply in a Year as Allocation 1 under the Type B Agreements as varied at the same time and in the same proportion as Allocation 1 may vary in accordance with **clause 32**; and
- (c) any volume of HQS sawlogs which is to be supplied in that Year under a clause in a Type A Agreement identical to or having similar effect to **clause 14.6** of this Agreement;

**'Type A Agreements'** means:

- 1. the agreements within a class of agreements each of which:
  - (a) is a written agreement between State Forests, the State of NSW and a person entered into in 2004 for an annual supply of HQL sawlogs and HQS sawlogs from the Area of Supply;
  - (b) bears the title of Type A Hardwood Timber Term Agreement;
  - (c) has substantially identical terms and conditions except there may be variations in relation to:
    - (i) the quantity of the Allocations and the precise Specifications for Timber, (as Allocations, Specifications and Timber are defined in the agreement); and
    - (ii) the indicative areas from which the timber will be supplied;
- 2. the agreement dated 26 August 2003 between State Forests, the State of NSW, Allen Taylor & Co Ltd and Duncans Holdings Ltd;

**'Type B Agreement'** means a written agreement between State Forests, the State of NSW and a person entered into in 2004 on terms and conditions substantially identical to the provisions of this Agreement except in relation to the quantity of the Allocations and the precise Specifications for Timber;

**'Value Added Criteria'** means criteria either regarding the sawing, drying, dressing or other processing of Timber, or regarding the marketing of Timber, which adds value to the Timber;

**'Year'** means a period of twelve months commencing on 1 July in any year.

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 any thing 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 and 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 State Forests making Timber available is a reference to making Timber available by the method described in **clause 8.1**;
- 2.2.15 a reference to taking Timber is a reference to accepting delivery of Timber delivered by State Forests in the course of State Forests conducting Contract Harvesting.

### 3. SCOPE OF AGREEMENT

- 3.1 The Company carries on the business of the processing of hardwood timber and requires supplies of Timber to conduct its business.
- 3.2 From the Commencement Date State Forests will make available supplies of Timber to the Company and the Company must accept and pay for the supplies of Timber delivered by State Forests upon the terms and conditions set out in this Agreement.
- 3.3 The Company must pay State Forests the prices calculated in accordance with **clause 16**.
- 3.4 The State of NSW undertakes to ensure that State Forests has sufficient resources and the necessary capacity to make the Timber to be supplied under this Agreement available to the Company and will cause State Forests to perform its obligations as required by the provisions of this Agreement. The State of NSW will only be excused for any failure to perform its undertakings set out in this clause if prevented from doing so by Force Majeure. For the purposes of this clause the words 'act or omission of government or government department

Q

or instrumentality' in the definition of Force Majeure will be deemed to mean 'act or omission of a government or government department or instrumentality other than the government or a department or instrumentality of the State of NSW'.

#### 4. DURATION OF AGREEMENT

- 4.1 This Agreement will take effect from the date of this Agreement and will operate until 31 December 2023 unless determined at an earlier date under a provision of this Agreement.
- 4.2 If the Company makes written application to State Forests and the Minister to renew this Agreement provided it is not in material breach of this Agreement at the time it makes the application, the Minister and State Forests must consult with the Company, and negotiate with the Company in good faith for the purpose of seeking to reach agreement in respect of the grant of a renewed Agreement and the terms and conditions of such a renewal. Nothing in this clause obliges State Forests or the State of NSW to grant a renewal of this Agreement.
- 4.3 The parties agree that in the event of an assignment of this Agreement as envisaged by **clauses 29 and 30**, the parties will execute a further agreement upon the same terms as this Agreement but including provisions incorporating an obligation in **clause 21** upon the Company or any assignee to comply with any conditions imposed under **clause 30** as obligations under the agreement (and it is agreed that non-compliance with such conditions will be a material breach for the purposes of **clause 27.2**).

#### 5. ALLOCATIONS


- 5.1 From the Commencement Date and subject to **clause 6**, State Forests must make available to the Company each of the Allocations in each Year.
- 5.2 Despite any provision of this Agreement State Forests is not obliged to supply the Timber from outside the Area of Supply.
- 5.3 State Forests may supply the Timber from outside the Area of Supply provided:
  - 5.3.1 State Forests must use its reasonable endeavours to supply the Timber it is required to supply under this Agreement from the Area of Supply;
  - 5.3.2 State Forests may supply the Timber from the Northern Region and elsewhere provided that State Forests may not supply the Timber from outside the Northern Region unless it has used its reasonable endeavours to supply it from within the Northern Region;
  - 5.3.3 the Delivered Price payable for the Timber from outside the Area of Supply must be calculated on the assumption that the Timber had been harvested and delivered from within the Area of Supply nearest to the actual point of harvest; and
  - 5.3.4 State Forests must act reasonably to ensure that the Timber supplied from outside the Area of Supply is suitable for the Company's business.
- 5.4 Part II of **Schedule 2** sets out indicative proportions of each of the Allocations which are to be made available from particular Regions for the term of this Agreement. The parties acknowledge the purpose of Part II is to provide information relating to likely sources of Timber but State Forests is not able to make any firm commitment that Timber will be available in the proportions or

*Q*

from the Regions indicated. The inclusion of this acknowledgment does not relieve State Forests of its obligations to make the Allocations available under, and in accordance with, this Agreement. State Forests will update this information from time to time if the indicative information provided ceases to be relevant for a period greater than 2 Years.

- 5.5 Part IV of **Schedule 2** sets out the Allocation Distribution Table being the relative proportions of each of the Classes State Forests expects to be produced from its harvesting operations in the Area of Supply during each Year. The parties acknowledge State Forests is not able to make any firm commitment that Timber will be available in the proportions indicated and in this regard the provisions of **clause 10.3** will apply. State Forests may, in consultation with the Company, review the Allocation Distribution Table during January each of 2008, 2012, 2016, and 2020. State Forest may by written notice to the Company issued as soon as practicable after the review, amend the Allocation Distribution Table from 1 July immediately following the review to reflect State Forests best estimate, on the basis of information available to it at the time of the review, of the relative proportions of each of the Classes State Forests expects to be produced from its harvesting operations in the Area of Supply during each of the following four Years.
- 5.6 Part VI of **Schedule 2** sets out the relative proportions of each of the relevant species State Forests expects to be produced from its harvesting operations in the Area of Supply during each Year. The parties acknowledge the purpose of Part VI is to provide indicative information relating to likely proportions of Timber but State Forests is not able to make any firm commitment that Timber will be available in the proportions specified. State Forests will update this information from time to time if the indicative information provided ceases to be relevant for a period greater than 2 Years.
- 5.7 State Forests must not unfairly or inequitably disadvantage the Company, in relation to other Type B Agreement holders, in a manner in which it supplies the Allocations, and the relative proportions of the Classes and species it is prepared to supply to the Company.

## 6. SPECIAL CONDITIONS REGARDING ALLOCATION 2

- 6.1 State Forests obligations to supply Allocation 2 each Year are qualified by this **clause 6**. This **clause 6** has no application to the obligations to supply Allocation 1.
- 6.2 Each Year in addition to its obligations to supply Allocation 1 State Forests must use its reasonable endeavours to supply the lesser of:
- 6.2.1 the volume calculated by the following formula:  
$$AHQLP \times Co\%HQL \times HQL/TC$$
  
Where:  
AHQLP means the Available HQL Production for the Year;  
CoHQL % means the Company's HQL Percentage Share; and  
HQL/TC means the HQL/Timber Conversion Factor; and
- 6.2.2 the volume calculated by the following formula:  
$$AHQSP \times CoHQS\% \times HQS/TC$$
  
Where:  
AHQSP means the Available HQS Production for the Year;  
CoHQS% means the Company's HQS Percentage Share; and  
HQS/TC means the HQS/Timber Conversion Factor.
- 

A worked example of the application of this formula is set out as **Schedule 9**.

- 6.3 Each Year State Forests must use its reasonable endeavours to ensure there is an Available HQL Production or an Available HQS Production sufficient that the Company is supplied with Allocation 2 in that Year.
- 6.4 No claim may be made against State Forests in relation to its obligations to supply Allocation 2 if it complies with **clauses 6.2 and 6.3**. Nothing in **clauses 6.2 and 6.3** requires State Forests:
  - 6.4.1 to supply a volume of Timber in excess of Allocation 2;
  - 6.4.2 to harvest Timber from the Area of Supply at a rate which compromises its capacity to harvest the Total Priority HQL Volume or the Total Priority HQS Volume from the Area of Supply each Year from the Commencement Date to 31 December 2023; or
  - 6.4.3 to harvest Timber in breach of any law or written direction from the Minister regarding the supply to all Type B Agreement holders or in respect to the timber to be supplied under the Type B Agreements.
- 6.5 Unless otherwise agreed between State Forests and the Company all Timber delivered to the Company in a Year under this Agreement will be firstly applied in satisfaction of State Forests' obligations in relation to Allocation 1 until those obligations are satisfied and thereafter shall be applied in satisfaction of State Forests' obligations in relation to Allocation 2.
- 6.6 Prior to 1 April in each Year State Forests must use its reasonable endeavours to estimate the volume that will be calculated in accordance with **clause 6.2** for the following Year. The volume so estimated must:
  - 6.6.1 be disclosed to the Company at the commencement of negotiations for the purposes of **clause 9.1**; and
  - 6.6.2 be included in the Annual Delivery Plan for the following Year as the indicative volume to be supplied in relation to Allocation 2 if it is less than Allocation 2.
- 6.7 If State Forests forms the reasonable opinion that supplying Allocation 2 in a Year (in addition to supplying Allocation 1) will compromise its capacity to harvest timber in the manner set out in **clause 6.4.2** it must as soon practicable after forming that opinion inform the Company accordingly. If requested by the Company to do so State Forests must as soon as practicable give the Company particulars in writing of the basis upon which State Forests formed that opinion.
- 6.8 If State Forests forms the reasonable opinion that supplying Allocation 2 in a Year (in addition to supplying Allocation 1) would involve a breach of any law or a direction of the Minister ("Ministerial direction") it must as soon as practicable after forming that opinion inform the Company accordingly. If requested by the Company to do so State Forests must as soon as practicable give the Company particulars in writing of the basis upon which State Forests formed that opinion and a copy of any Ministerial direction provided it will have no obligation to provide a copy of any Ministerial direction if directed not to do so by the Minister.

## 7. SHORTFALL

- 7.1 If for reasons other than Force Majeure or the default of State Forests or the State of NSW the Company:



- 7.1.1 takes less than 80 per cent of an Allocation for two consecutive Years during the term of this Agreement; or
- 7.1.2 takes less than 70 per cent of an Allocation in any Year,
- State Forests may terminate this Agreement under the provisions of **clause 27**.
- 7.2 Subject to **clause 7.3** if for reasons other than Force Majeure, or the default of State Forests or the State of NSW, the Company fails in any Year ("FD Year") except either of the Years commencing 1 July 2004 or 1 July 2005, to take at least 90% of an Allocation and State Forests does not terminate this Agreement under **clause 7.1**:
- 7.2.1 the Company must pay State Forests within 90 days of State Forests' written demand to pay (which may not be served before the end of the FD 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 comprising the Allocation actually taken by the Company in that FD Year. In calculating the price that would have been payable had the Company taken at least 90% of the Allocation the relevant price for Timber not taken is the weighted average price for the Timber actually taken in the relevant Year. Any sum payable by the Company under this clause is payable as pre-estimated and liquidated damages and not as a penalty;
- 7.2.2 if in the Year in which the Company makes a payment under **clause 7.2.1** (the SFD Year) the Company takes a quantity of Timber in excess of 90% of the Allocation, the amount payable by the Company for the quantity of Timber comprising the Allocation above 90% for that Year will be reduced by the amount of any sum paid under **clause 7.2.1**; and
- 7.2.3 the amount of any reduction allowed under **clause 7.2.2** must not exceed the sum that would have otherwise been payable for the quantity of Timber in excess of 90% at the price applicable for the SFD Year.
- 7.3 If the Company proposes to take less than 90% of an Allocation during a Year it may by notice ("Undercut Notice") to State Forests request State Forests to elect by notice to the Company ("Waiver Notice") to waive **clauses 7.1 and 7.2** or any of them, provided:
- 7.3.1 any Undercut Notice must:
- (a) be in writing;
  - (b) specify the volume of the Allocation intended to be taken by the Company in the relevant Year;
  - (c) be served on State Forests no later than 3 months prior to the commencement of the Year;
- 7.3.2 any Waiver Notice which State Forests in its absolute discretion elects to issue to the Company:
- (a) must be in writing;
  - (b) must be served on the Company not later than 1 month prior to the commencement of the Year
  - (c) may be limited to a specified volume or such other conditions as State Forests sees fit; and
  - (d) will bind State Forests for the purposes of the application of **clauses 7.1 and 7.2**, or any of them, in the manner specified in the notice.
- 7.4 Nothing in this Agreement prevents the Company from requesting State Forests waive **clause 7.2** in circumstances other than those set out in **clause 7.3**.
- 7.5 If the Company makes a payment under **clause 7.2.1** in respect of a FD Year the FD Year shall not be taken into account as a Year for the purposes of State

Forests exercising a right to terminate under **clause 7.1.1** or **clause 7.1.2**.

