


TYPE C WSA Low Quality Sawlogs – VARIATION AGREEMENT

THIS AGREEMENT is made the 28th day of June 2022 

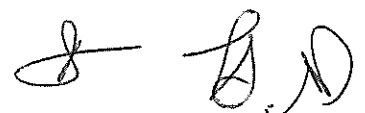
1. PARTIES

- 1.1 THE FORESTRY CORPORATION OF NEW SOUTH WALES a statutory State owned corporation constituted by the Forestry Act 2012 (NSW) ('State Forests')
- 1.2 AQUAFERN PTY LIMITED (ABN 40065134027) ('Company')
- 1.3 THE STATE OF NEW SOUTH WALES ('State of NSW')

2 RECITALS

- 2.1 The parties are parties to a Type C Wood Supply Agreement requiring State Forests to supply an annual Allocation of 6,283 tonnes of Low Quality Sawlogs to the Company for a term expiring on 31 December 2023 ("the WSA").
- 2.2 The parties have reached agreement on an extension to the term of the WSA and other amendments to its conditions.
- 2.3 This Agreement sets out the agreed amendments to the WSA.
- 2.4 Unless a contrary intention appears in this agreement:
 - 2.4.1 "Agreement" means this agreement;
 - 2.4.2 headings are for convenience only and do not affect the interpretation of the Agreement;
 - 2.4.3 words importing the singular include the plural and vice versa;
 - 2.4.4 words importing a gender include any gender;
 - 2.4.5 a reference to any thing includes a part of that thing;
 - 2.4.6 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;
 - 2.4.7 a reference to a document includes all amendments or supplements or replacements or notations of that document;
 - 2.4.8 a reference to a party to a document includes that party's successors and permitted assigns;
 - 2.4.9 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;
 - 2.4.10 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.





SCHEDULE 1

Amendments to the WSA

1. In clause 2.1 at the end of the definition of Force Majeure insert the following:
"and includes any circumstance where Contract Harvesting ceases to be RFA forestry operations within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*"
2. In clause 4.1 delete "2023" and insert instead "2028"
3. After clause 17.3 insert a new clause 17.3A as follows:
17.3A A Delivered Price agreed or determined under clause 17.2 shall be reviewed and varied during the relevant DP Year at the end of each Quarter in accordance with Schedule 8. Clause 17.2 shall not apply to a review under Schedule 8, and the Delivered Price at the commencement of each DP Year and for the first Quarter of the DP Year shall be as agreed or determined under clause 17.2 without reference to Schedule 8. A reference to a Quarter in this clause 17.3A and Schedule 8 is a reference to the 3 month period commencing on 1 July, 1 October, 1 January, and 1 April each Year.
4. In clause 17.6 delete "and 1 July 2020" and insert instead ", 1 July 2020 and 1 July 2024";
5. After clause 17.6 insert a new clause 17.6A as follows:
17.6A At the same time as the parties conduct a review under clause 17.6 in 2024 the parties must review in good faith the provisions of Schedule 8 to reach agreement if possible regarding amendments to Schedule 8 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. After Schedule 7 insert a Schedule 8 as follows:

SCHEDULE 8 Quarterly Rate Review

Part 1

- (a) The Delivered Prices for each Quarter of a DP Year except the first Quarter of that 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 8.
- (b) State Forests must within thirty days of the end of each Quarter except the first Quarter of the DP Year, 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 8 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 DC 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;

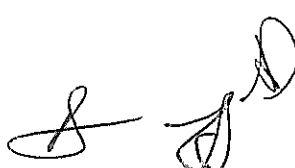
“Indicator Weighting” means the weighting given to an Indicator for the purpose of calculating the weighted movement across all Indicators during a review more particularly being, for the first review under this Schedule, the weighting set out in column 8 of Part 3 as varied from review to review in accordance with this Schedule 8;

“Net Fuel Price” for a Quarter means the item identified as the Net Fuel Price in Part 3 of this Schedule 8 more particularly being an amount calculated for that Quarter as demonstrated by columns 2 and 3 of that Part;

“Reviewed Quarter” means the Quarter that ended immediately before the conduct of a review under this Schedule 8.

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 www.abs.gov.au
Fuel	Terminal Gate Price	Daily 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 www.aip.com.au
	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 https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/
	Off Road Fuel Tax Credit	Fuel Tax Credit Rates applicable to liquid fuels for heavy machinery working off public roads. As published at https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/

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SCHEDULE 1

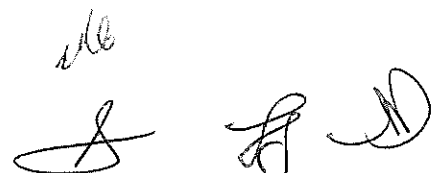
Item 2 : Methodology

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 (the 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 (see clause 1) 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	-14.04%	19%	-2.67%%
					100.0%	0.41%	100.0%



3. **AMENDMENTS**

3.1 On and from the date of this Agreement the WSA is amended in accordance with **Schedule 1.**

EXECUTED AS A DEED:

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

Anshul Chaudhary)
in the presence of: *CEO*)

[Signature])
Witness)

[Signature]
.....
Delegate

EXECUTED by **AQUAFERN**)
PTY LIMITED)

by [two directors] or [a director and)
its secretary] or [its sole director])

[Signature])
..... **WITNESS**)
Secretary/Director

M. Lockburn
.....
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:)

James Dooste)
.....
Witness

[Signature]
.....
Minister

[Handwritten marks]

TYPE C
HARDWOOD TIMBER TERM AGREEMENT

BETWEEN

THE FORESTRY COMMISSION OF NEW SOUTH WALES
(trading as Forests NSW)

AND

AQUAFERN PTY LTD

AND

THE STATE OF NEW SOUTH WALES

Preferred Price Zones

Kempsey, Wauchope Coastal, Wauchope Foothills, Wauchope Upriver, Carrai, Kendall, Coopernook,
Taree, Wingham, Doyles, Lower Creek.

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- Schedule 6 Delivered Price Review Mechanism
- Schedule 7 Delivery Site and Delivery Hours

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TYPE C

WOOD SUPPLY AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2005

1. PARTIES

- 1.1 THE FORESTRY COMMISSION OF NEW SOUTH WALES a corporation constituted under the Forestry Act 1916 (NSW) trading as FORESTS NSW ('Forests NSW')
- 1.2 AQUAFERN PTY LIMITED (ABN40 065 134 027) ('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' for a Year means the quantity of Timber set out in Part 1 of Schedule 2 for that Year;

'Annual Delivery Plan' means a schedule prepared by Forests NSW for the Year to which it applies which must provide for the supply of the Allocation (or such lesser quantity as the Company requests or which is in accordance with clause 6) 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 quantities of Timber proposed to be delivered to the Delivery Site;

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

'Available Production' for a Year means the quantity of Timber harvested in the Area of Supply in the Year that is in excess of the total of any quantity of Timber which Forests NSW supplies in that Year under the Type A Agreements and the Type B Agreements including Timber supplied pursuant to provisions identical to or having similar effect to clause 14.6 of this Agreement or any other provision of those agreements which allows for the supply of Timber in substitution for the supply of higher quality timber, provided that if any quantity of Timber referred to in this definition is supplied by Forests NSW in cubic metres the factor necessary to convert the volume into tonnes for the purposes of this Agreement shall be the conversion factor determined by Forests NSW acting reasonably;

