

**TIMBER SALE CONTRACT**

This Contract is entered into by and between \_\_\_\_\_ (Seller), and \_\_\_\_\_ (Purchaser). Contact information is listed in par. 43 of this agreement.

The Seller hereby authorizes the Purchaser to enter upon the following described lands (the Premises) for purposes of cutting and removing timber marked or otherwise designated by the Seller:

County: \_\_\_\_\_ Town Name: \_\_\_\_\_

Town: \_\_\_\_\_ N; Range \_\_\_\_\_ ; Section \_\_\_\_\_; Legal Description(s) \_\_\_\_\_

Town: \_\_\_\_\_ N; Range \_\_\_\_\_ ; Section \_\_\_\_\_; Legal Description(s) \_\_\_\_\_

Those Premises are further described on the map(s) or diagram(s) attached to and made a part of this Contract.

FOR AND IN CONSIDERATION of the following terms and conditions the Seller and the Purchaser mutually agree:

**CONTRACT PERFORMANCE, PERIOD, EXTENSIONS AND TERMINATION**

**1. PERFORMANCE**

- a. Commencement. Cutting and removal of timber in conformance with this Contract may commence and continue only after the signing of this Contract by both parties and only after submission and maintenance of all bonds, certificates or statements required under it.
- b. Contract Oversight. Cutting and removal of timber purchased under this Contract shall be conducted in conformance with this Contract and in a good and workmanlike manner with reasonable diligence to assure completion of all performance within the Contract period specified in par. 2. The Purchaser shall notify the Seller or the Seller’s Agent 36-48 hours prior to commencing harvest of the timber designated herein and upon completion of the cutting. In the event that the harvest is temporarily discontinued for more than one week, the Purchaser agrees to notify the Seller or the Seller’s Agent \_\_\_\_\_ (Agent's name) both upon discontinuance and resumption of harvest. Notification under this paragraph may be made by telephone to \_\_\_\_\_ (phone number). The Seller or the Seller’s Agent may require an onsite meeting before commencement of harvesting.

**2. CONTRACT PERIOD**

- a. All work under this Contract shall be completed between the signing of the Contract by both Parties and \_\_\_\_\_ (contract ending date), FOR TIME IS OF THE ESSENCE. Contract amendments or extensions may not be relied upon by the Purchaser for the purpose of completing performance under this Contract.
- b. The Seller may temporarily suspend operations under this Contract due to excessive property damage, wet conditions or at other reasonable<sup>2</sup> times upon notice to the Purchaser or other persons operating on the sale area under this Contract with subsequent equitable adjustment of this Contract as mutually agreed upon by the parties.

3. **CONTRACT EXTENSIONS.** If extensions of this Contract are deemed reasonable by the Seller, the stumpage price agreed upon herein shall be adjusted as follows:
- First six-month extension: 0% increase
  - Second six-month extension: 5% increase
  - Additional six-month extensions: 10% increase
  - Other applicable charges or fees: \_\_\_\_\_
4. **TERMINATION.** The Seller may terminate this Contract by oral or written notice to the Purchaser upon its breach. Upon such notice, the Purchaser shall cease all operations on and immediately leave, and not return to, the Seller's property unless otherwise provided by the Seller.