**7.6 For the purposes of this clause 7:**

7.6.1 a reference to an Allocation shall, in relation to Allocation 2, be a reference to the lesser:

- (a) of Allocation 2; and
- (b) the volume of Timber that State Forests is ready willing and able to supply to the Company in the relevant Year in accordance with **clause 6** in relation to Allocation 2;

provided that if in any Year the volume referred to in **clause 7.6.1(b)** is less than 50% of Allocation 2:

7.6.2 **clause 7.2** shall not apply to that Year in relation to the Company failing to take Allocation 2; and

7.6.3 that Year shall not be taken in account as a Year for the purposes of State Forests exercising a right to terminate under **clause 7.1.1** or **clause 7.1.2** in relation to the Company failing to take Allocation 2.

**8. METHOD OF SUPPLY**

8.1 State Forests shall make Timber available by conducting Contract Harvesting and delivering the Timber to the Delivery Site.

8.2 If in any Year the Company requests State Forests supply it less than an Allocation, for the sole purpose of determining whether State Forests has complied with its obligations under this Agreement to supply that Allocation to the Company in that Year, State Forests will be deemed to have supplied that volume which it is ready willing and able to supply and not any lesser quantity which it actually supplies in accordance with the Company's request. Nothing in this clause will give State Forests any right to claim payment (except as provided in **clause 7**) for any Timber it is deemed to supply under this clause.

**9. ANNUAL DELIVERY PLAN**

9.1 No later than April in each Year State Forests 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 the following May State Forests may determine the Annual Delivery Plan for the following Year. Any agreement or determination of the Annual Delivery Plan must recognise:

9.1.1 the need for the Company to stockpile Timber in some months to compensate for events preventing delivery such as wet weather preventing harvesting of Timber; and

9.1.2 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.

9.2 State Forests 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.

9.3 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.

9.4 If there is any inconsistency between any Annual Delivery Plan and this Agreement the provisions of this Agreement will prevail.

- 9.5 Agreement by State Forests to an Annual Delivery Plan or Monthly Delivery Schedule or amendment thereto which would result in the Company taking less than a volume of timber the Company is required to take under this Agreement in any Year will not constitute a waiver of any obligation imposed or right given by this Agreement.

## 10. MONTHLY DELIVERY SCHEDULES

- 10.1 Each Year State Forests will use reasonable endeavours to ensure that the volume of Timber to be delivered under the relevant Annual Delivery Plan is delivered substantially in accordance with the Monthly Delivery Schedules for that Year.
- 10.2 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 State Forests provided:
- 10.2.1 State Forests will have due regard to the Company's requests; and
- 10.2.2 If the Company has a special requirement regarding volume in a particular month State Forests will, with due regard to the practicalities and the rights of other persons supplied with Timber by State Forests, use all reasonable endeavours to meet the Company's request.
- 10.3 State Forests must use its reasonable endeavours to ensure that each month it is ready willing and able to supply the Monthly Quantity in the Classes and proportions set on the Allocation Distribution Table. Despite any other provision of this Agreement if it complies with this **clause 10.3**:
- 10.3.1 State Forests has no other obligation in relation to the Allocation Distribution Table; and
- 10.3.2 no claim may be made against State Forests in relation its performance of this Agreement in relation to the Allocation Distribution Table.
- 10.4 At the commencement of negotiations referred to in **clause 10.2** State Forests must serve a notice in writing on the Company which:
- 10.4.1 specifies the Monthly Quantity it is ready willing and able to supply in the relevant month (the Base Monthly Quantity);
- 10.4.2 specifies the volume of each of the Classes that would be supplied during the relevant month if the Base Monthly Quantity was delivered in the proportions set on the Allocation Distribution Table.
- 10.5 If in the course of negotiations referred to in **clause 10.2** the Company is not prepared to accept the volume specified for a Class in accordance with **clause 10.4.2** during the relevant month it must state that fact in a notice in writing to State Forests served during the course of those negotiations.
- 10.6 If the Company serves notice in accordance with **clause 10.5**:
- 10.6.1 the Company shall not be entitled to a supply during the relevant month of any Timber in the Class identified in the notice;
- 10.6.2 the Monthly Delivery Schedule for the relevant month may be determine by State Forests so as:
- (a) to give effect to **clause 10.6.1**; and
- (b) to provide for a Monthly Quantity equivalent to the Base Monthly Quantity less any volume specified in accordance with **clause 10.4.2** for the Class identified in the notice;
- 10.6.3 any volume specified in accordance with **clause 10.4.2** for the Class

identified in the notice (the "Forfeited Volume") shall:

- (a) be deemed to have been supplied by State Forests in part satisfaction of its obligations under **clause 5.1**;
  - (b) be deemed to have been taken by the Company for the purposes of **clause 7.1**;
- in the Year in which the month associated with the Forfeited Volume occurs.

10.7 Nothing in **clause 10.6** entitles State Forests to claim payment for the Forfeited Volume or any part thereof under any provision of this Agreement except to the extent any part or whole of it is subsequently supplied by State Forests and accepted by the Company in the same month in which the Forfeited Volume arose.

10.8 If State Forests or the Company wishes to vary a current Monthly Delivery Schedule, it must notify the other party as soon as practicable and State Forests 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.

## **11. AMENDMENT OF ANNUAL DELIVERY PLAN OR MONTHLY DELIVERY SCHEDULES**

11.1 From time to time during the term of this Agreement the Company may request State Forests, 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 State Forests 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 State Forests, State Forests must amend or vary the Annual Delivery Plan in the manner requested by the Company.

11.2 If State Forests considers a modification or variation of an Annual Delivery Plan is necessary to enable or facilitate the Contract Harvesting of Timber under this Agreement, State Forests 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 State Forests of its obligations under **clause 5.1**, as modified by **clause 6**.

11.3 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 an Allocation is otherwise prevented by Force Majeure, State Forests 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 State Forests of its obligations under **clause 5.1**, as modified by **clause 6**.

11.4 State Forests must provide the Company with a copy of any varied Annual Delivery Plan or Monthly Delivery Schedule for the period to which it applies:

11.4.1 in the case of an Annual Delivery Plan or Monthly Delivery Schedule varied under **clause 11.3**:- as soon as practicable and in any event before the commencement of the period to which it applies; and

11.4.2 in any other case:- at least 28 days before the commencement of the

period to which it applies.

## 12. DELIVERY

- 12.1 State Forests must effect delivery of Timber by delivering it:
  - 12.1.1 to the Delivery Site; and
  - 12.1.2 during the Delivery Hours andthe Company may not refuse Timber or fail to unload Timber delivered to the Delivery Site in accordance with this **clause 12.1** and substantially with the relevant Monthly Delivery Schedule and otherwise in accordance with this Agreement.
- 12.2 Except where the parties have agreed that State Forests' contractors will unload the Timber (in which case **clause 12.3** shall apply) the Company must:
  - 12.2.1 promptly unload Timber delivered to it in accordance with this Agreement with due regard to the practicalities and available unloading equipment; and
  - 12.2.2 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.
- 12.3 If the parties have agreed that State Forests' Contractors are to unload the Timber State Forests must ensure that its Contractors:
  - 12.2.1 promptly unload Timber for delivery in accordance with this Agreement with due regard to the practicalities and available unloading equipment; and
  - 12.2.2 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.

## 13. TITLE AND RISK

- 13.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber.
- 13.2 Delivery will be effected and the risks of ownership of the Timber will pass to the Company when the Timber is unloaded in accordance with this Agreement.

## 14. SPECIFICATIONS

- 14.1 State Forests must make available or supply and the Company must accept any timber which conforms with the Specifications and is within other requirements of this Agreement.
- 14.2 Timber will be deemed to conform with the Specifications if the Timber 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 State Forests within seven days of its delivery.

- 14.3 If the Company objects to timber in terms of **clause 14.2** it must set the timber aside for inspection. State Forests must arrange for the inspection of the timber by a suitably qualified State Forests officer, in company with a representative of the Company, within 7 days after receipt of the objection. The adjudication of the disputed timber must be dealt with in accordance with the Code of Procedure. Despite the foregoing the State Forests' officer must provide a written determination in respect of the adjudication of the disputed timber.
- 14.4 A decision of a suitably qualified State Forests 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. The decision of the suitably qualified State Forests officer must be based on State Forests' hardwood log measurement manual 1<sup>st</sup> January 2002 edition, as amended from time to time following consultation with the Company. If a party disputes the adjudication on the grounds of manifest error the provisions of **clause 28** shall apply to the adjudication.
- 14.5 If the suitably qualified State Forests 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, State Forests must within 7 days remove that timber from the Delivery Site at its own cost.
- 14.6 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:
- 14.6.1 the Company and State Forests 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. State Forests 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 State Forests and provide particulars of:
- (a) the extent and consequences of the shortage;
  - (b) details of other timber which State Forests can supply by way of replacement timber ("Replacement Timber"); and
  - (c) the terms and conditions (including price) on which State Forests would supply, or make available such Replacement Timber; and
- 14.6.2 The Company will not be entitled to invoke the provisions of **clause 27.6.1** or to claim any damages for breach against State Forests unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from Replacement Timber available from State Forests but outside the scope of the Specifications.
- 14.7 Replacement Timber supplied to the Company under the provisions of **clause 14.6** will be deemed to be Timber supplied under this Agreement.
- 14.8 At the request of the Company, State Forests must consult with the Company with respect to the terms and conditions (including price) upon which State Forests is prepared to supply or make available Replacement Timber.
- 14.9 The Company has no obligation to accept Replacement Timber on the terms proposed or at all.

## 15. DETERMINATION OF QUANTITY OF TIMBER

- 15.1 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 State Forests as may be considered necessary by State Forests from time to time but State Forests will consult with and take into account any comments of the Company before any amendments are effected or implemented.
- 15.2 Any determination by State Forests 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.
- 15.3 The Company acknowledges in relation to good faith negotiations regarding amendments to the Code of Procedure that the Code of Procedure is a standardised document applicable to a number of persons who are supplied with Timber by State Forests from the Area of Supply and that amendments to the Code of Procedure will be introduced uniformly to those persons. Consequently a determination to make amendments to the Code of Procedure must take into account a wider range of issues other than those of immediate concern to the Company. The parties agree that any amendment of the Code of Procedure will apply, uniformly, to all persons supplied with Timber by State Forests from the Area of Supply.
- 15.4 The Company also acknowledges and accepts that State Forests will amend the Code of Procedure to introduce an electronic delivery docket system. The Company acknowledges and accepts it will be required to purchase and maintain computer hardware and software technology to support the system together with having e-mail capacity.
- 15.5 In the event that the parties agree an Allocation (or part thereof) is to be weighed and if the Company provides a weighbridge or other measuring device approved by State Forests, the Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.
- 15.6 State Forests 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.
- 15.7 Any determination by State Forests to amend or not amend the Code of Procedure must be made and conveyed to the Company in writing within 21 days of the conclusion of negotiations on the proposed amendment. State Forests must give written notice of its determination. If the Company is dissatisfied with the determination it may, but only within 10 days of receipt of the notice of determination, claim a dispute in accordance with **clause 28**.
- 15.8 If there is any inconsistency between the Code of Procedure and this Agreement, the provisions of this Agreement shall prevail.

## 16. DELIVERED PRICE





- 16.1 The prices payable under this Agreement for Timber taken by the Company under this Agreement shall be the Delivered Prices.
- 16.2 The Delivered Prices payable at the Commencement Date for Timber supplied from the Area of Supply shall be the Delivered Prices specified in the Delivered Price Schedule for the Region from which the Timber is harvested.
- 16.3 The Delivered Prices referred to in **clause 16.2** shall be amended from time to time in accordance with **clause 17**.