'Base Indicator Rate' see Schedule 6;

'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 2005;

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

'Company's Percentage Share' means the percentage set out in **Part III of Schedule 2**;

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

'Contract Harvesting' includes the felling, extraction, sorting, processing, grading, loading, hauling, delivery and distribution of Timber and ancillary works including roading, tracking, log dump construction and site rehabilitation by a Contractor engaged by Forests NSW necessary to deliver the Allocation to the Company;

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

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

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

'Delivered Prices' means the prices payable for Timber delivered to the Company under this Agreement determined in accordance with **clauses 16, 17 and 18**;

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

'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 Forests NSW), 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;

'Harvesting Difficulty Classes' means a number of different classes specified in Forests NSW 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;

'Indicator' see **Schedule 6**;

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

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

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'Management Area' means an area of land designated as a 'Management Area' on the plan prepared by Forests NSW and attached as **Schedule 3**;

'Minister' means the Minister administering the Act;

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

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

'Preferred Price Zones' means the Price Zones identified in Part II of **Schedule 2**;

'Price Zone' means an area nominated by Forests NSW from time to time as a Price Zone for the purposes of setting Delivery Charges and being a generally contiguous geographical area of forest which in the opinion of Forests NSW is suitable for uniformity in pricing of Timber. The Price Zones applicable at the commencement of the Agreement are as set out in **Schedule 3**;

'Products' see **Schedule 6**;

'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;

'tonnes' means green metric tonnes;

'Type A Agreements' means:

1. agreements within a class of agreements each of which:
 - (a) is a written agreement between Forests NSW, the State of NSW and a person entered into in 2004 for an annual supply of high quality sawlogs low quality sawlogs and veneer logs from the Area of Supply;
 - (b) bears the title of Type A Wood Supply 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

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- (ii) the indicative areas from which the timber will be supplied; and
2. the agreement dated 26 August 2003 between Forests NSW, the State of NSW, Allen Taylor & Co Ltd and Duncans Holdings Ltd;

'Type B Agreements' means agreements within a class of agreements each of which:

- (a) is a written agreement between Forests NSW, the State of NSW and a person entered into in 2004 for an annual supply of higher quality sawlogs, low quality sawlogs, poles piles and girders from Area of Supply during the period 1 July 2004 and 31 December 2023;
- (b) bears the title of Type B Wood Supply 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;

'Type C Agreements' means agreements within a class of agreements (which includes this Agreement) each of which:

- (a) is a written agreement between Forests NSW, the State of NSW and a person entered into in 2004 or 2005 for an annual supply of timber from the Area of Supply during a period ending 31 December 2023;
- (b) bears the title of Type C Wood Supply Agreement;
- (c) has substantially identical terms and conditions as this Agreement except there may be variations in relation to:
 - (i) the quantity of the Allocation, the areas identified in accordance with **clause 5.3** and the precise Specifications for Timber; and
 - (ii) the indicative areas from which the timber will be supplied;

'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 Forests NSW 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 Forests NSW in the course of Forests NSW conducting Contract Harvesting.

3. SCOPE OF AGREEMENT

- 3.1 The Company carries on the business of sawmilling and the processing of hardwood timber and requires supplies of Timber to conduct its business.
- 3.2 From the Commencement Date Forests NSW will make available supplies of Timber to the Company and the Company must accept and pay for the supplies of Timber delivered by Forests NSW upon the terms and conditions set out in this Agreement.
- 3.3 The Company must pay Forests NSW the prices calculated in accordance with **clause 16**.
- 3.4 The State of NSW undertakes to ensure that Forests NSW has sufficient resources and the necessary capacity to make the Timber to be supplied under this Agreement available to the Company and will cause Forests NSW 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 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 Forests NSW 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 Forests NSW must consult with 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 Forests NSW 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. ALLOCATION

- 5.1 From the Commencement Date and subject to **clause 6**, Forests NSW must make available to the Company the Allocation in each Year.
- 5.2 Despite any provision of this Agreement Forests NSW is not obliged to supply the Timber from outside the Area of Supply.
- 5.3 Forests NSW may supply the Timber from outside the Area of Supply provided:
- 5.3.1 Forests NSW 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 Forests NSW may supply the Timber from the Northern Region and elsewhere provided that Forests NSW 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 has been harvested and delivered from the Price Zone within the Area of Supply nearest to the actual point of harvest; and
 - 5.3.4 Forests NSW 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 the Preferred Price Zones within the Area of Supply from which Forests NSW will, if reasonably practicable, preferentially source the Allocation. The parties acknowledge:
- 5.4.1 the purpose of Part II is to provide information relating to the preferential sources of Timber but Forests NSW is not able to make any firm commitment regarding the source of all Timber supplied under this Agreement;
 - 5.4.2 persons other than the Company will be entitled under other Type C Agreements to have Timber preferentially supplied from some or all of the Preferred Price Zones;
 - 5.4.3 Forests NSW will use its reasonable endeavours to supply the Timber, which is available to be supplied from the Preferred Price Zones under the Type C Agreements, to each of the Company and such other persons who are parties to the Type C Agreements on an equitable basis.
- The inclusion of this acknowledgment does not relieve Forests NSW of its obligations to make the Allocation available under, and in accordance with, this Agreement. Forests NSW 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 proportions of different grades of Timber that Forests NSW will, if reasonably practicable supply the Company during each Year. The parties acknowledge the purpose of Part IV is to provide information relating to the proportions of the differing grades of Timber being supplied but Forests NSW is not able to make any firm commitment regarding those proportions.

5.6 Forests NSW must prior to 1 April in each Year the use its reasonable endeavours to estimate the proportions of the different grades of Timber that Forests NSW will, if reasonably practicable supply the Company during each of the following two Years. The estimate for the first of those two Years shall subject to **clause 9.2** be included in the Annual Delivery Plan for that Year.

5.7 If:

5.7.1 the estimate for the second of those two Years referred to in **clause 5.6** is significantly different from that information specified in Part IV of **Schedule 2**; or

5.7.2 Forests NSW reasonably estimates that at a time subsequent to that second Year the proportions of the different grades of Timber that Forests NSW will supply in a Year will be significantly different from the information specified in Part IV of **Schedule 2**; then

Forests NSW must as soon as practicable give the Company notice in writing of the anticipated variation.

5.8 For the purposes of **clauses 5.7.1 and 5.7.2** the proportions will be significantly different:

5.8.1 if Forests NSW estimates that in a Year it will not be able to supply any Timber of a particular grade as specified in Part IV of **Schedule 2**; or

5.8.2 if, assuming the Allocation was supplied in a Year in accordance with Forests NSW' estimated proportions, the cumulative effect of all the changes to the quantities of the various grades of Timber (when compared to the quantities of the various grades of Timber that would be supplied if the Allocation was supplied as specified in Part IV of **Schedule 2**) will exceed 50% of the Allocation.

5.9 If Forests NSW gives notice under **clause 5.7** the parties must as soon as practicable confer and negotiate in good faith to reach agreement on amendment to Part IV of **Schedule 2** to take effect when Forests NSW' estimates the significant variation referred to in **clause 5.7** will occur.