### **DOWNPAYMENT, BOND, REMEDIES AND DAMAGES**

5. **DOWNPAYMENT.** The Purchaser has given the Seller a down payment in the form of cash, a certified check, or other form acceptable to the Seller in the amount of \$\_\_\_\_\_ [if none, enter "zero"] to commit to completion of the timber sale in a timely manner as specified in the contract.
6. **BOND.** The Purchaser has deposited cash, a surety bond, a certified check, or other form acceptable to the Seller in the amount of \$\_\_\_\_\_ [if none, enter "zero"] as a performance bond to assure proper performance. The performance bond is to be held by the Seller until the Purchaser has completed or complied with all contract conditions. Upon breach of any condition of this Contract, the performance bond shall be applied to actual damages incurred by the Seller. The performance bond (or any balance after damages are deducted) shall be returned to the Purchaser within sixty days of the completion of the harvest consistent with the contract, if the Purchaser notifies the Seller in writing that the harvest is finished.
7. **REMEDIES.** If timber or other forest products not specifically described in this Contract or designated by the Seller for cutting are cut, unreasonably damaged or removed by the Purchaser, the Seller may pursue any and all remedies for the unlawful use of the Seller's property and the cutting, unreasonable damage or removal of property without consent, including the seeking of criminal or civil charges for theft, timber theft or criminal damage to property, in addition to any Contract remedies for breach.
8. **DAMAGES.** The damages to be paid to the Seller upon the Purchaser's failure to perform this Contract include, but are not limited to:
- The difference between the Purchaser's bid value of timber not cut and removed under this Contract and the value returned to the Purchaser. The Seller agrees to mitigate the damages for breach by offering the timber for resale within 12 months if the Seller determines the timber is salable based upon its volume or quality.
  - Triple average stumpage rate will be assessed for any timber cut, removed or unreasonably damaged without authorization under or in violation of this Contract. The Seller's decision to assess triple damages as provided here and to allow the Purchaser to continue performance under this contract shall not be construed as a waiver of other contract performance requirements.
  - All costs of sale area cleanup or completion of performance not completed by the Purchaser.
  - All costs of resale of timber not cut and removed as required under this Contract.

- e. The Purchaser agrees that if the timber identified in this Contract for cutting is to be resold due to a breach of this Contract, the Seller is not obligated to give oral or written notice to the Purchaser of the resale.
- f. Additional damage provisions:

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**PRODUCTS TO BE REMOVED**

- 9. No forest products may be removed from the Premises until the Purchaser pays for the products or guarantees payment for the products to the satisfaction of the Seller.
- 10. Title to stumpage and any forest products cut under this Contract shall remain with the Seller until payment is received. Title to stumpage and cut products that are not cut and removed before the end of the contract period, even though paid for, shall revert to the Seller, and the Seller shall be under no obligation to return payments to the Purchaser.
- 11. During the period of this contract, the Purchaser is authorized and shall cut, remove and pay for the timber or forest products marked or designated as follows:

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**14. TIMBER PRODUCTS TABLE**

The Purchaser agrees to pay the Seller the unit price for the volume of product by species that is harvested. In the case of lump sum sales, the unit prices shall be used for sale add-ons or calculation of damages.

Species to be Harvested	Product (Sawtimber, Cordwood, Posts, Poles, etc.)	Estimated Volume	Price per Unit (MBF6, Cord, Piece, etc.)	Total Value of Estimated Volume
Total Estimated Value:				

- 15. Sawtimber volumes shall be determined by the Scribner Decimal C system.
- 16. Cord means 128 cubic feet<sup>7</sup> of wood, air and bark assuming careful piling. Peeled cordwood and chips shall be converted to standard cords.
- 17. The volumes of timber indicated in this Contract or other appraisal or cruise documents of the Seller are estimates. The Seller gives no warranty or guarantee respecting the quantity, quality or volume of marked or otherwise designated timber or forest products on the sale area.

## SALE TYPE, SCALING, HAULING AND PAYMENTS

### 12. SALE TYPE [select one of the following three choices and strike the others]

#### LUMP SUM SALE:

The Purchaser agrees to pay Seller an amount of \$ \_\_\_\_\_, to be paid in full prior to the commencement of timber cutting, based on the volume estimates and unit values in Par. 14 Timber Products Table. The Seller is not obligated to return the payment or any portion of it in the event the Purchaser fails to remove all timber or forest products authorized for removal.

OR

#### SCALED PRODUCTS SALE:

**FLAT RATE METHOD.** The payment as established by the Price per Unit in Par. 14 shall be based on sawtimber, cordwood, or piece product volume as measured by product dimensions. **The price paid per board feet, cord or piece is a flat rate regardless of the quality, final destination or use of the cut product.** Hardwood less than ten inches in diameter at the small end of the log, inside the bark (d.i.b.), shall be measured as cordwood and ten inches or greater d.i.b. as sawtimber. For conifers, the division between cordwood and sawtimber is nine inches d.i.b. Sawtimber with 50% or more cull shall be measured as cordwood. The volume shall be measured by \_\_\_\_\_ (name), an agent of the Seller / the Purchaser / the primary processing facility (the Mill or its agent) to whom the Purchaser delivers the product and to whom the cut product is sold [strike the choices that do not apply].