## **17. DELIVERED PRICE REVIEW**

- 17.1 The Delivered Prices for each DP Year commencing 1 October 2004 shall be the Delivered Prices for the previous DP Year varied by the percentage determined by State Forests by applying the Delivered Price Review Mechanism as specified in **Schedule 6**. To resolve doubt the Delivered Prices for the DP Year ending 30 September 2004 shall be the Delivered Prices set out in the Delivered Price Schedule as specified in **Schedule 5** at the Commencement Date.
- 17.2 As soon as practicable after the commencement of a DP Year, but not later than 60 days after the commencement of a DP Year, State Forests must:
- 17.2.1 apply the Delivered Price Review Mechanism to determine the Delivered Prices for that DP Year;
- 17.2.2 provide the Company with details of its application of the Delivered Price Review Mechanism.
- Delivered Prices so determined shall be applied retrospectively to the commencement of the DP Year. Any money due to a party as a result of the retrospective application of Delivered Prices must be paid within one month of the claim for the adjustment being made.
- 17.3 The parties must review the Delivered Prices and the Delivered Price Review Mechanism on or before each of 1 July 2008, 1 July 2012, 1 July 2016 and 1 July 2020 and negotiate in good faith to reach agreement on whether to:
- 17.3.1 amend the Delivered Prices;
- 17.3.2 amend the Delivered Price Review Mechanism by adding, deleting or varying any Cost Items, Indicators, Indicator Rates or Weighting's; or
- 17.3.3 replace the Delivered Price Review Mechanism with a new mechanism for calculating annual shifts in the market value of Timber delivered at the Delivery Site; or
- 17.3.4 do both of **clauses 17.3.1 and 17.3.2** or do both of **clauses 17.3.1 and 17.3.3**;
- and in default of agreement (and subject to **clause 17.4**) State Forests may:
- 17.3.5 determine whether any amendment or replacement is necessary;
- 17.3.6 may make such any amendment or replacement or both, as it considers necessary; and
- 17.3.7 implement its determination in relation to Delivered Prices to apply in the Year following the Year of the review.
- 17.4 Any agreement or determination under **clause 17.3** must meet the requirements that:
- 17.4.1 the Delivered Prices are fair, reasonable and competitive and where available, comparable to current market prices for Timber (or timber types similar or comparable to Timber) of a similar quality and harvested and hauled in similar circumstances with regard to:
- (a) quantities;

- (b) harvesting difficulty; and
  - (c) haulage distances and difficulty; and
- 17.4.2 the Delivered Price Review Mechanism provides a fair and reasonable mechanism for calculating shifts in the market value of Timber delivered to the Delivery Site.
- 17.5 If:
  - 17.5.1 an exceptional change occurs in the Indicator Rate of an Indicator;
  - 17.5.2 a factor which is not then included as an Indicator or a Cost Item becomes apparent which may have a significant effect on the market value of Timber delivered to the Delivery Site; or
  - 17.5.3 a factor which is included as an Indicator or a Cost Item ceases to have an effect on the market value of Timber delivered to the Delivery Site;a party may request a review of the Delivered Price Review Mechanism and the parties must negotiate in good faith to reach agreement on the amendment of the Delivered Price Review Mechanism by adding, deleting or varying any Cost Item, Indicator, Indicator Rate, or Indicator Weighting and in default of agreement (and subject to **clause 17.6**) State Forests may:
  - 17.5.4 determine whether any amendment is necessary;
  - 17.5.5 make such any amendment as it considers necessary; and
  - 17.5.6 implement its determination in relation to Delivered Prices to apply in the Year following the Year of the review.
- 17.6 Any agreement or determination under **clause 17.5** must meet the requirement that the Delivered Price Review Mechanism provides a fair and reasonable mechanism for calculating shifts in the market value of Timber delivered to the Delivery Site.
- 17.7 State Forests must advise the Company in writing of any variation to Delivered Prices or the Delivered Price Review Mechanism as soon as practicable after the variation is agreed or determined.
- 17.8 Any dispute regarding a determination by State Forests under **clause 17.3** or **clause 17.5** may be subject to the dispute resolution procedures of **clause 28**.

## 18. INFORMATION

- 18.1 The Company may request information from State Forests relating to the Indicators relevant to the review of the Delivered Prices or the Delivered Price Review Mechanism including any documentation verifying the accuracy of such information.
- 18.2 State Forests must promptly provide the information, on a confidential basis, to the Company except where the information is data provided to State Forests by third parties on a confidential basis in which case State Forests may only be required to provide the Company with aggregated data provided always that in so doing State Forests will not be in breach of any undertaking it has given not to disclose information.

## 19. PAYMENT

- 19.1 State Forests will issue monthly invoices for Timber taken by the Company during the previous month.
- 19.2 The Company must pay any invoice issued to it prior to the expiration of 14 days

after the date of its issue, or the expiration of the calendar month within which it was issued, whichever last occurs. The Company is liable to pay an invoice issued to it and any interest accrued in accordance with **clause 34** on that invoice as a debt due and payable to State Forests.

19.3 If the Company fails to pay an invoice within the time for payment of that invoice:

19.3.1 State Forests may give written notice to the Company of its intention to suspend the Company's right to take Timber if payment is not made within 7 days after the date of the notice; and

19.3.2 State Forests may suspend the Company's right to take Timber under this Agreement if the invoice is not paid within the 7 day period.

## 20. GOODS AND SERVICES TAX

20.1 The Delivered Prices 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.

20.2 The GST may be imposed on the prices for Timber delivered under this Agreement.

20.3 If GST is or will be imposed on a supply made under this Agreement, the supplier may:

20.3.1 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or

20.3.2 otherwise recover from the recipient the amount of that GST.

20.4 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.

20.5 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.

20.6 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.

20.7 In this clause:

20.7.1 **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;

20.7.2 **GST** includes any replacement or subsequent similar tax;

20.7.3 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

20.7.4 **New Tax System changes** has the same meaning as in the Trade

Practices Act 1974 (Cth);

- 20.7.5 **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
- 20.7.6 Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

## 21. COMPLIANCE

- 21.1 The Company and State Forests must each respectively comply with:
- 21.1.1 the provisions of the Act and other Acts of the State of NSW;
  - 21.1.2 the Code of Procedure; and
  - 21.1.3 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.
- 21.2 The Company and State Forests must each respectively ensure that their respective agents, contractors or other persons under their respective control or direction comply with **clause 21.1**;

## 22. SALE OF TIMBER TO OTHER PERSONS

- 22.1 State Forests reserves the right to:
- 22.1.1 supply Timber and other timber from within the Area of Supply; or
  - 22.1.2 issue licences to obtain Timber, timber, products or forest materials within the Area of supply;
- to any other person providing it does not, by so doing, adversely affect its capacity to perform its obligations under this Agreement and nothing in this **clause 22** relieves State Forests from performing its obligations under this Agreement.
- 22.2 The Company may from time to time sell Timber which it owns to any person without the need for processing the Timber.
- 22.3 If the Company sells Timber under **clause 22.2** the Company must provide State Forests with details in writing of the volume by log category of sales and the identity of the purchaser within 60 days after the end of each Year.

## 23. SECURITY

- 23.1 State Forests may at its sole discretion require the Company to provide security for the purpose of ensuring the due and proper performance of the Company's obligations under this Agreement in respect of payment of money.
- 23.2 If State Forests requires the Company to provide security the Company must provide the security ('security') in the amount determined by State Forests from time to time which must not exceed a sum equivalent to 15% of the Delivered Price of the volume of Timber State Forests is to make available in each Year assuming it was made available in accordance the with Annual Delivery Plan for the Year ('secured amount').
- 23.3 State Forests will give the Company written notice of any amount determined under **clause 23.2** and any adjustment to or variation of the secured amount that

may be determined by State Forests under the provisions of **clause 23**.

- 23.4 the Company must lodge, adjust or vary the secured amount within 28 days of the receipt of a notice from State Forests under **clause 23.3**.
- 23.5 The security must:
  - 23.5.1 be in the form of a bank guarantee or other form approved by State Forests;
  - 23.5.2 if requested be lodged within fourteen (14) days of the execution of this Agreement; and
  - 23.5.3 be in a form which allows State Forests to draw upon the secured amount if the Company is in breach of this Agreement.
- 23.6 If the security is not transferable by delivery, it must be accompanied by an executed transfer or other documentation sufficient to effect transfer of the security. The costs (including stamp duty) of any transfer or retransfer must be borne by the Company.
- 23.7 If the Company commits a material breach of this Agreement with respect to the payment of money and does not remedy that material breach within 7 days after being given notice of that breach State Forests may at any time thereafter, draw upon the secured amount to meet any loss or damages arising from the Company's failure to perform any of its obligations to pay money under this Agreement.
- 23.8 If State Forests draws on the secured amount under this Agreement but does not terminate this Agreement as a result of any breach, then the Company must provide additional security so that the secured amount is maintained at the level notified under **clause 23.3**.
- 23.9 State Forests may suspend the Company's rights to take any Timber if the Company fails to lodge the security or to vary or adjust the secured amount within the time required in accordance with this **clause 23** or by any notice to the Company under this **clause 23**.
- 23.10 State Forests must release the security to the Company within six months of the date of termination or assignment (except assignment by Change in Control) of this Agreement if no money is then due to State Forests or any earlier date that may be otherwise agreed.

## **24. FORCE MAJEURE**

- 24.1 If the Company is prevented from taking or accepting Timber or from processing Timber by Force Majeure and:
  - 24.1.1 the Force Majeure was not caused by any act or omission on the part of the Company or any employee or agent of the Company;
  - 24.1.2 the Company had taken all practicable precautions to prevent the Force Majeure; and
  - 24.1.3 the Company has made all reasonable efforts to contain the effect of the Force Majeure;then the Company may apply to State Forests for suspension or modification of its obligations under this Agreement to the extent that its ability to meet its obligations have been adversely affected by the Force Majeure.
- 24.2 Where the Company makes an application under **clause 24.1**, State Forests will negotiate with the Company in good faith to review the Allocations taking into

account the functions and obligations of State Forests under this Agreement and the Act and the requirements for the Company to do all things practicable to mitigate the effect of the Force Majeure.

24.3 If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:

24.3.1 the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure;

24.3.2 if State Forests 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

24.3.3 State Forests may allocate any Timber which is available to the Company and other persons in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister provided that where reasonably practicable and not inconsistent with those functions, obligations or directions State Forests must apportion the available Timber justly and equitably among those persons who would in the usual course, have been supplied with the Timber had it not been for the Force Majeure.

24.4 A party affected by Force Majeure 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.

## **25. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY**

25.1 Where the Company is prevented from taking Timber:

25.1.1 by an act or omission of State Forests, being a breach of this Agreement, then State Forests and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or

25.1.2 by an act or omission of the State of NSW, being a breach of this Agreement, the State of NSW and not State Forests will be the party, if any, responsible to the Company for any loss suffered; or

25.1.3 by an act or omission or law of the Commonwealth of Australia, then neither State Forests nor the State of NSW will be in any way responsible to the Company for any loss suffered.

25.2 Where State Forests or the State of NSW is in breach of this Agreement by reason of any failure to make Timber available or to supply or deliver Timber any loss suffered by the Company will be limited to any loss, damage or expense incurred by the Company as a direct result of the failure to make Timber available or to supply or deliver Timber under this Agreement and will not include any loss of profits or consequential loss.

## **26. ISSUE OF REQUIRED LICENCES**

- 26.1 Subject to **clause 26.4** and compliance by the Company with the requirements under the Act necessary to entitle the Company to the issue of the Required Licences or any of them, State Forests must, on application, issue the Required Licences from time to time to the Company throughout the term of this Agreement so that the Required Licences are in force for the term.
- 26.2 Subject to **clause 26.4** State Forests must not impose any conditions on the Company's application for any of the Required Licences, which are unreasonable or in addition to the conditions commonly imposed on the application for licences of that type or which are inconsistent with the provisions of this Agreement.
- 26.3 Subject to **clause 26.4** State Forests must not impose any conditions in any Required Licences which are in addition to the conditions commonly included in licences of that type or which are inconsistent with the provisions of this Agreement.
- 26.4 Nothing in this **clause 26** prevents State Forests from refusing to issue licences, or from cancelling licences or imposing conditions in accordance with the proper exercise of its statutory functions, duties, and powers under the Act.

## **27. DEFAULT OR INSOLVENCY**

- 27.1 If the Company or State Forests breaches or repudiates this Agreement, nothing in this clause will prejudice the right of either party to recover damages or exercise any other right.
- 27.2 If the Company commits a material breach of this Agreement and State Forests considers that damages may not be an adequate remedy, State Forests may give the Company a written notice to show cause. Material breaches include without limitation:
- 27.2.1 failing to take the quantities of Timber set out in **clause 7.1**;
  - 27.2.2 failing to accept Timber in breach of **clause 12.1 and 14.1**;
  - 27.2.3 failing to make payments in breach of **clause 19**;
  - 27.2.4 failing to provide security or to adjust or vary the secured amount in breach of **clause 24**;
  - 27.2.5 purporting to assign the whole or any part of this Agreement without the approval of the Minister in breach of **clauses 29 and 30**;
  - 27.2.6 failing to comply with conditions imposed by the Minister pursuant to **clause 30** of this Agreement; and
  - 27.2.7 failing to meet Value Added Criteria in breach of **clause 31.1**.
- 27.3 A notice under **clause 27.2** must:
- 27.3.1 state that it is a notice under **clause 27.2** of this Agreement;
  - 27.3.2 specify the alleged material breach;
  - 27.3.3 require the Company to show cause in writing why State Forests should not exercise its right to terminate under **clause 27.4**;
  - 27.3.4 specify the time and date by which the Company must show cause (which must not be less than 14 days); and
  - 27.3.5 specify the place at which cause must be shown.
- 27.4 If by the time specified in a notice under **clause 27.2** the Company fails to show reasonable cause why State Forests should not exercise its right of termination, State Forests may by notice in writing to the Company terminate this Agreement.