6. QUALIFICATION OF THE OBLIGATION TO SUPPLY THE ALLOCATION

6.1 Forests NSW' obligations to supply the Allocation each Year are qualified by this **clause 6**.

6.2 The Company acknowledges that:

6.2.1 Timber may only be economically made available to it and other users of that Timber if it is harvested coincidentally with higher quality timber such as that supplied under the Type A Agreements and Type B Agreements;

6.2.2 harvesting operations in the Area of Supply are subject to either or both of the integrated forestry operations approvals issued under the Forestry and National Park Estate Act 1998 for the Upper North East Region and the Lower North East Region both dated 21/12/99 (the IFOAs). Both of the IFOAs limit the circumstances in which Forests NSW may harvest Timber;

6.2.3 the quantities of the Timber becoming available from harvesting operations for higher quality timber within the Area of Supply will vary each Year depending on a number of factors beyond Forests NSW' control;

6.2.4 the timing and location of harvesting operations within the Area of Supply throughout the duration of this Agreement will be determined by Forests NSW primarily with regard to:

(a) the relevant IFOA;

(b) its obligations to supply timber under the Type A Agreements and Type B Agreements; and

(c) Forests NSW statutory duty and discretion to manage the Area of Supply for a range of purposes in accordance with the principles of good forest management;

6.2.5 each Year Forests NSW will have legal obligations to supply a number of persons including the Company with Timber from within the Area of Supply.

- 6.3 Each Year Forests NSW must use reasonable endeavours to supply the quantity equivalent to the Company's Percentage Share of the Available Production for that Year.
- 6.4 With due regard to the matters set forth in **clause 6.2** each Year Forests NSW must use its reasonable endeavours to ensure there is an Available Production sufficient that the Company is supplied with the Allocation in that Year.
- 6.5 No claim may be made against Forests NSW in relation to its obligations to supply the Allocation if it complies with **clauses 6.3 and 6.4**. Nothing in **clauses 6.3 and 6.4** requires Forests NSW to supply the Company a quantity of Timber in any Year in excess of the Allocation.
- 6.6 Prior to 1 April in each Year State must use its reasonable endeavours to estimate the quantity equivalent of the Company's Percentage Share of Available Production for the following Year. The quantity 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 quantity to be supplied in relation to the Allocation if the quantity so estimated is less than the Allocation.

7. SHORTFALL

- 7.1 If for reasons other than Force Majeure or the default of Forests NSW or the State of NSW the Company:
- 7.1.1 takes less than 80 per cent of the Allocation for two consecutive Years during the term of this Agreement; or
- 7.1.2 takes less than 70 per cent of the Allocation in any Year,
Forests NSW may terminate this Agreement under the provisions of **clause 27**.
- 7.2 If in a Year ('the relevant Year')
- 7.2.1 for reasons other than Force Majeure or the default of Forests NSW or the State of NSW, the Company takes less than 90 per cent of the lesser of:
- (a) the Allocation; and
- (b) the quantity of Timber that Forests NSW is ready willing and able to supply to the Company from the Area of Supply in the relevant Year in accordance with **clause 6**;
- Forests NSW may, after consultation with the Company and by notice in writing to the Company given no later than 3 months after the end of the relevant Year, amend:
- 7.2.2 the Allocation by reducing it to a quantity not less than the quantity calculated by the formula:

$$A \times AQ/AS$$
Where:
A means the Allocation for the relevant Year;
AQ means the actual quantity of Timber taken by the Company in the relevant Year;
and
AS means the lesser of:
- (a) the Allocation; and
- (b) the quantity of Timber that Forests NSW is ready willing and able to supply to the Company from the Area of Supply in the relevant Year in accordance with **clause 6**; and
- 7.2.3 the Company's Percentage Share by reducing it in the same proportion that the Allocation is reduced in accordance with **clause 7.2.2**.

- 7.3 Subject to **clause 7.4** if for reasons other than Force Majeure, or the default of Forests NSW or the State of NSW, the Company fails in any Year ("FD Year") to take at least 90% of the Allocation and Forests NSW does not terminate this Agreement under **clause 7.1**:
- 7.3.1 the Company must pay Forests NSW within 90 days of Forests NSW' 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;
- 7.3.2 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 7.3.1**; and
- 7.3.3 the amount of any reduction allowed under **clause 7.3.2** 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.
- 7.4 If the Company makes a payment under **clause 7.3.1** in respect of a FD Year the FD Year shall not be taken into account as a Year for the purposes of Forests NSW exercising a right to terminate under **clause 7.1.1** or **clause 7.1.2**.
- 7.5 For the purposes of **clause 7.1** and **clause 7.3**:
- 7.5.1 a reference to the Allocation shall be a reference to the lesser of:
- (a) the Allocation less any quantity of Timber the Company declined to accept under **clause 9.2**; and
- (b) the quantity of Timber that Forests NSW is ready willing and able to supply to the Company from the Preferred Price Zones in the relevant Year; less any quantity of Timber the Company declined to accept under **clause 9.2** from the Preferred Price Zones;
- provided that if in any Year the quantity referred to in **clause 7.5.1(b)** is less than 50% of the Allocation:
- 7.5.2 **clause 7.3** shall not apply to that Year in relation to the Company failing to take the Allocation; and
- 7.5.3 that Year shall not be taken into account as a Year for the purposes of Forests NSW exercising a right to terminate under **clause 7.1.1** or **clause 7.1.2** in relation to the Company failing to take the Allocation.

8. METHOD OF SUPPLY

- 8.1 Forests NSW 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 Forests NSW supply it less than the Allocation, for the sole purpose of determining whether Forests NSW has complied with its obligations under this Agreement to supply the Allocation to the Company in that Year, Forests NSW will be deemed to have supplied that quantity 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 Forests NSW 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 Forests NSW 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 Forests NSW 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;
 - 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;
 - 9.1.3 the delivery in the first 6 months of the Year of approximately 55% of the quantity of Timber to be delivered in the Year and the delivery of the balance in the second 6 months of the Year; and
 - 9.1.4 the delivery of the indicative proportions of the different grades of Timber, which comprise the Allocation (or such lesser quantity as the Company requests or which is in accordance with **clause 6**). Those proportions shall be the proportions set out in Part IV **Schedule 2** (as amended in accordance with **clause 5.9**) except if Forests NSW has estimated different proportions under **clause 5.6** in which case the proportions shall be the estimated proportions as may be modified in accordance with **clause 9.2**.
- 9.2 The Company may in the course of negotiations under **clause 9.1** (but subject to **clause 7.2**) decline to agree to accept any quantity of a particular grade of Timber greater than that quantity of that grade which would be supplied in that Year if the total quantity of all grades of Timber to be supplied under the relevant Annual Delivery Plan was supplied in the proportions set out in Part IV **Schedule 2** (as amended in accordance with **clause 5.9**).
- 9.3 Forests NSW 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.
- 9.4 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.
- 9.5 If there is any inconsistency between any Annual Delivery Plan and this Agreement the provisions of this Agreement will prevail.
- 9.6 Agreement by Forests NSW to an Annual Delivery Plan or Monthly Delivery Schedule or amendment thereto which would result in the Company taking less than a quantity 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 Forests NSW will use reasonable endeavours to ensure that the quantity 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 Forests NSW provided:
- 10.2.1 Forests NSW will have due regard to the Company's requests; and