OR

#### SCALED PRODUCTS SALE:

**GRADED PRODUCT METHOD.** The payment as established by the Price per Unit in Par. 14 shall be based on the volume of *graded* products including fuel wood, pulpwood, sawbolts, sawtimber by grade, veneer by grade and piece products (such as posts and utility poles) by grade. **In addition to product dimension, the price paid depends upon the quality or intended use of the cut product or type of processing facility that the cut product is destined for.** The volume and grade shall be determined by \_\_\_\_\_ (name), an agent of the Seller / the Purchaser / the primary processing facility (the Mill or its agent) to whom the Purchaser delivers the product and to whom the cut product is sold [strike the choices that do not apply].

### 13. HAULING PROCEDURE AND PAYMENT SCHEDULE FOR SCALED SALES [select one of the following two choices and strike the other]

**ON SITE SCALE.** No products may be hauled from the Seller's property until scaled and paid for or payment has been arranged to the Seller's satisfaction in writing. Removing products otherwise shall be a violation of this contract and considered theft.

OR

**MILL SCALE.** The Purchaser shall keep a record of each load removed and its destination. Addresses of the Mills where wood products are to be delivered shall be given to the Seller before cutting begins. The Purchaser shall provide Mills with the Seller's name and address for each load and request Mills to provide copies of the mill scale slips to the Seller within \_\_\_\_\_ days of receipt of the wood products. Failure to keep a record of any load and its destination shall be a violation of this contract and considered theft. Payments shall be made according to the following schedule [pick one of the following three choices and strike the others]:

The Purchaser shall pay the Seller for the products delivered to the Mill, as measured on the mill scale slip, within \_\_\_\_\_ days of delivery. The Purchaser shall include copies of the mill scale slips with payments.

OR

Payment to the Seller shall be made in advance of hauling, with the value of the measured volume on the mill scale slips deducted from the Purchaser's stumpage payment balance. The Seller agrees that advance stumpage payments shall not be used for any purpose other than the stumpage account and that any excess payments will be returned to the Purchaser within 60 days after the last load is hauled from the Seller's property.

OR

The Mill shall make payments for delivered products directly to the Seller within \_\_\_\_\_ days of delivery by the Purchaser. Copies of the mill scale slips shall be included with payments to the Seller.

## OPERATIONAL CONSTRAINTS

- 18. STUMP HEIGHT; TOPS.** Tree stumps shall be cut as close to the ground as practical, otherwise maximum stump height shall not exceed stump diameter; and for stumps ten or more inches in diameter, stumps shall not exceed ten inches in height. For sales including cordwood products, trees shall be utilized to a 4" minimum top diameter. Title to tops shall remain with the Seller and may not be utilized by the Purchaser, or at the Purchaser's direction, unless otherwise specified in this Contract.
- 19. WASTE.** The Purchaser agrees to complete all operations and performance as described in this Contract without waste or nuisance on the sale area or any other property of the Seller or adjoining land used in conjunction with the harvest and use reasonable care not to damage trees not designated or marked for cutting. Young trees bent or held down by felled trees shall be promptly released.
- 20. ZONE COMPLETION.** The Purchaser agrees to complete all operations on each portion of the sale area or each zone as designated on the sale area map, or other attachments or in the cutting requirements before beginning cutting in the next portion or zone, unless agreed to otherwise by the Seller.
- 21. ROADS, LANDINGS, MILL SITES, CAMPSITES, EROSION CONTROL, BEST MANAGEMENT PRACTICES (BMPs).**
- a. When not otherwise designated by the Seller, the location of roads, landings, mill sites and campsites on Seller's property are subject to advance approval and under the conditions established by the Seller. All restoration, cleanup or repair of roads, bridges, fences, gates, landings, mill sites and campsites, or the cost of the cleanup, if not completed by the Purchaser to the reasonable satisfaction of the Seller, is the responsibility of the Purchaser.
  - b. Logging debris accumulated at landing areas shall be scattered within the sale area to the reasonable satisfaction of the Seller.
  - c. Berms constructed on the Seller's property shall be leveled to restore the area to the Seller's satisfaction unless they are constructed at the direction of the Seller under sub d.
  - d. Roads and landings shall be graded or closed upon the request of and to the Seller's satisfaction upon completion or termination of this Contract.
  - e. Other restoration requirements (e.g., seeding, gravel, rutting, culvert removal, etc.):  