- 27.5 If:
- 27.5.1 the Company informs State Forests in writing or its creditors generally that it is insolvent;
  - 27.5.2 commits an act of bankruptcy;
  - 27.5.3 has a bankruptcy petition presented against it;
  - 27.5.4 is made bankrupt;
  - 27.5.5 the Company enters a scheme of arrangement or composition with creditors;
  - 27.5.6 a resolution is passed at a meeting of creditors to place the Company under official management in the form of an administrator or liquidator of the Company;
  - 27.5.7 an administrator or liquidator of the Company is appointed;
  - 27.5.8 a receiver of the property or part of the property of the Company is appointed;
  - 27.5.9 a winding up order is made in respect of the Company; or
  - 27.5.10 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.
- State Forests may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.
- 27.6 If State Forests commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give State Forests a written notice to show cause. Material breaches include without limitation:
- 27.6.1 failing to make available an Allocation for each Year in breach of **clause 5** as modified by **clause 6**;
  - 27.6.2 a breach of **clauses 8, 10.1, and 12.1**; and
  - 27.6.3 failing to process any application requesting an assignment of this agreement in breach of **clauses 29 or 30**.
- 27.7 A notice by the Company under **clause 27.6** must:
- 27.7.1 state that it is a notice under **clause 27.6** of this Agreement;
  - 27.7.2 specify the alleged material breach;
  - 27.7.3 require State Forests to show cause in writing why the Company should not terminate this Agreement;
  - 27.7.4 specify the time and date by which State Forests must show cause (which must not be less than 14 days); and
  - 27.7.5 specify the place at which cause must be shown.
- 27.8 If by the time specified in a notice under **clause 27.6** State Forests fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to State Forests terminate this Agreement.

## **28. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION**

- 28.1 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 twenty eight (28) 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 Commercial Disputes Centre (ACDC) 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 ACDC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute.

- 28.2 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 the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

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

- 28.4 Any mediation or arbitration must be held in Sydney, NSW and either party may be represented by a legal practitioner.

- 28.5 In so far as the provisions of this **clause 28** apply to **clauses 17 and 18**, the issue for consideration by any arbitration or litigation is to be limited to whether the Delivered Price or the Delivered Price Review Mechanism (as the case may be) in dispute (the "Disputed Item"), was a reasonable one considering the factors and principles set out in those clauses to be taken into account in determining the Disputed Item and, otherwise met the requirements for the Dispute Item set out in that clause.

- 28.6 If an arbitration or litigation regarding a Disputed Item determines that State Forests determination of a Disputed Item was unreasonable or did not comply with the requirements for the Disputed Item set out in those clauses, then State Forests must:

- 28.6.1 promptly re-determine the Disputed Item which will then apply from the first date the Dispute Item was originally intended to apply; and  
28.6.2 refund to the Company any over payment made under the Disputed Item with interest calculated pursuant to **clause 34**.

- 28.7 A party shall not be required to accept the appointment of a mediator or arbitrator of a dispute under this **clause 28** if that appointee does not give a confidentiality undertaking (in a form acceptable to the party) in relation to the dispute.

## 29. ASSIGNMENT

- 29.1 The Company may not without the prior approval of the Minister assign its rights and entitlements under this Agreement in whole or part to any person.

- 29.2 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. For the purpose of this clause 'change in control' means change in control of more than 50% of the shares with the right to vote in general meetings of the corporation.

- 29.3 If the Company wishes to assign the whole or any part of this Agreement it must make a written application to State Forests requesting an assignment and must provide all details and information concerning the assignee and the effect of the assignment as may be reasonably required by State Forests.
- 29.4 The Company must pay all debts due and payable to State Forests under this Agreement before an assignment (in whole or part) of its interest in this Agreement.
- 29.5 Upon receipt of any request for an assignment of the whole or any part of this Agreement, State Forests must process the application in accordance with **clause 30** provided the Company has supplied any details and information required by State Forests under **clause 29.3**.
- 29.6 The Company must ensure that any assignee executes all agreements and other documents which State Forests may reasonably require to record or effect any assignment.

### **30. MINISTER'S APPROVAL FOR ASSIGNMENT**

- 30.1 State Forests must consider any application made in relation to requesting an assignment of the whole or part of this Agreement and recommend to the Minister the action that the Minister should take on the application. The Minister will have regard to any recommendation of State Forests but is not bound by any recommendation. State Forests must make any such recommendation within 3 months of receiving the request for assignment unless State Forests extends that period by notice in writing to the Company provided that any such notice must state the extended period, give the reasons why the recommendation has not been made to the date of the notice, and the reasons why a further period is required before the recommendation can be made.
- 30.2 The Minister may determine an application requesting an assignment of the whole or part of this Agreement by granting the application (either unconditionally or subject to conditions of the kind set out in **clause 30.3**) or by refusing the application. An application may only be refused on the following grounds:
  - 30.2.1 the Company fails to satisfy such Value Added Criteria as have been adopted by the Minister;
  - 30.2.2 such grounds as may be prescribed by regulations under the Act;
  - 30.2.3 such grounds as the Minister (acting reasonably) considers relevant having regard to;
    - (a) the need to promote a competitive timber industry and to prevent misuse of market power; or
    - (b) government policy including the socio-economic impact of the assignment on rural communities; or
    - (c) the impact on State Forests capacity to meet its obligations under this Agreement or other written contracts for the harvesting haulage or supply of timber; or
  - 30.2.4 at the time the application is made the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to State Forests as required under **clause 19**.

- 30.3 The Minister may impose (without limitation) the following kinds of conditions on an application for requesting an assignment of the whole or part of this Agreement:
- 30.3.1 a condition requiring the Company or any assignee to take action to comply with or satisfy Value Added Criteria as have been adopted by the Minister;
  - 30.3.2 a condition requiring the Company or any assignee to prepare, and submit to the Minister, a business plan ('designated business plan') setting out the Company's or any assignee's policies, practices and procedures for the implementation or maintenance of any Value Added Criteria;
  - 30.3.3 a condition requiring the Company or any assignee to furnish to the Minister (at the times and for the periods as the Minister may decide) information the Minister may require to enable the Minister to determine whether or not the Company or the assignee has satisfied or is complying with any Value Added Criteria or is conducting its business in accordance with a designated business plan; and
  - 30.3.4 in the event the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to State Forests as required under **clause 19**, a condition requiring any assignee to undertake the rectification or remediation of the material breach including the payment in full of any accrued debts due and owing to State Forests.

### 31. ASSESSMENT OF VALUE ADDED PERFORMANCE

- 31.1 The Company must during the term of this Agreement meet the Value Added Criteria for the forestry industry as have been adopted by the Minister from time to time and of which the Company has received reasonable notice in order to meet the Value Added Criteria. For the purpose of this **clause 31** notice of the Value Added Criteria includes notice of any guidelines issued on the Minister's behalf indicative of the type of Value Added Criteria the Minister may adopt.
- 31.2 If requested by State Forests at any time during the term of this Agreement, the Company must submit to State Forests all records, information and data necessary to enable State Forests to assess whether the Company has satisfied the Value Added Criteria as have been adopted by the Minister. The Company must afford State Forests all reasonable assistance and must provide all further details as may be reasonably required by State Forests to make an assessment under this clause.

### 32. AMENDMENT OF THE ALLOCATIONS

- 32.1 In this clause
- 'Implementation Date'** for a Review means:
- (i) 1 July 2014 for a Review conducted in 2012; and
  - (ii) 1 July 2019 for a Review conducted in 2017;

**'Review'** means a review referred to in **clause 32.2**.

References to an Allocation is a reference to the Allocation as it is at the time of the Review.

- 32.2 In the last 6 months of 2012 and 2017 State Forests must conduct a review to assess the timber resource available in the Area of Supply.
- 32.3 In conducting a Review State Forests must take into account:
- 32.3.1 its most recent inventory data and timber assessment models and methodology;
  - 32.3.2 the regulatory restrictions relevant to Contract Harvesting in the Area of Supply current at the time of the Review; and
  - 32.3.3 its yield schedules and management strategies which were applicable on 1 July 2004.
- 32.4 Pursuant to each Review State Forests must determine the Available HQL Resource and the Available HQS Resource for the period from Implementation Date for the Review until 31 December 2023.
- 32.5 At the conclusion of a Review and no later than 16 months prior to the Implementation Date for the Review State Forests must provide the Company with a written statement advising the Available HQL Resource and the Available HQS Resource calculated in the Review. Subject to **clause 32.6** if:
- 32.5.1 the Available HQL Resource for the relevant period is less than the Total Type B Agreement HQL Volume for the same period; or
  - 32.5.2 the Available HQS Resource for the relevant period is less than the Total Type B Agreement HQS Volume for the same period;
- then State Forests may also give the Company written notice of an intention to amend the volume of the respective Allocations ('Allocation Amendment Notice') effective from the Implementation Date relevant to the Review until 31 December 2023.
- 32.6 An Allocation Amendment Notice may give notice of an intention to amend the Allocations within the following limits:
- 32.6.1 The total of any intended amendment to Allocation 1 and Allocation 2 may not exceed the volume ('the Deductible Volume') calculated by the following formulas:
    - (a) if **clause 32.5.1** applies but **clause 32.5.2** does not:  

$$DV = (1 - AHQLR/TTBAHQLV) \times (A1 + A2)$$
    - (b) if **clause 32.5.2** applies but **clause 32.5.1** does not:  

$$DV = (1 - AHQSR/TTBAHQSV) \times (A1 + A2)$$
    - (c) if both **clause 32.5.2** and **clause 32.5.1** apply:  

$$DV = (1 - AHQLR/TTBAHQLV) \times (A1 + A2) + (1 - AHQSR/TTBAHQSV) \times (A1 + A2)$$

Where:

DV means the Deductible Volume

'AHQLR' means the Available HQL Resource calculated in the Review;

'AHQSR' means the Available HQS Resource calculated in the Review;

'TTBAHQLV' means the Total Type B Agreement HQL Volume calculated for the purpose of the Review;

'TTBAHQSV' means the Total Type B Agreement HQS Volume calculated for the purpose of the Review;

'A1' means the volume of the Allocation 1; and

'A2' means the volume of the Allocation 2.

- 32.6.2 If the Deductible Volume is less than Allocation 2, State Forests may give notice of an intention to amend Allocation 2 by reducing it by a

volume not exceeding the Deductible Volume. In such a case State Forests may not give notice of any intention to amend Allocation 1;

- 32.6.3 If the Deductible Volume is greater than Allocation 2 State Forests may give notice of an intention to amend Allocation 2 by reducing it to nil and to amend Allocation 1 by reducing it by a volume not exceeding the difference between the Deductible Volume and Allocation 2.

32.7 Subject to:

- 32.7.1 consultation with the Company regarding the proposed amendments;  
32.7.2 the approval of the Minister; and  
32.7.3 State Forests' Allocation Amendment Notice being given not less than 16 months prior to the next Implementation Date;  
each of the Allocations shall be amended, effective from the next Implementation Date, to be:  
32.7.4 the volume specified in the Allocation Amendment Notice for the Allocation; or  
32.7.5 such greater volume as State Forests may agree upon in writing to the Company following consultation with it.

32.8 In the course of the consultation referred to in **clause 32.7**:

- 32.8.1 State Forests must (unless directed otherwise by the Minister) offer the Company an amendment to this Agreement providing for State Forests to supply and the Company to accept as part (or whole) of an Allocation, timber (which is not then within Specifications) in a quantity equivalent to and instead of, the volume by which the Allocation Amendment Notice proposes to reduce the Allocations; and  
32.8.2 State Forests and the Company must, if requested by the Company, negotiate in good faith to reach agreement on amendments to this Agreement which would give effect to that offer, instead of the amendments identified in the Allocation Amendment Notice.

- 32.9 An Allocation Amendment Notice may provide for Allocations of different quantities for different Years.

### 33. VARIATION

- 33.1 This Agreement comprises the entire understanding of the parties.  
33.2 None of the provisions of this Agreement may be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.

### 34. INTEREST

- 34.1 In the event that the Company fails to pay any money due to State Forests 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 per annum for the time being payable under Schedule J of the Supreme Court Rules (NSW).

### 35. NOTICE

- 35.1 Any notice required to be served under this Agreement may be served:  
(a) in the case of the Company:

General Manager  
Koppers Wood Products  
PO Box 2122  
North Sydney NSW 2059

- (b) in the case of State Forests:  
General Manager, Marketing  
State Forests of NSW  
Building 2, 423 Pennant Hills Rd  
Locked Bag 23, Pennant Hills NSW 2120

35.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.

35.3 A notice under this Agreement must:

- 35.3.1 be in writing and directed to the other party as specified in **clause 35.1** or the address last notified by the intended recipient to the sender; and  
35.3.2 forwarded to the address, facsimile number or the email address of that party.