- 10.2.2 If the Company has a special requirement regarding quantity in a particular month Forests NSW will, with due regard to the practicalities and the rights of other persons supplied with Timber by Forests NSW, use all reasonable endeavours to meet the Company's request.
- 10.3 If Forests NSW or the Company wishes to vary a current Monthly Delivery Schedule, it must notify the other party as soon as practicable and Forests NSW 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 Forests NSW, 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 Forests NSW 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 Forests NSW, Forests NSW must amend or vary the Annual Delivery Plan in the manner requested by the Company.
- 11.2 If Forests NSW considers a modification or variation of an Annual Delivery Plan is necessary to enable or facilitate the Contract Harvesting of Timber under this Agreement, Forests NSW 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 Forests NSW 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 the Allocation is otherwise prevented by Force Majeure, Forests NSW 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 Forests NSW of its obligations under **clause 5.1**, as modified by **clause 6**.
- 11.4 If Forests NSW amends the Allocation in accordance with **clause 7.2** the parties must as soon as practicable confer and negotiate in good faith to reach agreement on amendments to the Annual Delivery Plan for the Year then being necessary to take into account the reduced Allocation. In default of agreement within 14 days of commencement of negotiations Forests NSW may determine the amendments to apply. Any agreement or determination must recognise the matters set out in **clauses 9.1.1, 9.1.2, 9.1.3 and 9.1.4**.
- 11.5 Forests NSW must provide the Company with a copy of any varied Annual Delivery Plan or Monthly Delivery Schedule for period to which it applies:
- 11.5.1 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
- 11.5.2 in any other case:- at least 28 days before the commencement of the period to which it applies.

12. DELIVERY

- 12.1 Forests NSW must effect delivery of Timber by delivering it:
- 12.1.1 to the Delivery Site; and
 - 12.1.2 during the Delivery Hours and
- the 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 Forests NSW' 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 Forests NSW' Contractors are to unload the Timber Forests NSW must ensure that its Contractors:
- 12.3.1 promptly unload Timber for delivery in accordance with this Agreement with due regard to the practicalities and available unloading equipment; and
 - 12.3.2 ensure that all unloading operations carried out by them at the Delivery Site are performed in a safe manner in accordance with:
 - (a) any relevant code issued by New South Wales WorkCover or other relevant agency which replaces or exercises the functions carried out by New South Wales WorkCover; and
 - (b) the Company's safety policies for the Delivery Site.

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 Forests NSW 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 Forests NSW 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. Forests NSW must arrange for the inspection of the timber by a suitably qualified Forests NSW 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 Forests NSW' officer must provide a written determination in respect of the adjudication of the disputed timber.

- 14.4 A decision of a suitably qualified Forests NSW 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 Forests NSW officer must be based on Forests NSW' hardwood log measurement manual 1st 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 Forests NSW 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, Forests NSW 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 are not available in a Year as a consequence of Force Majeure or any other reason:
- 14.6.1 the Company and Forests NSW 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. Forests NSW 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 Forests NSW and provide particulars of:
- (a) the extent and consequences of the shortage;
 - (b) details of other timber which Forests NSW can supply by way of replacement timber ("Replacement Timber"); and
 - (c) the terms and conditions (including price) on which Forests NSW 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 Forests NSW unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from timber available from Forests NSW but outside the scope of the Specifications.
- 14.7 Other 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, Forests NSW must consult with the Company with respect to the terms and conditions (including price) upon which Forests NSW 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 Forests NSW as may be considered necessary by Forests NSW from time to time but Forests NSW will consult with and take into account any comments of the Company before any amendments are effected or implemented.
- 15.2 Any determination by Forests NSW 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 Forests NSW 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 Forests NSW from the Area of Supply.
- 15.4 The Company also acknowledges and accepts that Forests NSW 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 the Allocation (or part thereof) is to be weighed and if the Company provides a weighbridge or other measuring device approved by Forests NSW, the Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.
- 15.6 Forests NSW 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 Forests NSW 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. Forests NSW 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 Preferred Price Zones shall be the Delivered Prices specified in the Delivered Price Schedule for those Price Zones.
- 16.3 The Delivered Prices referred to in **clause 16.2** shall be amended from the time to time in accordance with **clause 17**.
- 16.4 The Delivered Prices payable for Timber supplied from time to time from outside the Preferred Price Zones shall be the Delivered Price agreed or determined in accordance with **clause 18**.

17. PREFERRED PRICE ZONE DELIVERED PRICE REVIEW

- 17.1 A reference in this **clause 17** to Delivered Prices is a reference to the Delivered Prices for Timber supplied from the Preferred Price Zones only.

17.2 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 Forests NSW by applying the Delivered Price Review Mechanism as specified in **Schedule 4**. 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 at the Commencement Date.

17.3 As soon as practicable after the commencement of a DP Year Forests NSW must:
17.3.1 apply the Delivered Price Review Mechanism to determine the Delivered Prices for that DP Year;
17.3.2 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 the retrospective application of Delivered Prices must be paid within one month of the claim for the adjustment being made.

17.4 If the Specification is amended in accordance with **Schedule 1** Forests NSW and the Company must as soon as practicable thereafter negotiate in good faith to reach agreement on the Delivered Prices to apply to the amended grades of Timber and in default of agreement within 28 days of commencement of negotiations the revised Delivered Prices may be determined by Forests NSW.

17.5 Any agreement or determination under **clause 17.4** in relation to each new Delivered Price for a new grade of Timber must meet the requirements that:

17.5.1 the difference between the new Delivered Price for the new grade and the Delivered Price which was formerly payable for that former grade of Timber which most closely resembled the new grade must be commensurate with the difference between:
(a) the market value of new grade and market value of the former grade; and
(b) the costs of carrying out Contract Harvesting for the new grade and the cost of carrying out Contract Harvesting for the former grade

17.5.2 Each of the new Delivered Prices must be otherwise fair, reasonable, and competitive.

17.6 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:

17.6.1 amend the Delivered Prices;

17.6.2 amend the Delivered Price Review Mechanism by adding, deleting or varying any Cost Items, Indicators, Indicator Rates or Weightings; or

17.6.3 replace the Delivered Price Review Mechanism with a new mechanism for calculating annual shifts in the market value of Timber delivered at the Mill; or

17.6.4 do both of **clauses 17.6.1 and 17.6.2** or do both of **clauses 17.6.1 and 17.6.3**;

and in default of agreement (and subject to **clause 17.7**) Forests NSW may:

17.6.5 determine whether any amendment or replacement is necessary;

17.6.6 may make such any amendment or replacement or both, as it considers necessary; and

17.6.7 implement its determination in relation to Delivered Prices to apply in the DP Year following each review under this **clause 17.6**.