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  - f. The Purchaser agrees to comply with the Best Management Practices (BMP) guidelines as described in "*North Dakota's Forestry Best Management Practices*".  
  
Identify BMPs of particular concern:  

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- 22. OTHER APPROVALS.** Logging roads that intersect town, county or state roads or highways must have the intersections approved by the proper authorities prior to construction and cleared of all unsightly debris at the time of construction. The Purchaser agrees to apply for and obtain all approvals. The

Purchaser also agrees to fully comply with all terms and conditions of intersection approvals.

**23. SURVEY MONUMENTS.** The Purchaser agrees to perpetuate of landmarks and pay for the cost of repair or replacement of property or land survey monuments or accessories which are removed, destroyed or made inaccessible.

**24. FOREST FIRE PREVENTION.** The Purchaser agrees to take reasonable precautions to prevent the starting and spreading of fires. Those precautions include, but are not limited to:

- a. A minimum of one fully charged 5 pound or larger ABC fire extinguisher with a flexible spout shall be carried on each off-road logging vehicle.
  - b. All chainsaws and all non-turbocharged off-road logging equipment used in the operation shall be equipped with spark arrestors that have been approved by the U.S. Forest Service. Such arrestors may not be altered in any manner or removed and shall be properly maintained.
  - c. If a fire occurs, the Purchaser agrees to promptly report the fire and cooperate in the control and suppression of the fire.
  - d. The Purchaser shall comply with requests regarding forest fire prevention and suppression made by the Seller and take all reasonable precautions to prevent, suppress and report forest fires. Those requests may include ceasing or modifying operations.
  - e. The Purchaser shall be responsible for damage and forest fire suppression costs caused by their operation under this Contract.
  - f. Other:
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**25. SLASH REMOVAL.** Slash shall be disposed of as follows:

- a. Slash falling in any lake or stream, in a right-of-way or on land of an adjoining landowner shall be immediately removed from the waters, right-of-way or adjoining land. Tops from felled trees may not be left hanging in standing trees. All trees shall be completely felled and not left leaning or hanging in other trees.
  - b. Other:
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**26. CLEANUP AND USE OF SALE AREA.**

- a. The Purchaser shall remove equipment, tools, solid waste and trash remaining on the sale area or Seller's property or adjoining land used in conjunction with the harvest upon completion of performance under this Contract, termination of this Contract due to breach by the Purchaser or when requested by the Seller.
- b. No residence, dwelling, permanent structure, or improvement may be established or constructed on the sale area or other property of the Seller.

- 27. **HAZARDOUS MATERIALS.** The Purchaser agrees to properly use and dispose of all petroleum and hazardous products, including but not limited to oil, oil filters, grease cartridges, hydraulic fuel and diesel fuel. Any on-site spillage must be properly reported, removed and cleaned up by the Purchaser in accordance with applicable statutes and rules of the State of North Dakota.
- 28. **ADDITIONAL UTILIZATION AND OPERATION REQUIREMENTS AND INSTRUCTIONS:**
  - a. Pine products that are harvested must be removed from the site within two weeks if cut between April 15 and August 15.
  - b. Oak wilt prevention: where residual oak trees will be left, no cutting is allowed between April 15 and August 15.
  - c. No trees or products over 16 feet in length may be skidded within the cutting area without written permission of the Seller.
  - d. Other (If none, state None.)