35.4 A notice under this Agreement will be deemed to be served:

- 35.4.1 in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;  
35.4.2 in the case of delivery by post – within three business days of posting;  
35.4.3 in the case of delivery by facsimile- at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient;  
35.4.4 in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.

35.5 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.

### **36. GOVERNING LAW**

36.1 This Agreement is governed by the laws of New South Wales and the parties agree to the jurisdiction of the Courts of New South Wales.

### **37. SEVERABILITY**

37.1 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.

### **38. GENERAL**


38.1 A party terminating this Agreement as a result of a failure or default of the other party may only claim damages for any loss resulting from the failure or default if the claim for damages is not excluded under this Agreement.

- 38.2 If a party is at liberty to determine a matter under this Agreement or act unilaterally with respect to some amendment of any procedure (including the Code of Procedure) it must, in doing so, act reasonably and in good faith.
- 38.3 If a party is obliged to consult with another party the parties must consult with each other in good faith and have reasonable regard to what is put by the other party.

### **39. CONFIDENTIALITY**

- 39.1 No party will disclose the contents or terms of this Agreement or any information or documents received by it in connection with the negotiation of this Agreement or pursuant to the provisions of this Agreement without the prior written consent of the other parties, except to the extent that:
- 39.1.1 the information is available to the public generally;
  - 39.1.2 that party is required to make the disclosure by law or to make any filing, recording or registration required by law;
  - 39.1.3 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorization, approval or licence from any public body or authority;
  - 39.1.4 it is necessary or expedient that the disclosure be made to any taxation or fiscal authority;
  - 39.1.5 the disclosure is made on a confidential basis to the professional advisers of that party (including any industry association) 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;
  - 39.1.6 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;
  - 39.1.7 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.

### **40. OBLIGATION TO CONSULT**

- 40.1 Where in this Agreement there is an obligation to meet to review, confer, negotiate or consult the obligation of each party is to do so in good faith and have reasonable regard to matters put by the other in respect of the relevant subject matter.
- 40.2 Where in this Agreement a party is entitled to determine a matter following a review, conference, negotiation or consultation with the other, in determining the matter the party determining the matter must act reasonably and in good faith and have reasonable regard to matters put by the other in respect of the relevant subject matter.
- 



I, PETER DUNCAN  
(name)  
CEO, FORESTS NSW  
(position)  
have hereunto affixed the  
Seal of the **FORESTRY COMMISSION**  
**OF NEW SOUTH WALES**  
in the presence of: [Signature]

in the presence of:

*[Signature]*

(ABN 81 003 947 680) )  
 BY [two of its directors] )  
 Or [a director and secretary] or [its sole director] )

P. D. M.


  
Director

.....  
Secretary/Director

**SIGNED SEALED AND DELIVERED**  
by **THE HONOURABLE**  
**IAN MACDONALD** Minister for  
Primary Industries  
in and for the State of New South Wales  
for and on behalf of the Crown (but not  
so as to incur any personal liability) in the  
presence of:

Sam Macdonald

Minister for Primary Industries

Witness 

Q

## SCHEDULE 1

### SPECIFICATIONS

#### DOMESTIC POLES DURABILITY CLASS THREE

Product	Poles (Domestic - Durability Class Three)
Species	Durability Class 3: Species as agreed by customer
Length and Groundline Diameter	See Table One Below
Length Tolerance	+3dm
Internal Defect	<p><b>Within the Critical Zone</b></p> <ul style="list-style-type: none"> <li>No pipe; and</li> <li>No grub holes with a diameter greater than 12mm.</li> </ul> <p><b>Elsewhere</b></p> <ul style="list-style-type: none"> <li>No insect holes that may impact on strength or integrity of sapwood;</li> <li>No individual grub holes with a diameter greater than 30mm;</li> <li>No more than 5 grub holes between 12mm and 30mm and spaced closer than 10dm;</li> <li>Pipe in LED less than 100mm or no greater than 20% diameter of heartwood.</li> <li>No pipe in SED</li> <li>Loose gum veins visible on the ends of the pole within 25 mm of the surface of the pole not to exceed 2 in number and individually not exceeding 10% of the circumference of the pole. Elsewhere unlimited.</li> </ul>
External Defect	<p><b>Critical Zone</b></p> <ul style="list-style-type: none"> <li>No dry side; and</li> <li>No knots either sound or unsound.</li> </ul> <p><b>Elsewhere</b></p> <ul style="list-style-type: none"> <li>No gum pockets individually exceeding 20 mm depth;</li> <li>No barrel checks greater than 3mm in width;</li> <li>No punk holes, sapwood lift, sprung limbs, butt or head splits;</li> <li>No dry side exceeding 20% of circumference;</li> <li>Sound knots' aggregate diameter in any 6dm length shall not exceed 20% of the circumference of the pole at that point;</li> <li>Individual unsound knots, if cleared for drainage, shall not exceed 5 % of the circumference of the pole at that point.</li> </ul>
Sweep	<p><b>Single Sweep</b> - Equal to or less than 7mm per 10dm of pole length;</p> <p><b>Multiple Sweep</b> – Equal to or less than 5mm per 10dm of pole length;</p> <p><b>Butt sweep</b> – Equal to or less than 1.5 times the LED, if pole is less than 400mm LED; or equal to or less than 1.25 times the LED, if pole is greater than 400mm LED.</p>
Kinks and Crooks	Less than 3mm per 10dm of log length
Spiral Grain	Less than 10% (1 in 10) over any 10dm log length
Ovality	The shortest diameter must not be less than 80% of the longest diameter for over 80% of the log length.
Servicing	<p>Poles must meet Australian Standard (AS 2209 – 1994) <i>Timber Poles for Overhead Lines</i>.</p> <ul style="list-style-type: none"> <li>Limbs must be trimmed flush.</li> <li>Log ends must be cut square with no slovens,</li> </ul>

Table One: Groundline Diameter in mm at 20dm from Log Large End

Length	Kilo-newton	Minimum Groundline Diameter	Maximum Groundline Diameter
8.0	2	192	237
	4	238	270
	6	271	296
	8	297	337
	12	338	362
	18	363	408
	18+	409	
9.5	2	209	256
	4	257	290
	6	291	318
	8	319	362
	12	363	409
	18	410	455
	18+	456	
11.0	2	225	274
	4	275	310
	6	311	339
	8	340	384
	12	385	434
	18	435	486
	18+	487	
12.5	2	241	292
	4	293	329
	6	330	359
	8	360	407
	12	408	459
	18	460	514
	18+	515	
14.0	2	256	308
	4	309	346
	6	347	377
	8	378	427
	12	428	477
	18	478	533
	18+	534	
15.5	2	271	325
	4	326	364
	6	365	396
	8	397	447
	12	448	500
	18	501	555
	18+	556	

Length	Kilo-newton	Minimum Groundline Diameter	Maximum Groundline Diameter
17.0	2	287	342
	4	343	382
	6	383	415
	8	416	467
	12	468	522
	18	523	579
	18+	580	
18.5	2	301	357
	4	358	398
	6	399	431
	8	432	485
	12	486	541
	18	542	599
	18+	600	
20.0	2	318	374
	4	375	416
	6	417	450
	8	451	505
	12	506	562
	18	563	620
	18+	621	
21.5	2	335	393
	4	394	435
	6	436	470
	8	471	525
	12	526	582
	18	583	639
	18+	640	
23.0	2	348	407
	4	408	451
	6	452	486
	8	487	542
	12	543	599
	18	600	656
	18+	657	

## **SCHEDULE 2**

### **The Allocations**

#### **Part I**

##### **Allocation 1**

*For the Year commencing 1 July 2004 and each Year thereafter until 30 June 2023: 1,335m<sup>3</sup>*

*For the Year commencing 1 July 2023: 667.5m<sup>3</sup> (half of Allocation 1 for the previous Years)*

##### **Allocation 2**

*For the Year commencing 1 July 2004 and each Year thereafter until 30 June 2023: 445 m<sup>3</sup>*

*For the Year commencing 1 July 2023:- 222.5m<sup>3</sup> (half of Allocation 2 for the previous Years)*

*Q*

## Part II

### Indicative Quantities of Timber

Region	Indicative Proportion (%)
North East	60%
Mid North Coast	25%
Hunter	15%

## Part III

Company's HQL Percentage Share: 1.2%

Company's HQS Percentage Share: 3.3%

## Part IV

As insufficient volumes of this class of pole has been sold in the past allocations will be supplied to orders where possible for the first year. An allocation table will be developed when sufficient sales have occurred to develop a table.

Length	Class Kn	Annual Allocation for Each Class in M3
8	2	
	4	
	6	
	8	
	12	
	18	
	18+	
9.5	2	
	4	
	6	
	8	
	12	
	18	
	18+	
11	2	
	4	
	6	
	8	
	12	
	18	
	18+	
12.5	2	
	4	
	6	
	8	
	12	
	18	
	18+	
14	2	
	4	
	6	
	8	
	12	
	18	
	18+	

	18+	
15.5	2	
	4	
	6	
	8	
	12	
	18	
	18+	
17	2	
	4	
	6	
	8	
	12	
	18	
	18+	
18.5	2	
	4	
	6	
	8	
	12	
	18	
	18+	
20	2	
	4	
	6	
	8	
	12	
	18	
	18+	
21.5	2	
	4	
	6	
	8	
	12	
	18	
	18+	
23	2	
	4	
	6	
	8	
	12	
	18	
	18+	

**Part V**

**HQL/Timber Conversion Factor: 20**

**HQS/Timber Conversion Factor: 1.67**

**Part VI**

**Relative Proportion of Species**

The species acceptability for durability class 3 poles is not known at this stage. When sufficient sales have occurred to develop a table , the table will be included.

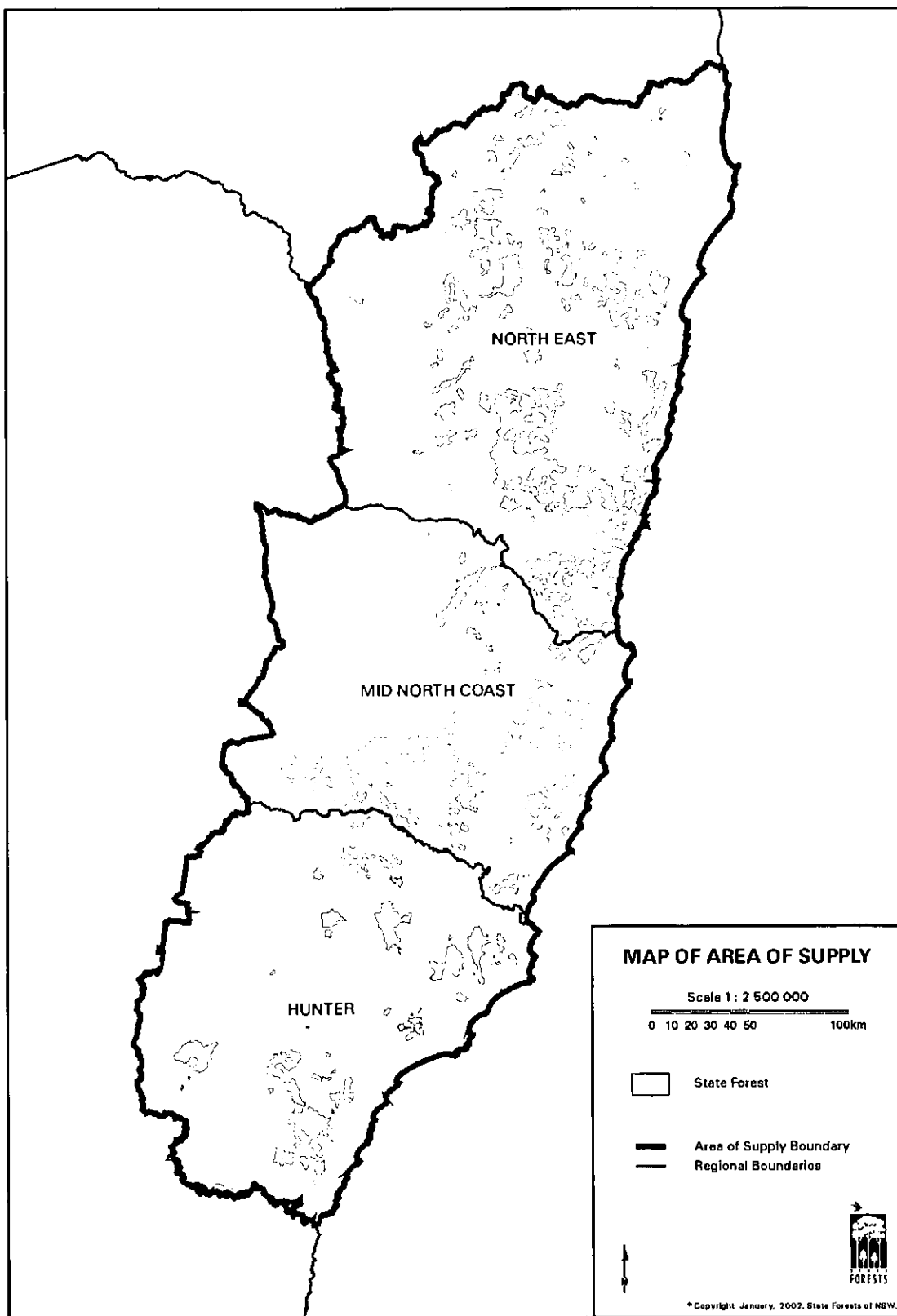
Species or Species Group	Relative Proportion (%)
	XX

Q



### Plan of Area of Supply and Regions





\\slbbs\home\janice\odds\mhc\coast\local\kym4.mxd - 6:10 AM, January 14, 2002.