17.7 Any agreement or determination under **clause 17.6** must meet the requirements that:

17.7.1 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

- 17.7.2 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.
- 17.8 If:
- 17.8.1 an exceptional change occurs in the Indicator Rate of an Indicator;
 - 17.8.2 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
 - 17.8.3 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 Mill;
- 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 17.9**) Forests NSW may:
- 17.8.4 determine whether any amendment is necessary;
 - 17.8.5 make such any amendment as it considers necessary; and
 - 17.8.6 implement its determination in relation to Delivered Prices to apply in the DP Year following the review under this **clause 17.8**.
- 17.9 Any agreement or determination under **clause 17.8** 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.
- 17.10 If an aberrant change to the Indicator Rate of an Indicator occurs for the purposes of the application of the Delivered Price Review Mechanism in accordance with **clause 17.2**:
- 17.10.1 the party may request a special review of the Delivered Prices;
 - 17.10.2 the parties must conduct such a review and negotiate in good faith to reach agreement on any amendments to the Delivered Prices;
 - 17.10.3 in default of agreement Forests NSW may determine what amendments if any to the Delivered Prices are to be implemented;
 - 17.10.4 any agreement or determination under this clause must implement Delivered Prices which would have been calculated by the Delivered Price Review Mechanism but for the aberrant change; and
 - 17.10.5 Delivered Prices agreed or determined shall be applied retrospectively to the commencement of the relevant DP Year.
- 17.11 Any agreement or determination under **clause 17.10** must meet the requirement that the Delivered Prices so agreed or determined are fair, reasonable and competitive.
- 17.12 Forests NSW 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.
- 17.13 Any dispute regarding a determination by Forests NSW under **clause 17.4, clause 17.6, clause 17.8 or clause 17.10** may be subject to the dispute resolution procedures of **clause 28**.
- 17.14 The Company may request information from Forests NSW 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.
- 17.15 Forests NSW must promptly provide the information, on a confidential basis, to the Company except where the information is data provided to Forests NSW by third parties on a confidential basis in which case Forests NSW may only be required to provide the Company with aggregated

data provided always that in so doing Forests NSW will not be in breach of any undertaking it has given not to disclose information.

18. DELIVERED PRICE FOR TIMBER FROM OUTSIDE THE PREFERRED PRICE ZONES

- 18.1 A reference in this clause to Delivered Price is a reference to the Delivered Price payable for Timber supplied from outside the Preferred Price Zones but within the Area of Supply.
- 18.2 If Forests NSW proposes to supply Timber from outside the Preferred Price Zones but within the Area of Supply it must inform the Company as soon as practicable and the parties must as soon as practicable thereafter confer and negotiate in good faith to reach agreement on the Delivered Prices payable for such Timber. In default of agreement Forests NSW may determine the Delivered Prices to apply.
- 18.3 Any agreement or determination under **clause 18.2** must meet the requirements that 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:
- 18.3.1 quantities;
 - 18.3.2 harvesting difficulty; and
 - 18.3.3 haulage distances and difficulty.
- 18.4 Any dispute regarding a determination by Forests NSW under **clause 18.3** may be subject to the dispute resolution procedures of **clause 28**.

19. PAYMENT

- 19.1 Forests NSW 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 on that invoice as a debt due and payable to Forests NSW.
- 19.3 If the Company fails to pay an invoice within the time for payment of that invoice:
- 19.3.1 Forests NSW 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 Forests NSW 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 Forests NSW 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 Forests NSW 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 Forests NSW 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 Forests NSW 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 Forests NSW with details in writing of the quantity by log category of sales and the identity of the purchaser within 60 days after the end of each Year.

23. SECURITY

- 23.1 Forests NSW 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 Forests NSW requires the Company to provide security the Company must provide the security ('security') in the amount determined by Forests NSW from time to time which must not exceed a sum equivalent to 15% of the Delivered Price of the quantity of Timber Forests NSW 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 Forests NSW 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 Forests NSW under the provisions of **clause 23**.
- 23.4 the Company must adjust or vary the secured amount within 28 days of the receipt of a notice from Forests NSW 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 Forests NSW;
 - 23.5.2 be lodged within fourteen (14) days of the execution of this Agreement; and
 - 23.5.3 be in a form which allows Forests NSW 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 Forests NSW 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 Forests NSW 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 Forests NSW 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**.

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23.10 Forests NSW must release the security to the Company within six months of the date of termination of this Agreement if no money is then due to Forests NSW 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 carrying on production of sawn 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 Forests NSW 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**, Forests NSW will negotiate with the Company in good faith to review the Allocation taking into account the functions and obligations of Forests NSW 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 Forests NSW 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 Forests NSW under this Agreement, to the extent that the non-performance is due to the Force Majeure;
 - 24.3.2 if Forests NSW 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 Forests NSW may allocate any Timber which is available to the Company and other persons in a manner which reflects Forests NSW 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 Forests NSW 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 Forests NSW, being a breach of this Agreement, then Forests NSW 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 Forests NSW 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 Forests NSW nor the State of NSW will be in any way responsible to the Company for any loss suffered.

25.2 Where Forests NSW 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, Forests NSW 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** Forests NSW 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** Forests NSW 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 Forests NSW 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 Forests NSW 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 Forests NSW considers that damages may not be an adequate remedy, Forests NSW 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 7.2**;

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 Forests NSW should not exercise its right to terminate under **clause 27.4**;

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- 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 Forests NSW should not exercise its right of termination, Forests NSW may by notice in writing to the Company terminate this Agreement.

27.5 If:

- 27.5.1 the Company informs Forests NSW 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.

Forests NSW may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.

27.6 If Forests NSW commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give Forests NSW a written notice to show cause. Material breaches include without limitation:

- 27.6.1 failing to make available the 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 Forests NSW to show cause in writing why the Company should not terminate this Agreement;
- 27.7.4 specify the time and date by which Forests NSW 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** Forests NSW fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to Forests NSW 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

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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 Forests NSW' affairs and accounts so far as may be necessary to assist the Arbitrator to determine any matter referred for arbitration. The Company and Forests NSW 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 Forests NSW determination of a Disputed Item was unreasonable or did not comply with the requirements for the Disputed Item set out in those clauses, then Forests NSW 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 33**.

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 Forests NSW 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 Forests NSW.
- 29.4 The Company must pay all debts due and payable to Forests NSW 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, Forests NSW must process the application in accordance with **clause 30** provided the Company has supplied any details and information required by Forests NSW under **clause 29.3**.
- 29.6 The Company must ensure that any assignee executes all agreements and other documents which Forests NSW may reasonably require to record or effect any assignment.

30. MINISTER'S APPROVAL FOR ASSIGNMENT

- 30.1 Forests NSW 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 Forests NSW but is not bound by any recommendation. Forests NSW must make any such recommendation within 3 months of receiving the request for assignment unless Forests NSW 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 Forests NSW 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 Forests NSW 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;

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- 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 Forests NSW 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 Forests NSW.

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 Forests NSW at any time during the term of this Agreement, the Company must submit to Forests NSW all records, information and data necessary to enable Forests NSW to assess whether the Company has satisfied the Value Added Criteria as have been adopted by the Minister. The Company must afford Forests NSW all reasonable assistance and must provide all further details as may be reasonably required by Forests NSW to make an assessment under this clause.

32. MARKET DEVELOPMENT

- 32.1 The Company acknowledges that during the term of this Agreement Forests NSW in conjunction with other persons supplied Timber from the Area of Supply may seek to undertake marketing and product development activities for products manufactured from Timber.
- 32.2 The Company must participate and contribute in good faith and in a like manner to the participation and contribution of such other persons in any such marketing and product development activities.

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 Forests NSW 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:

Director
Aquafern Pty Ltd
PO Box 274
Macksville NSW 2447

(b) in the case of Forests NSW:

Director Commercial Services
Forests 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

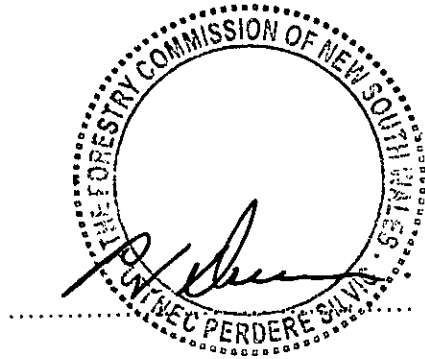
- 40.1 Where in this Agreement there is an obligation to meet to review, confer, negotiate or consult the obligation of each party is to do so in good faith and have reasonable regard to matters put by the other in respect of the relevant subject matter.
- 40.2 Where in this Agreement a party is entitled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

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

I Peter John Duncan
(name) CEO
(position)

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

[Signature]
Robert White



EXECUTED BY AQUAFERN PTY LIMITED BY [two of its directors] Or [a director and secretary] or [its sole director]

[Signature]
Director

[Signature]
Secretary/Director

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

[Handwritten initials]
M.D.C.