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**NOTICE OF INTENT TO CUT AND COMPLIANCE WITH LAWS**

- 29. The Seller will have a Forest Stewardship Management plan prepared for their property.
- 30. The Seller / Purchaser [select one] shall file a declaration annually with the county clerk in any manner acceptable to the county of his or her intentions to cut forest products and comply with all other notice requirements, laws and ordinances with respect to work under this Contract.
- 31. The Seller and Purchaser shall work together on acquiring other necessary permits (such as wetland or stream crossing permits).

**TITLE, BOUNDARY LINES AND ACCESS**

- 32. The Seller guarantees title to the timber and to defend it against any and all claims and to have the boundaries marked with paint or other suitable means before any timber is harvested.
- 33. The Seller agrees to secure entry and right-of-way to the Purchaser on and across the area covered by this contract, including access via land owned by a third-party if necessary.

**LIABILITY AND INSURANCE**

- 34. The Purchaser agrees to protect, indemnify and save harmless the Seller and the Seller's employees and agents from and against all causes of action, claims, demands, suits, liability or expense by reason of loss or damage to any property or bodily injury to any person, including death, as a direct or indirect result of timbering operations under this Contract or in connection with any action or omission of the Purchaser, who shall defend the Seller in any cause of action or claim.

35. The Purchaser agrees to furnish the Seller with a certificate of public liability insurance covering the period of logging operations on the Seller's property for:
- a. \$1,000,000 single limit liability for personal injury or \$1,000,000 bodily injury per person and \$1,000,000 per occurrence;
  - and
  - b. \$100,000 property damage.

### **GENERAL**

36. The Purchaser is an independent contractor for all purposes including Worker's Compensation and is not an employee or agent of the Seller. The Seller agrees that the undersigned Purchaser, except as otherwise specifically provided herein, shall have the sole control of the method, hours worked, time and manner of any timber cutting to be performed hereunder. The Seller reserves the right only to inspect the job site for the sole purpose of insuring that the cutting is progressing in compliance with the cutting practices established under this Contract. The Seller takes no responsibility for supervision or direction of the performance of any of the harvesting to be performed by the undersigned Purchaser or its employees. The Seller further agrees to exercise no control over the selection and dismissal of the Purchaser's employees.
37. The Seller agrees to initially designate the timber to be sold and may make inspections for the purposes of ascertaining whether the timber has been cut and the Contract has been complied with. All work shall be performed in a workman-like manner. Work shall be performed in accordance with the requirements of the contract. The parties stipulate that in fulfillment of the terms of this timber sale Contract, the Seller warrants that the Seller has clear and unencumbered title to the stumpage subject to this Contract.
38. This Contract or work under it may not be assigned or subcontracted in part or in whole without prior written approval from the Seller and may be changed or amended only in writing. The Purchaser agrees to notify the surety, if any, of any such change or amendment.
39. This Contract, together with specifications in the request for bids as well as reference to parts and attachments, shall constitute the entire agreement and any previous communications or agreements pertaining to this Contract are hereby superseded. Any amendments to this Contract shall be in writing, signed and dated by both parties.
40. Neither party shall be liable for defaults or delays due to acts of nature or the public enemy, acts or demands of any government or governmental agency, strikes, fires, flood, accidents or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five days after the beginning thereof. If such uncontrollable circumstances continue for 30 days and prevent either party from complying with the terms of this agreement, either party shall have the option of terminating upon ten days notice to the other.
41. This contract shall be governed by the laws of the State of North Dakota. The Purchaser shall at all times comply with all federal, state, and local laws, ordinances and regulations in effect during the contract period.

**42. CONTACT INFORMATION:**

(Note: Separate from this form, the Seller and Purchaser are encouraged to provide one another with their Social Security Number or Federal Employer ID Number, needed to file tax returns or other financial documents.)

**Seller:**

**Purchaser:**

Name \_\_\_\_\_

Name \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Cellular Phone: \_\_\_\_\_

Cellular Phone: \_\_\_\_\_

We have read and understand the entire contract comprised of \_\_\_\_\_ pages.

**SELLER**

Date \_\_\_\_\_ by \_\_\_\_\_

**PURCHASER**

Date \_\_\_\_\_ by \_\_\_\_\_