Q

## **SCHEDULE 4**

### **State Forests' Code of Procedure**

De



## **CUSTOMER CODE OF PROCEDURE**

**FOR  
HARDWOOD  
MILL DOOR SALES**

**NORTH EAST, MID NORTH COAST  
AND HUNTER REGIONS**

**APRIL 2002**

*Q*

## SECTION 1: MEASURING AND MARKING OF LOG PRODUCTS

### 1.1 Measuring of Log Products

State Forests must ensure that Log Products which are sold by volume are measured in accordance with Table 1.

**Table 1 : Log Measurement**

PRODUCT	LENGTH	DIAMETER
Quota, smalls, salvage, veneer	Actual length in decimetres rounded down to the next whole decimetre	Centre diameter underbark to the backward centimetre
Standard poles	Nominal length in decimetres rounded down to multiple of 15 decimetres	Groundline diameter underbark in millimetres
Piles and girders	Actual length in decimetres rounded down to the next whole decimetre	Toe diameter underbark in millimetres
Non-standard export poles	Nominal length in decimetres	Groundline diameter underbark in millimetres

Salvage logs to some customers and pulpwood are the only products sold by weight.

### 1.2 Marking of Log Products

#### 1.2.1 Log Branding

State Forests must ensure that all log products except non-standard export poles, are branded in accordance with Table 2 below:

**Table 2 : Log Branding**

ITEM TO BE BRANDED	SALE BY VOLUME	SALE BY WEIGHT	
	All products	Salvage	Pulpwood
LENGTH	YES	NOT REQUIRED	NOT REQUIRED
DIAMETER	YES	NOT REQUIRED	NOT REQUIRED
SPECIES CODE	YES	YES Except for plantation salvage logs	NOT REQUIRED
COMPARTMENT NO	YES	YES Except for plantation salvage logs	NOT REQUIRED
LOG GRADERS ID	YES	YES Except for plantation salvage logs	YES if >30cms Butt diam NO if <30cms Buttdiam

Non-standard export poles require the length, species code and compartment number and the log graders ID branded on the pole.

Note that all logs, irrespective of quality and sales method (except for plantation salvage logs and pulpwood as indicated in Table 2) must be branded with the identification number of the log grader.

#### 1.2.2 Species Code

State Forests must ensure that the species code is branded on logs in accordance with Table 3.

Table 3 : Species Code

SPECIES CODE	DELIVERY DOCKET SYMBOL	SPECIES
1	IBK	Ironbark
2	TWD	Tallowwood
3	GBX	Grey Box
4	BG	Blue Gum
5	STS	Silvertop Stringybark
6	SG	Spotted Gum
7	NEB	New England Blackbutt
8	BBT	Blackbutt
9	RM	Red Mahogany
10	MM	Messmate
11	FAS	Fastigata
12	VIM	Viminalis
13	DHS	Diehard Stringybark
14	BBX	Brushbox
15	TRP	Turpentine
16	GG	Grey Gum
17	WM	White Mahogany
18	WS	White Stringybark
19	FG	Flooded Gum
20	RG	Forest Red Gum
21	RLG	Round Leaf Gum ( <i>Euc. deanei</i> )
22	NOT TO BE USED	
23	BLW	Bloodwood
24	BLS	Blue Leaf Stringybark
25	PEP	Peppermint
26	QBX	Whitetopped box
27	RUM	Steel Box
28	SBA	Smoothbark Apple
29	SCG	Scribbly Gum
30	WG	White Gum ( <i>Euc. dunnii</i> )
31	YBX	Yellow Box
32	GMM	Gympie Messmate
33	SM	Swamp Mahogany

### 1.2.3 Log Product Code

State Forests must ensure that all logs are marked on one end using paint or crayon with the appropriate log product code in accordance with Table 4.

**Table 4 : Log Product Code**

PRODUCT	CODE
Quota	O
Veneer	Ø
Face Veneer	F
Poles	P
Piles	I
Export Poles	E
Girders	G
Graded Smalls/Thinnings	T
Sleeper	S
Salvage	Z
Pulpwood	DOT If >30cms Butt Diameter

In special cases, quota and small logs of individual species may be downgraded in some Price Zones where the net wood quality of the significant majority of logs is below that normally expected of that species.

Downgrading can only take place with State Forests prior approval and is Price Zone specific.

Downgraded logs are still graded as the same log product but to distinguish them, are marked with a "D". Downgraded logs should be marked with a "D" before the relevant product code, ie "DO" for downgraded quota and "DT" for downgraded small logs.

### 1.2.4 Log Marking Format

State Forests must ensure that logs are branded on one end in the format shown in Figure 1 below.

**Figure 1 - Log Marking Format**



Sale by volume



Sale by weight(\*\*)

\*\* Pulpwood >30cms butt diameter only requires the product code and grader ID.

All plantation salvage logs and pulpwood < 30cm butt diameter do not require branding. The product code for these logs must be painted on the end of the log.

Where a log is multigraded, ie two products in the one log, both sets of measurements including the product code are to be marked on the same end of the log.

**Figure 2 - Log Marking Format – Multigraded Logs**



## **SECTION 2: DELIVERY DOCKETS**

### **2.1 Issue of Delivery Dockets**

Delivery Dockets will be supplied by State Forests at State Forests' cost. Dockets will be printed in quadruplicate and will be sequentially numbered.

### **2.2 Completion of Delivery Dockets**

State Forests must ensure that, prior to departure from the Loading Site, the following details will be completed on the Delivery Docket:

- i) Customer/Location
- Date
- Time
- Region
- State Forest
- Harvesting Plan No
- Age Class (where relevant)
- Compartment
- Stack (where relevant)
- Operation Type
- Product
- Grade
- Length (where relevant)
- Diameter (where relevant)
- Count
- Harvest , Load and Haulage Contractor
- Truck & Trailer Registration Number
- Truck Type
- Driver, Grader,

*Q*



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 (refer to Table 1)
- Species Code (refer to Table 3)
- Product Code (refer to Table 4)

In the case of non-standard export poles, the length, the number of poles of that length and the product code must be entered on the Delivery Docket.

### **2.3 Receipt of Delivery**

Upon receipt of a load of logs at the Delivery Site the Delivery Docket must be signed, dated and marked with the time of delivery by the Company's representative. This signature will verify the load was received and that the Gross Weight (where relevant) has been verified.

### **2.4 Company Copy**

The Duplicate copy of Delivery Dockets will be retained by the Company.

### **2.5 Docket Errors**

In the case of an error being made on the Delivery Docket mistakes must be crossed out and corrected with all changes initialled by the truck driver.

In the event of a Delivery Docket error being identified, (other than errors relating to log grade), the necessary amendment must be made on the Delivery Docket and such changes initialled by the Company's representative and the truck driver.

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

### **2.6 Delivery outside of normal delivery hours**

On the occasions where a mill representative is not available when the load is delivered and where specific arrangements have been made for delivery outside of normal delivery hours, the Contractor may unload the timber and leave the Duplicate copy of the Delivery Docket at a predetermined location.

These loads must be placed separately from other loads and clearly marked by the Haulage Contractor with the docket number, so as to enable its identification by a Company representative.

All details of the Delivery Docket will be completed by the Haulage Contractor except for the signature of the Company representative.

As soon as is practicable and no later than the 3.00 pm on the first working day following delivery a Company representative will sign the Mill copy of the Delivery Docket and fax it to the relevant Haulage Contractor. The Haulage Contractor will then be responsible for attaching the signed faxed copy, to the original Delivery Docket and forwarding it to State Forests.

## **SECTION 3: SALE BY VOLUME**

### **3.1 Sawlogs and Veneer logs**

The volume of a sawlog is calculated using the formula below

$$V = L \times \pi \times D^2 / 4$$

Where V is volume in cubic metres  
 L is log length in metres rounded down to the next even decimetre  
 D is log diameter in metres

### 3.2 Poles

The volume of a pole is calculated using the formula below

$$V = ((L-2) \times \pi \times ((D - (L-2) / 2 \times (0.0072 + (0.11 \times (L-8) / 1000))) / 2)^2) + (2 \times \pi \times ((D + (0.02 + (0.6 \times (L-8) / 1000))) / 2)^2)$$

Where V is volume in cubic metres  
 L is pole length in metres  
 D is the groundline at 20dms from the large end diameter in metres

### 3.3 Piles and girders

The volume of a pile and girder is calculated using the formula below

$$V = (((0.004167 \times L) + D) \times 0.5)^2 \times \pi \times L$$

Where V is volume in cubic metres  
 L is length in metres  
 D is small end diameter in metres

## SECTION 4: SALE BY WEIGHT

### 4.1 Sale by Weight Using Truck Scales

Where logs are to be accounted for by weight as measured by truck scales, the following procedure must be followed:

#### 4.1.1 Tare Weight

The tare weight of each truck/trailer combination delivering logs using the truck scale system will be calculated by State Forests from tare weight certificates provided by the Haulage Contractor. The tare weight certificates must be obtained from a weighbridge, which has current certification by the NSW Department of Fair Trading in the presence of a State Forests Officer

Haulage Contractors will be required to submit tare weight certificates to State Forests before commencing delivery and at quarterly intervals throughout the year.

Tare weights are to be certified measured using the normal running truck and trailer configuration (ie all bolsters, spare tyres and chains) and with a full tank of fuel.

#### 4.1.2 Routine Weighing

Prior to the departure from the Loading Site each truckload of logs shall have the relevant details including the source of the logs recorded on a Delivery Docket. In addition the tare weight of the truck shall be recorded on the Delivery Docket.

The truck, following loading at the dump, is required to stop at the next available level and firm site, so that the gross weight can be determined. The time required before an accurate gross weight can be determined from the truck scales varies but generally is advised to be 5 minutes.

The gross weight and the calculated net weight shall then be recorded on the Delivery Docket. The site on which the gross weight is determined must be within 1Km of the log dump, unless otherwise negotiated with a State Forests Officer.

On arrival at the customer/location and prior to the commencement of unloading, the truck driver must request the Company to verify the gross weight recorded on the delivery docket by comparing it to that shown on the truck scales.

If the difference between the gross weight recorded on the Delivery Docket and the gross weight shown on the truck scales at the Delivery Site is greater than one percent (of the gross weight recorded on the Delivery Docket), the gross weight shown at the Delivery Site shall be recorded on the Delivery Docket. The initial gross weight recorded in the forest shall be deleted.

Any change to the gross weight resulting from the verification at the Delivery Site in accordance with the above will require the resultant net weight to be altered. Any such changes to the gross weight and net weight must be initialled by both the truck driver and a Company representative.

Where a full load of one product is not available the load may be made up with another Log Product. In this case an interim gross weight is recorded after the first product has been loaded and the final gross weight after both products have been loaded. Both the gross weights and the net weights of each product must be clearly indicated on separate Delivery Dockets. No more than two Log Products per load may be carried.

If one product is sold by log volume rather than weight, the measurements of each log of that product is to be recorded on a separate delivery docket.

#### **4.1.3 Verification of Truck Scales and Audit Procedures**

State Forests must ensure that each truck must obtain a weighbridge docket to verify the Gross Weight of one load each month. The weighbridge docket is to be attached to the original copy of the Delivery Docket.

Truck scale weights as read at the weighbridge which are inconsistent with weighbridge recordings for gross weight by more than one percent must have weighbridge dockets attached to the Delivery Docket of every subsequent load until the required level of accuracy is obtained.

In the event that the truck scales are not verified to be within one percent of the weighbridge reading the gross weight recorded by the weighbridge will be used for accounting purposes. Otherwise the weights recorded on the Delivery Docket will be used.

State Forests may direct any load to be checked on a certified weighbridge at any time. Where the variation in gross weight as measured by truck scales and as measured by public weighbridge exceeds +/- 1%, the certified weighbridge measurement will be accepted and the weighbridge docket attached to the original copy of the Delivery Docket for forwarding to State Forests by the Haulage Contractor.

#### **4.1.4 Inoperable Truck Scales**

If truck scales become inoperable or inaccurate, alternate methods of accounting for the load will be made between State Forests and the Company.