[Handwritten initials]

SCHEDULE 1

Draft Specifications from 1 July 2005

Product	
Sawlog Grade 3	
Species	Blackbutt (<i>E. pilularis</i> , <i>E. pyrocarpa</i>), Spotted Gum (<i>C. maculata</i> , <i>C. variegata</i> , <i>C. henryi</i>), Flooded Gum (<i>E. grandis</i>), Blue Gum (<i>E. saligna</i>), Stringybark (<i>E. laevopinea</i> , <i>E. cameronii</i> , <i>E. globoidea</i> , <i>E. eugenioides</i> , <i>E. tindaliae</i> , <i>E. agglomerata</i>), Messmate (<i>E. obliqua</i>), New England Blackbutt (<i>E. campanulata</i>) and White Gum (<i>E. dunnii</i> , <i>E. dalrympleana</i> , <i>E. noblis</i> , <i>E. dorrigoensis</i> , <i>E. brunnea</i>).
Length	Sawlog 50dm
Minimum Small End Diameter	25cm Under Bark
Maximum Centre Diameter	60cm Under Bark
Internal Defect	<p>Brown Stained Wood to be confined to the central section of the log but not exceeding</p> <ul style="list-style-type: none"> • For logs under 40cm CDUB = 10cm • For logs 40cm and greater CDUB = 15cm <p>Gum veins and blotches allowable if cumulative length is less than log diameter. No continuous gum rings outside of maximum allowance for stained wood. No pithy wood (ie coarse textured crosscuts) outside of maximum allowance for stained wood.</p>
External Defect	<p>No Green limbs > 15 cm diameter No Dry Limbs > 10cm diameter NO MORE THAN ONE BUMP (IE OCCLUDED LIMBS) ON HALF THE LOG WITHIN EACH 10DM LOG LENGTH. NO MORE THAN ONE OVERGROWTH (IE INSECT DAMAGE OR LOGGING DAMAGE) ON HALF THE LOG WITHIN EACH 10DM LENGTH. Fluting is acceptable where the hollows do not extend into the centre log diameter.</p>
Maximum Sweep	20% of mid diameter over 50dm
Spiral and Free Grain	<p>Spiral grain to be less than 12.5% slope (1 in 8) No excessive free grain, ie where logs end split after cross cutting to a length greater than 2dms, are not acceptable.</p>
Servicing	<p>Only logs of lengths specified above will be accepted. No additional allowance should be made for crosscutting. Trimmed with square ends.</p>
Special Conditions	<p>State Forests may following consultation with the company include other species to this Grade. Up to 10% of each month's deliveries of this grade may be greater than the minimum sweep, internal defect and external defect.</p>

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Product		Sawlog Grade 4	
Species	All species of the Genera Eucalyptus, Corymbosa, Lophostemon and Syncarpia and any other species acceptable to the purchaser.		
Minimum Length	Minimum of 25dm,		
Log Lengths	Either 25dm, 37dm, 50dm and then random or random after 25dm		
Small End Diameter	Minimum of 30cms		
SED Tolerance	(+/-2cm)		
Wood Quality	<p>The minimum recoverable wood thickness can contain features such as :</p> <ul style="list-style-type: none"> • Unlimited tight gum veins, gum pockets, scattered ant, insect holes, rot pockets • Discoloured wood where it does not affect wood structure <p>A maximum of one open ring, less than 2mm wide, affecting less than half the recoverable wood thickness within specification.</p>		
Wood Thickness	Log diameter	Minimum recoverable wood thickness for at least 2 quarters of the cross section of the log	
	30 to 49 cms	10cms	
	50 to 59 cms	12cms	
	60 to 79 cms	13cms	
	70 to 79 cms	14cms	
	80 to 89 cms	15cms	
	90 to 99 cms	17cms	
	100 to 110 cms	18cms	
	110+cms	20cms	
Length Features and Defects	<ul style="list-style-type: none"> • External features that are not associated with decayed wood are to be ignored. These are solid limbs and bumps that indicate a solid overgrown limb. • 2 quarters of the cross section of the log over any 25dm length must be free of length features associated with decayed wood. 		
Sweep	The maximum deflection from a straight line that includes sweep, is 20% (1 in 5) over the log length if the log length is less than 50dms. If the log length is 50dm or longer the sweep is measured over a 25dm length.		
Kinks	At least 25dms both sides of the kink		
Spiral Grain	Less than 12.5% slope (1 in 8)		
Splits and Shatters	<p>More than 2 splits greater than 4dms in length affecting the net recoverable wood that is in specification are not acceptable.</p> <p>Shattered sections of the log are not acceptable.</p>		

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Product		Sawlog Grade 5
Species	All species of the Genera Eucalyptus, Corymbosa, Lophostemon and Syncarpia and any other species acceptable to the purchaser.	
Minimum Length	Minimum of 25dm,	
Log Lengths	Either 25dm, 37dm, 50dm and then random or random after 25dm	
Small End Diameter	Minimum of 20cms	
SED Tolerance	(+/-2cm)	
Large End Diameter	Maximum 32cms	
Wood quality	<p>The minimum recoverable wood thickness can contain features such as :</p> <ul style="list-style-type: none"> • Unlimited tight gum veins, gum pockets, scattered ant, insect holes, rot pockets • Discoloured wood where it does not affect wood structure <p>A maximum of one open ring, less than 2mm wide, affecting less than half the recoverable wood thickness within specification.</p>	
Wood Thickness	Minimum recoverable wood thickness of 10cms for at least 2 quarters of the cross section of the log	
Length Features and Defects	<ul style="list-style-type: none"> • External features that are not associated with decayed wood are to be ignored. These are solid limbs and bumps that indicate a solid overgrown limb. • 2 quarters of the cross section of the log over any 25dm length must be free of length features associated with decayed wood. 	
Sweep	The maximum deflection from a straight line that includes sweep, is 20% (1 in 5) over the log length if the log length is less than 50dms. If the log length is 50dm or longer the sweep is measured over a 25dm length.	
Kinks	At least the minimum log length both sides of the kink	
Spiral Grain	Less than 12.5% slope (1 in 8)	
Splits and Shatters	<p>More than 2 splits greater than 4dms in length affecting the net recoverable wood that is in specification are not acceptable.</p> <p>Shattered sections of the log are not acceptable.</p>	