Alternate methods of accounting may include weighbridge measure or log volume measure.

### **4.2 Sale by Weight Using Weighbridges**

The gross weight of the truck, trailer and load is to be recorded on an approved printed docket on arrival at the Delivery Site.

The tare weight of the truck and the trailer and the net weight of the load is to be printed on the docket referred to above following the unloading of the truck. The tare weight, gross weight and net weight are to be recorded on the Delivery Docket and a copy of the weighbridge docket is to be attached to the original copy of the Delivery Docket.

## **SECTION 5: 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. A log may also become a disputed log if the log details are entered on the docket in error and this was not detected and corrected prior to the Haulage Contractor leaving the Delivery Site.

The Company, if disagreeing with the log details or the grade, must notify States Forests of the disputed log within three business days of the delivery of the log.

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

A State Forests Officer will inspect the log within five working days of being notified.

Where the State Forests Officer determines that the disputed timber fails to meet the Specifications, or that there has been an error on the Delivery Docket, action as determined in Table 5 below will occur.

Any dispute over a decision made by a State Forests Officer regarding disputed logs, should be referred to the Regional Log Supply Manager for resolution.

Table 5 - Disputed log actions

DOCKET OR LOG GRADING ISSUES						
Problem	Details	Re-hammer and brand log	Complete 'Assessment of Disputed Logs' Arrange to shift log(s)	Complete a new docket	Recalculation of customer account	
Docket	Log measurement information incorrect		Yes		Yes	
	Load weight information incorrect		Yes		Yes	
	Logs incorrectly tallied		Yes		Yes	
Log Branding	Incorrect branding	Yes	Yes		Yes	
Regrading	Change grade or reject	Yes	Yes		Yes	
	Re-servicing	Yes	Yes		Yes	
Redirection	Redirected following regrading	Yes	Yes	Yes	Yes	
	Delivery to incorrect location by haulier			Yes	Yes	
	Rejects loaded and delivered by haulier		Yes	Yes	Yes	

**SECTION 6: DEFINITION OF TERMS**

<b>Delivery Docket</b>	:	Means a sequentially numbered docket for recording the details of each truck load of logs as set out in Clause 1.3
<b>State Forests</b>	:	Means the State Forest Regional Office of the Region from which the load was obtained.
<b>Loading Site</b>	:	Means the point from which log product is loaded onto a haulage vehicle
<b>Regional Log Supply Manager</b>		Means the State Forests employee with responsibility for managing delivered log sales to the Customer.
<b>State Forests Officer</b>	:	Means an employee of State Forests
<b>Harvesting Contractor OR Haulage Contractor</b>	:	Means a Contractor engaged by State Forests



**SCHEDULE 5****Delivered Price Schedule****1. Delivered Price Schedule \$/m3 1-7-2004 to 30-9-2004****North East Region**

Length (dms)	Strength Group (Kns)						
	2	4	6	8	12	18	18+
80							
95							
110							
125							
140							
155							
170							
185							
200							
215							
230							

**Mid North Coast Region**

Length (dms)	Strength Group (Kns)						
	2	4	6	8	12	18	18+
80							
95							
110							
125							
140							
155							
170							
185							
200							
215							
230							

**Hunter Region**

Length (dms)	Strength Group (Kns)						
	2	4	6	8	12	18	18+
80							
95							
110							
125							
140							
155							
170							
185							
200							
215							
230							

**2 Delivered Price Schedule 1-10-2004**

The delivery price schedule will be recalculated to apply from 1-10-2004 based on the delivered price of a

## SCHEDULE 6

### DELIVERED PRICE REVIEW MECHANISM

#### PART 1: DEFINITIONS AND INTERPRETATION

In this Schedule unless the context indicates to the contrary:

**Base Indicator Rate** for a review means the Indicator Rate, which was the Current Indicator Rate for the previous review;

**CPI** means the Consumer Price Index, All Groups, ABS Cat No 6401;

**Cost Item** means a factor relevant to the market value of Timber delivered at the Delivery Site more particularly being any item set out in column 1 of Part 3;

**Current Indicator Rate** means the indicator rate at the time a review of the Delivered Price is being conducted;

**Forecast Weighted Average Harvesting Difficulty Class** for a Year for a Region means State Forests calculation (based on its expectations of the Harvesting Difficulty Classes for the areas and the expected yields from the areas it plans to harvest in the Region during the Year) of the weighted average Harvesting Difficulty Class for each cubic metre of timber harvested by State Forests in the Region during the Year. The Forecast Weighted Average Harvesting Difficulty Classes for the Year commencing 1 July 2004 for each Region are:

- (i) Hunter Region 1.6;
- (ii) Mid North Coast Region 1.43; and
- (iii) North East Region 2.42.

**Forecast Weighted Average Haulage Distance** for a Year in a Region means State Forests calculation (based on its expectations of the yields from the areas it plans to harvest in the Region during the Year and the haulage distances it expects the timber harvested to be hauled from those areas to the timber's destinations) of the weighted average distance each cubic metre of timber harvested by State Forests in the Region during the Year will be hauled to meet State Forests contractual obligations to supply persons from the Area of Supply. The Forecast Weighted Average Haulage Distances for the Year commencing 1 July 2004 for each Region are:

- (i) Hunter Region 536 km;
- (ii) Mid North Coast Region 335km; and
- (iii) North East Region 100 km.

**Harvesting Adjustment Factor** for a review for a Region means the product of the Harvesting Adjustment Rate applicable at the time of the review and the movement from the Forecast Weighted Average Harvesting Difficulty Class for the Region for the Year before the Year in which the review is being conducted and the Forecast Average Harvesting Difficulty Class for the Region for the Year in which the review is being conducted;

**Harvesting Adjustment Rate** means:

- (i) For the Year commencing 1 July 2004:- \$2.50/m<sup>3</sup>; and
- (ii) For each Year thereafter:- the Harvesting Adjustment Rate for the previous Year varied in the same proportion the CPI varied over the previous Year. The relevant figures for determining the variation in the CPI over the previous Year are the figures last published before the commencement of the previous Year and the figures last published before the end of the previous Year;



**Harvesting Difficulty Classes** means a number of different classes specified in State Forests' agreements with its Contractors, categorising differences in the complexity and difficulty of harvesting timber in Compartments, which provides a basis for different rates of remuneration for Contractors. There are four classes of Harvesting Difficulty Class identified by numbers 1, 2, 3, and 4 in ascending order of difficulty, as set out below;

#### Harvesting Difficulty Classes - Native Forests

Class	Description
1	The yield ( $\text{m}^3/\text{ha}$ ) of all products including pulpwood is greater than forty cubic metres per hectare ( $40\text{m}^3/\text{ha}$ ) and the slope of at least 50 percent of the actual net harvested area is less than twenty degrees ( $20^\circ$ ).
2	The yield ( $\text{m}^3/\text{ha}$ ) of all products including pulpwood is greater than forty cubic metres per hectare ( $40\text{m}^3/\text{ha}$ ) and the slope of 50 percent or more of the actual net harvested area is more than twenty degrees ( $20^\circ$ ), <b>Or</b> The yield ( $\text{m}^3/\text{ha}$ ) of all products including pulpwood is between forty cubic metres per hectare ( $40\text{m}^3/\text{ha}$ ) and twenty cubic metres per hectare ( $20\text{m}^3/\text{ha}$ ) and the slope of at least 50 percent of the actual net harvested area is less than twenty degrees ( $20^\circ$ ).
3	The yield ( $\text{m}^3/\text{ha}$ ) of all products including pulpwood is between forty cubic metres per hectare ( $40\text{m}^3/\text{ha}$ ) and twenty cubic metres per hectare ( $20\text{m}^3/\text{ha}$ ) and the slope of 50 percent or more of the actual net harvested area is greater than twenty degrees ( $20^\circ$ ). <b>Or</b> The yield ( $\text{m}^3/\text{ha}$ ) of all products including pulpwood is between twenty cubic metres per hectare ( $20\text{m}^3/\text{ha}$ ) and ten cubic metres per hectare ( $10\text{m}^3/\text{ha}$ ) and the slope of at least 50 percent of the actual net harvested area is less than twenty degrees ( $20^\circ$ ).
4	The yield ( $\text{m}^3/\text{ha}$ ) of all products including pulpwood is between twenty cubic metres per hectare ( $20\text{m}^3/\text{ha}$ ) and ten cubic metres per hectare ( $10\text{m}^3/\text{ha}$ ) and the slope of 50 percent or more of the actual net harvested area is greater than twenty degrees ( $20^\circ$ ). <b>Or</b> The yield ( $\text{m}^3/\text{ha}$ ) of all products including pulpwood is between ten cubic metres per hectare ( $10\text{m}^3/\text{ha}$ ) and seven cubic metres per hectare ( $7\text{m}^3/\text{ha}$ ) and the slope of at least 50 percent of the actual net harvested area is less than twenty degrees ( $20^\circ$ ).

#### Harvesting Difficulty Classes - Plantations

Parameter	(1) Clearfall	(2) Second and Later Thinning	(3) First Thinning	(4) Young Regrowth Thinning
Minimum Yield Per Hectare (GMT/ha)	120 (max 250)	50	50	40
Minimum Average Removed Tree Size ( $\text{m}^3$ )	0.30 (max 0.80)	0.25	0.15	0.15

**Haulage Adjustment Factor** for a review for a Region means the product of the Haulage Adjustment Rate applicable at the time of the review and the movement from the Forecast Weighted Average Haulage Distance for the Region for the Year before the Year in which the review is being conducted and the Forecast Average Haulage Distance for the Region for the Year in which the review is being conducted;

**Haulage Adjustment Rate** means:

- (a) For the Year commencing 1 July 2004:- \$0.13m<sup>3</sup>km; and
- (b) For each Year thereafter:- the Haulage Adjustment Rate for the previous Year varied in the same proportion the CPI varied over the previous Year. The relevant figures for determining the variation in the CPI over the previous Year are the figures last published before the commencement of the previous Year and the figures last published before the end of the previous Year;

**Indicator** means an indicator of a Cost Item more particularly being any indicator set out in column 2 of Part 3.

**Indicator Rate** means the value or status of an indicator at a point in time;

**Indicator Weighting** means the weighting given to a indicator for the purpose of calculating the weighted movement across all indicators during a review more particularly being the weighting set out in column 4 of Part 3.

**Product Price Movement** for a Year means the aggregate of the Species Weighted Price Movements for all of the species of Timber supplied under this Agreement in the Year.

**Species Percentage** for a Year for a species means the percentage of the total volume of Timber supplied under this Agreement in the Year that was comprised by the species;

**Species Price Movement** for a Year for a species means the movement (expressed as a percentage) in the weighted average prices established by the Timber Market Survey for sawn timber products manufactured from high quality logs of that species during that Year using the figures established by the Timber Market Survey which last occurred before the end of the Year compared to the figures established by the Timber Market Survey which last occurred before the commencement of the Year.

The relative weighting's for each sawn timber product used to calculate the Species Price Movement for the year 1 July 2005 are set out below. Following consultation with the Company, each Year prior to Delivered Price Review State Forests will vary these weighting's to reflect movements in processing productivity and market trends.

Species Groups	Sawn Timber Products									Total
	Paling	Pallet	Cross Arms	F11	F14	F17	Flooring Low Feature	Flooring Medium Feature	Flooring High Feature	
Highland	5	5		20	10	20	5	25	10	100
Blue Gum	5	5			10	15	25	30	10	100

The Highland species group includes New England Blackbutt, Messmate, Brown Barrel, Ribbon Gum, Roundleaf Gum, White Gum, Peppermint, and Dieldard Stringybark

The Blue Gum species group includes Blue Gum, Flooded Gum, Red Mahogany, Forest Red Gum and the Coastal Stringybarks.

**Species Weighted Price Movement** for a Year for a species means the Species Price Movement for the Year for the species multiplied by the Species Percentage for the Year for that species and expressed as a percentage;

**Timber Market Survey** means a survey of market prices for timber products conducted by State Forests from time to time.

**Year** means a twelve-month period from July to June.

A reference to Part 3 means a reference to Part 3 of this Schedule as amended from time to time in accordance with this Agreement.

## PART 2 : METHODOLOGY

The following describes the method of varying the Delivered Prices using the tables set out in Part 3 of this Schedule.