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Product		Sawlog Grade 6	
Species	All species of the Genera Eucalyptus, Corymbosa, Lophostemon and Syncarpia and any other species acceptable to the purchaser.		
Log Length	50dm		
Small End Diameter	Minimum of 12cms		
SED Tolerance	(+/-2cm)		
Large End Diameter	Maximum 22cms.		
Wood quality	<p>The wood quality that is acceptable can contain features such as :</p> <ul style="list-style-type: none"> • Unlimited tight gum veins, gum pockets, scattered ant, insect holes, rot pockets • Discoloured wood where it does not affect wood structure 		
Wood Thickness	These logs require wood of acceptable wood quality for at least two quarters of the cross section of the log.		
Length Features and Defects	<ul style="list-style-type: none"> • External features that are not associated with decayed wood are to be ignored. These are solid limbs and bumps that indicate a solid overgrown limb. • 2 quarters of the cross section of the log over any 25dm length must be free of length features associated with decayed wood. 		
Sweep	The maximum deflection from a straight line that includes sweep, is 20% (1 in 5) over the log length.		
Spiral Grain	Less than 12.5% slope (1 in 8)		
Splits and Shatters	<p>More than 2 splits greater than 4dms in length affecting the net recoverable wood that is in specification the are not acceptable.</p> <p>Shattered sections of the log are not acceptable.</p>		

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**PROCESS TO DETERMINE A REVISED SPECIFICATION
FOR IMPLEMENTATION
FROM 1 JULY 2005**

1. The Specification to apply from 1 July 2005 will be a standard Specification for all north coast customers.
2. From 1 October 2004 State Forests will convene a working group of State Forests, Type C WSA customers (or their representatives) and other parties (or their representatives) receiving Timber under written agreement from State Forests, for the purpose of developing the revised Specification ("the Working Group").
3. The Company (or its representative) may participate in the Working Group.
4. The Company or its representative on the Working Group must negotiate in good faith to reach agreement on changes to the Specifications.
5. Any revisions determined by the Working Group must:
 - Standardise specifications for low quality sawlogs for all State Forests north coast customers based on those for Sawlog Grade 3, 4, 5 and 6 above.
 - Be reflected in the Price Schedule from 1 July 2005.
 - 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.
6. The Company may not unreasonably refuse its consent to a request by State Forests to amend this Agreement from 1 July 2005 by replacing the Specifications with a revised Specification determined by the Working Group.

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SCHEDULE 2

**Part I
Allocation**

*For the Year commencing 1 July 2005 and each Year thereafter until 30 June 2023 :- 6,283 tonnes
For the Year commencing 1 July 2023: 3,141.5 tonnes (half of the Allocation for the previous Years)*

**Part II
Preferred Price Zones**

Kempsey, Wauchope Coastal, Wauchope Foothills, Wauchope Upriver, Carrai, Kendall, Coopernook, Taree, Wingham, Doyles, Lower Creek.

Part III

Company's Percentage Share: 2.6%

Part IV

Proportions of Different Grades of Timber

Native Forest and Plantation			
Grade 3	Grade 4	Grade 5	Grade 6
		100%	

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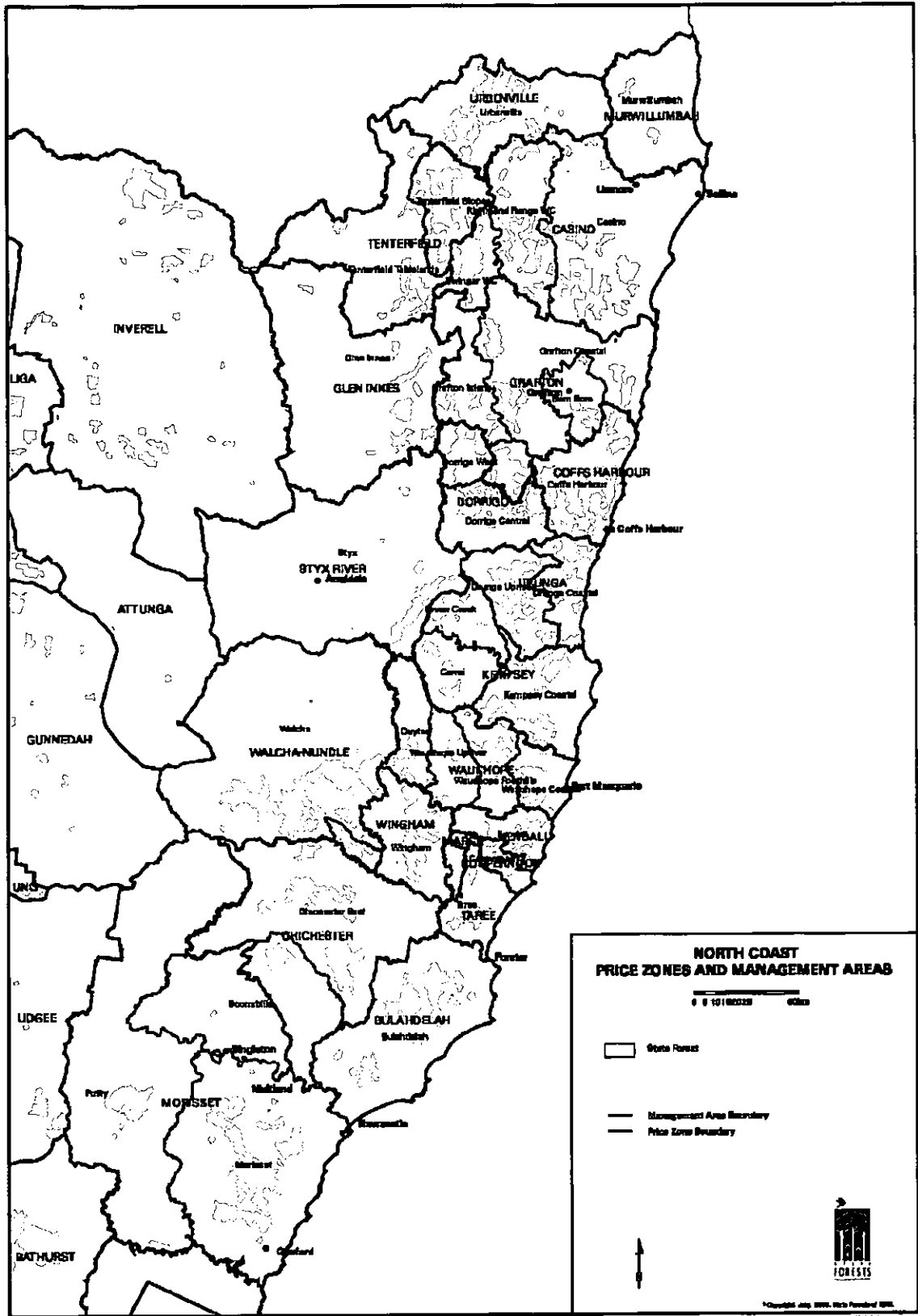
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SCHEDULE 3

**Plan of Area of Supply
Management Areas
And
Price Zones**

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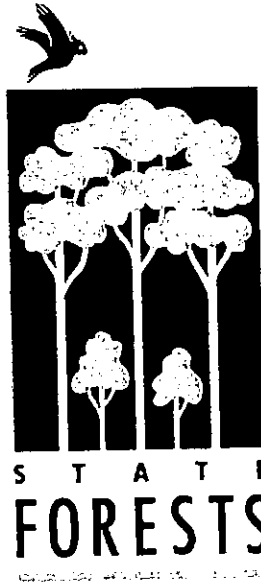
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State Forests' Code of Procedure



CUSTOMER CODE OF PROCEDURE

**FOR
HARDWOOD
MILL DOOR SALES**

NORTH EAST, MID NORTH COAST AND HUNTER REGIONS

APRIL 2002

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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

1.2.2 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

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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.