1. Ascertain the level of each indicator in column 2 of Part 3, expressed in dollars and cents, percentage or as an index (as the case may be) current at the time of the review (the Current Indicator Rate). The Current Indicator Rate will be the Base Indicator Rate for the next review.
2. Ascertain the movement in each Indicator during the relevant review period by establishing percentage increase (or decrease) in the Indicator Rate (by comparing the Current Indicator Rate (see clause 1) to the Base Indicator Rate) and applying any weighting specified in column 2 to that percentage change. An example of the methodology is shown in the example below for Cost Item 1:
  - (a) Calculate the Product Price Movement as follows:  
Assume the Company received Timber in 2 species groups during the relevant Year namely Highland and Blue Gum groups having Species Percentages of 75% and 25% respectively and the Species Price Movements for those species were +2.5% and +1% respectively.
    - (i) calculate the Species Weighted Price Movement for each of the species ie  
Highland group:-  $0.75 \times +0.025 = +0.0188$  ie +1.88%  
Blue Gum group:-  $0.25 \times +0.01 = +0.0025$  ie +0.25%
    - (ii) Aggregate the total of the Species Weighted Price Movements ie 2.13%  
Therefore the Product Price Movement is +2.13%.
  - (b) Compare the Indicator movement of Item 1 CPI to the Product Price Movement. The greater of those two Indicators movements shall be the relevant Indicator for Cost Item 1 for the purposes of the review. Assume CPI is 4% and the Product Price Movement is 2.13% and therefore CPI is the relevant Indicator.

**For the 1 October 2004 review all cost items ;**

- **Will not be varied for Domestic Durability Class 3 Poles due to a 10% increase resulting in price restructure. The delivered prices will be recalculated so that the delivered prices of Class 3 poles is 5% less than the delivered price of equivalent strength Blackbutt poles.**
3. Calculate the weighted movement across all Indicators by applying the methodology below:
    - (a) multiply the movement in each Indicator (see clause 2) by the Indicator Weighting in column 4 of Part 3 (eg the + 4.0% for CPI from clause 2 above is multiplied by the relevant weighting, ie 70% for North East, with the product being 2.8%);
    - (b) the sum of the products of each calculation referred to in clause 3(a) is the weighted movement across all Indicators.

4. Calculate the Harvesting Adjustment Factor for the review for each Region. An example of the methodology is shown in the example below:
  - (a) assume the movement in Forecast Weighted Average Harvesting Difficulty Class for a Region is from 2.1 (for the previous Year) to 2.2 (for the Year in which the review is being conducted);
  - (b) the change is therefore 0.1;
  - (c) the Harvesting Adjustment Rate for the Year of the review is \$2.50 per Harvesting Difficulty Class;
  - (d) 0.1 multiplied by \$2.50;
 Therefore the Harvesting Adjustment Factor for the Region is +\$0.25.
  
5. Calculate the Haulage Adjustment Factor for the review for each Region. An example of the methodology is shown in the example below:
  - (a) assume the movement in Forecast Weighted Average Haulage Distance for a Region is from 210 to 215 kilometres;
  - (b) the change is therefore 5 kilometres;
  - (c) the Haulage Adjustment Rate is \$0.13/m<sup>3</sup>km per Haulage Distance;
  - (d) 0.13 multiplied by 5;
 Therefore Haulage Adjustment Factor for the Region is +\$0.65.
  
6. The new Delivered Prices for a Region determined under this review mechanism are then calculated by applying the weighted movement across all Indicators (from clause 3 above) for the Region to the current Delivered Prices and adding the Harvesting Adjustment Factor for the Region (from clause 4 above) and Haulage Adjustment Factor for the Region (from clause 5 above), as per the methodology in the example below:
  - (a) assume the weighted movement across all Indicators is +2.5%, the Harvesting Adjustment Factor is \$0.30 and the Haulage Adjustment Factor is \$0.65. and the existing Delivered Price is \$100.00
  - (b) the new Delivered Price for the Region is  $(\$100.00 \times 1.025) + \$0.3 + \$0.65$  which equals \$103.45.
  
7. For the purposes of the next Delivered Price review ascertain new column 4 Part 3 Weightings for each Indicator by multiplying the then current column 4 Part 3 Weighting for each indicator by the period movement in the relevant Indicator (see clause 2 above) and then dividing the result by the weighted movement across all Indicators (see clause 3 above). This will produce a new table of Indicator Weightings which sum to 100 percent. For example:
  - (a) assume Cost Item 1 movement (see clause 2 above) is +4.0%, the weighted movement across all Indicators is +2%, and the weighting for Cost Item 1 (from column 4 of Part 3) is 70%;
  - (b) then the new Indicator Weighting for Cost Item 1 is calculated by the formula;
  - (c)  $70\% \times 1.04 / 1.02$  which equals 71.3%.
  
8. For the purposes of calculating the movement in the CPI over the previous Year the relevant figures are the figures last published before the commencement of the previous Year and the figures last published before the end of the previous Year;
  
9. For the purposes of calculating the movement in the Product Price Movement for a review the relevant Species Price Movements, Species Percentages, and Species Weighted Price Movements, will be those for the Year immediately before the Year which the review is being conducted.
  
10. In the first Delivered Price review in October 2004, the Base Indicator Rate for each of the indicators (other than those for Cost Item 1) will be the relevant rate which was applicable on the 1<sup>st</sup> July 2003.

**PART 3: INDICATORS AND WEIGHTING'S FOR DURABILITY CLASS ONE AND TWO  
POLES #**

Column 1	Column 2	Column 3	Column 4		
Cost Item	Indicator	Indicator Rate	North East Region	Mid North Coast Region	Hunter Region
Item 1: Timber Products	The greater of 100% of CPI or the Product Price Movement.	144.1 (CPI)	48%	42%	37%
Item 2: Wages	Haulage Wages: 100% of the movement in Transport Industry (State) Award (Award Code 677) Transport Worker Grade 7	\$602.50	9%	16%	22%
	Harvesting Wages: 100% Of The Movement In Timber And Allied Industries (Federal) Award (1999) Level 5 Operator	\$542.20	22%	19%	16%
Item 3: Diesel	100% of the movement in the Net Shell Wholesale Value for diesel in NSW (free delivery area).		21%	23%	25%
	Base Price (excluding GST)	\$0.4696			
	Plus Federal Excise	\$0.3864			
	Less 50% of the Diesel Fuel Rebate	\$0.1915			
	Less 50% of the On Road Grant	\$0.0926			
	Net Price	\$0.5720			

**#The table above will not be used in Year One. See Part 2 for details.**

**SCHEDULE 7**

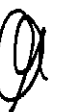
**DELIVERY SITE AND DELIVERY HOURS**

**Koppers Wood Products Pty Ltd, Koolkhan (Grafton NSW)**

Monday to Friday (except Public Holidays)

7.00am to 3.30pm

All other deliveries outside of the above hours and arrangements will be by prior agreement with the Company.



## SCHEDULE 8 HQL SAWLOGS AND HQS SAWLOGS

### Specifications for Hardwood Timber Between 1 July 2004 to 30 June 2005

Product	Sawlog Grade 1 (High Quality Large Sawlogs, HQL)
Species	All species of the Genera Eucalyptus, Corymbia, Lophostemon and Syncarpia.
Length	Minimum of 24dm and then random
Centre Diameter Under Bark	Minimum of 40cms
Internal Defect	Maximum pipe as set out below.
External Defect	Maximum total defect as set out below
Sweep	<20% of log diameter over any 24dm log length
Kinks	At least the minimum log length both sides of the kink
Spiral Grain	<12.5% slope (1 in 8)

In Price Zones - Urbenville, Murwillumbah, Casino, Richmond Range, Ewingar, Tenterfield Tablelands and Lower Slopes, Glen Innes, Grafton Coastal and Inland, Bom Bom, Dorrigo Central and West, Coffs Harbour, Styx River, Walcha/Nundle the defect allowance table below will apply.

Log or End Diameter	Maximum Pipe Allowance	Maximum Total Defect Allowance	Log or End Diameter	Maximum Pipe Allowance	Maximum Total Defect Allowance
24cms	0	30	74cms	46	62
26cms	2	30	76cms	48	62
28cms	4	30	78cms	48	62
30cms	6	30	80cms	50	62
32cms	8	34	82cms	52	63
34cms	12	39	84cms	54	63
36cms	16	44	86cms	54	63
38cms	18	46	88cms	56	64
40cms	20	49	90cms	58	64
42cms	22	51	92cms	58	64
44cms	24	52	94cms	60	64
46cms	26	53	96cms	62	65
48cms	26	54	98cms	64	65
50cms	28	55	100cms	64	65
52cms	30	56	102cms	66	65
54cms	32	57	104cms	68	65
56cms	32	57	106cms	68	65
58cms	34	58	108cms	70	65
60cms	36	58	110cms	72	66
62cms	38	60	112cms	74	66
64cms	38	60	114cms	74	66
66cms	40	60	116cms	76	66
68cms	42	60	118cms	78	67
70cms	42	60	120cms	80	67
72cms	44	61			

**In Price Zones** - Urunga Coastal and Upriver, Kempsey, Wauchope Coastal, Wauchope Foothills and Wauchope Upriver, Wingham, Kendall, Coopernook, Taree, Bulahdelah, Gloucester East and West, Chichester, Morisset and Putty the defect allowance table below will apply.

Log or End Diameter	Maximum Pipe Allowance	Maximum Total Defect Allowance	Log or End Diameter	Maximum Pipe Allowance	Maximum Total Defect Allowance
24cms	Solid	25	74cms	46	62
26cms	2	25	76cms	48	62
28cms	4	27	78cms	48	62
30cms	6	29	80cms	50	62
32cms	8	31	82cms	52	63
34cms	10	33	84cms	54	63
36cms	12	36	86cms	54	63
38cms	14	38	88cms	56	64
40cms	16	40	90cms	58	64
42cms	18	43	92cms	58	64
44cms	20	45	94cms	60	64
46cms	22	47	96cms	62	65
48cms	24	49	98cms	64	65
50cms	26	51	100cms	64	65
52cms	28	53	102cms	66	65
54cms	30	54	104cms	68	65
56cms	32	56	106cms	68	65
58cms	34	58	108cms	70	65
60cms	36	59	110cms	72	66
62cms	38	60	112cms	74	66
64cms	38	60	114cms	74	66
66cms	40	60	116cms	76	66
68cms	42	60	118cms	78	67
70cms	42	60	120cms	80	67
72cms	44	61			



<b>Product</b> <b>Sawlog Grade 2</b> <b>(High Quality Small Sawlogs, HQS)</b>	
<b>Species</b>	All species of the Genera Eucalyptus, Corymbia, Lophostemon and Syncarpia.
<b>Length</b>	Minimum of 30dm and then random in all price zones except Bulahdelah where the minimum length is 36dm and then random.
<b>Centre Diameter Under Bark</b>	Minimum of 30cms CDUB in all price zones except Bulahdelah where the minimum small end diameter is 30cms.
<b>Internal Defect</b>	Maximum pipe as set out below.
<b>External Defect</b>	Maximum total defect as set out below
<b>Sweep</b>	<20% of log diameter over any 30dm log length
<b>Kinks</b>	At least the minimum log length both sides of the kink
<b>Spiral Grain</b>	<12.5% slope (1 in 8)

<b>Log or End Diameter</b>	<b>Maximum Pipe Allowance</b>	<b>Maximum Total Defect Allowance</b>
<b>24cms</b>	Solid	25
<b>26cms</b>	Solid	25
<b>28cms</b>	2	26
<b>30cms</b>	6	29
<b>32cms</b>	8	31
<b>34cms</b>	12	35
<b>36cms</b>	14	39
<b>38cms</b>	16	42
<b>40cms</b>	18	44
<b>42cms</b>	20	47
<b>44cms</b>	22	49
<b>46cms</b>	24	51
<b>48cms</b>	26	51
<b>50cms</b>	26	52

**THE SPECIFICATIONS FOR HQL SAWLOGS AND HQS SAWLOGS FROM 1 JULY 2005 WILL BE  
DETERMINED BY THE FOLLOWING PROCESS**

1. By 1 October 2004 State Forests must convene a working group of State Forests, Type A WSA customers (or their representatives) and other parties (or their representatives) receiving HQL sawlogs and HQS sawlogs under written agreement from State Forests, for the purpose of developing revised Specifications for that timber ("the Working Group").
2. Any revised Specifications must:
  - Standardise specifications for HQL and HQS sawlogs for all State Forests north coast customers.
  - In aggregate not vary the total volume of timber currently defined as HQL and HQS sawlogs.
  - 
  - Define minimum diameter only in terms of small end diameter underbark.
  - Ensure that safety and operational efficiency of harvesting, haulage and timber processing operations are maximised.



**SCHEDULE 9****CLAUSE 6.2 EXAMPLE OF CALCULATIONS**

If the Available HQL Production for the Year (AHQLP) equals **15,000 m<sup>3</sup>**;  
the Company's HQL Percentage Share (CoHQL %) equals **1.2%**;  
the HQL/Timber Conversion Factor (HQL/TC) equals **7.14**;  
the calculated volume is **1286 m<sup>3</sup>**

**and**

If the Available HQS Production for the Year (AHQSP) equals **7000 m<sup>3</sup>**;  
the Company's HQS Percentage Share (CoHQS%) equals **16.4%**; and  
the HQS/Timber Conversion Factor (HQS/TC) equals **1.54**;  
the calculated volume is **1766 m<sup>3</sup>**

**then**

State Forests obligation to Allocation 2 for the Year is **1286 m<sup>3</sup>**