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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



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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
- ii) Date
- iii) Time
- iv) Region
- v) State Forest
- vi) Harvesting Plan No
- vii) Age Class (where relevant)
- viii) Compartment
- ix) Stack (where relevant)
- x) Operation Type
- xi) Product
- xii) Grade
- xiii) Length (where relevant)
- xiv) Diameter (where relevant)
- xv) Count
- xvi) Harvest , Load and Haulage Contractor
- xvii) Truck & Trailer Registration Number
- xviii) Truck Type
- xix) Driver, Grader,
- xx) 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.

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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.

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SECTION 3: SALE BY WEIGHT

3.1 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:

3.1.1 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.

3.1.2 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.

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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.

3.1.3 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.

3.1.4 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.

3.2 **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.

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SECTION 4: 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' form	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	Yes
	Delivery to incorrect location by hauler			Yes	Yes	Yes
	Rejects loaded and delivered by hauler		Yes	Yes	Yes	Yes

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SECTION 5: DEFINITION OF TERMS

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

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SCHEDULE 5

Delivered Price Schedule

Delivery Site	Grade 3	Grade 4	Grade 5	Grade 6
Aquafern, Pacific Highway, Warrell Creek				

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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- 8 Capital Cities, 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;

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 for a particular sawlog grade means the movement (expressed as a percentage) over the Year in the aggregate of the products of:

- (i) the movement (expressed as a percentage), over the Year, in the weighted average prices for each sawn timber product identified in the Standard Product Distribution Table manufactured from the particular sawlog grade during that Year; and
- (ii) the percentage of the relevant sawn timber product set out in the Standard Product Distribution Table for the particular sawlog grade;

where:

- (iii) the relevant figures to establish the movement referred to in (i) are 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;
- (iv) the weighting by volume of weighted average prices referred to in (i) is established by the Timber Market Survey; and
- (v) the Standard Product Distribution Table is the table current at the time of the Delivered Price review;

Standard Product Distribution Table means a table prepared by State Forests and amended from time to time by State Forests after consultation with the Company and other NSW sawmillers being:

- (i) a table that sets out the relative proportions (expressed as a percentage) of the major sawn timber products that can be reasonably expected to be produced from each grade of low quality hardwood sawlogs; where
- (ii) the relative proportions are determined by State Forests (acting reasonably) on the assumption that the sawmilling industry will implement best practice in processing productivity and adjust to meet market trends in demand for timber products; and

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- (iii) determined by State Forests on information obtained by State Forests from the Timber Market Survey, as well as State Forests' broader understanding of best practice and market trends obtained from other sources.

The Standard Product Distribution Table applicable at the Commencement Date is set out below;

Sawlog Grade	Sawn Timber Products										Total
	Paling	Pallet	Cross Arms	Sleepers	F14	F17	F27	Flooring Low Feature	Flooring Medium Feature	Flooring High Feature	
Grade 3	15	15			20	10		16	18	6	100
Grade 4	20	30		10	15	5		10	15	5	100
Grade 5 and 6	20	40						12	20	8	100

Timber Market Survey means a State Forests' survey conducted from time to time of wholesale timber prices (exclusive of GST) of hardwood sawn timber products to resellers and re-manufacturers (inclusive of delivery charges to the resellers/re-manufacturers premises) in NSW, Queensland, and Victoria that is ascertained from a statistically sound sample.

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.

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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 1 July immediately before the date 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 for each species group as follows:
 - (i) Establish the movement in weighted average price for a sawn timber product over the relevant Year (ie the Year before the Year in which the review is being conducted). If for example the Timber Market Survey which last occurred before the commencement of the relevant Year establishes that the only 2 wholesalers selling Pallets sold Pallets (manufactured from all species) for an average price of \$200.00 and \$250.00 respectively and that the Timber Market Survey which last occurred before the end of the relevant Year establishes that those wholesalers sold Pallets (manufactured from all species) for an average price of \$210.00 and \$230.00 respectively and that they each had 25% and 75% of the market respectively then the weighted average price for Pallets over the relevant Year would be calculated as follows:
$$(((210/200)-1) \times 0.25) + (((230/250)-1) \times 0.75) = \text{minus } 4.75\%$$
 - (ii) Multiply the weighted average price percentage movement established in accordance with (i) by the percentage for the relevant sawn timber product (eg Pallets) and a sawlog grade (eg Sawlog grade 3) combination set out the Standard Product Distribution Table. Following the Pallets example given in (i) and assuming the percentage set out in Standard Product Distribution Table for sawlog grade 3 is 5% the calculation would be:
$$\text{Minus } 4.75\% \times 5\% = \text{minus } 0.234\%;$$
 - (iii) Repeat the process set out in (i) and (ii) for each of the other sawn timber products identified in the Standard Product Distribution Table in relation to sawlog grade 3;
 - (iv) Aggregate the products of the multiplications referred to in (i), (ii), and (iii) for each of the sawn timber products identified in the Standard Product Distribution Table for sawlog grade 3. This aggregated figure is the Product Price Movement for the sawlog grade 3 for the relevant Year;
 - (v) Repeat the process set out in (i), (ii), (iii) and (iv) for each of the sawlog grades identified in the Standard Product Distribution Table.
 - (b) Compare the Indicator movement of Item 1 CPI to the Product Price Movement for each Sawlog grade. The greater of those two Indicators movements shall be the relevant Indicator for Cost Item 1 for the purposes of the review for that Grade. Assume CPI is 4% and the Product Price Movement is 0.9% and therefore CPI is the relevant Indicator.
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, eg 70% for sawlog grade 3, with the product being 2.8%);

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- (b) the sum of the products of each calculation referred to in clause 3(a) is the weighted movement across all Indicators.
4. The new Delivered Prices for the Preferred Price Zones determined under this review mechanism are then calculated by applying the weighted movement across all Indicators (from clause 3 above) for the Sawlog Product Grade to the current Delivered Prices as per the methodology in the example below:
- (a) assume the weighted movement across all Indicators is +2.5%, and the existing Delivered Price is \$100.00
 - (b) the new Delivered Price for the Preferred Price Zones is $(\$100.00 \times 1.025)$ which equals \$102.50
5. 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%.
6. 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;
7. For the purposes of calculating the Product Price Movement for a review the relevant movements, will be those for the Year immediately before the Year which the review is being conducted.
8. 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 1st October 2003.

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PART 3: INDICATORS AND WEIGHTINGS

Column 1	Column 2	Column 3	Column 4			
Cost Item	Indicator	Indicator Rate	Grade 3	Grade 4	Grade 5	Grade 6
Item 1: Timber Products	The greater of 100% of CPI or the Product Price Movement.	144.1 (CPI)		21%		
Item 2: Wages	Haulage Wages: 100% of the movement in Transport Industry (State) Award (Award Code 677) Transport Worker Grade 7	\$602.50		17%		
	Harvesting Wages: 100% Of The Movement In Timber And Allied Industries (Federal) Award (1999) Level 5 Operator	\$542.20		32%		
Item 3: Diesel	100% of the movement in Shell Terminal Gate Price (TGP) for diesel in NSW.			30%		
	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				

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DELIVERY SITE AND DELIVERY HOURS

Aquafern Pty Ltd,
Pacific Highway, Warrell Creek, NSW 2447

6:30am – 6:00pm Monday to Friday

Saturday deliveries by arrangement

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

M.B.R.
MLG

PH