



Terms and Conditions for Timber Sales – Small Quantities (Specialty Timber and Firewood – SBA8(Nov))

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Date

Parties

VicForests ABN 76 846 538 543 of Level 7, 473 Bourke Street, Melbourne 3000 in the State of Victoria (**VicForests**)

The Party whose details are set out in item 1 of the Schedule (**Buyer**)

Background

- A VicForests is a State Business Corporation established under section 17 of the *State Owned Enterprises Act 1992 (Victoria)* to undertake the management and sale of timber resources in Victorian State forest on a commercial basis.
 - B VicForests undertakes Auctions for the sale of a number of timber products including Firewood and Specialty Timber.
 - C These Terms and Conditions (including the completed Schedule) shall constitute the terms and conditions of the agreement between VicForests and the Buyer with respect to Timber Lots for which the Buyer is the successful bidder at an Auction.
 - D The Parties recognise the need to co-operate and liaise with each other to ensure these Terms and Conditions operate effectively throughout the Term, understanding the business needs of VicForests and the Buyer.
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Terms and Conditions

1 Interpretation

1.1 Definitions

In these Terms and Conditions, unless the contrary intention appears:

Act means the *Sustainable Forests (Timber) Act 2004 (Victoria)*.

Agreement means the agreement between VicForests and the Buyer created in accordance with **clause 3.2** which includes these Terms and Conditions.

Auction means Sealed Bid Auction 8—2009 conducted by VicForests for the sale of Timber Lots.

Auction Catalogue means the Auctions For Victorian Native Hardwood Logs Catalogue: SBA8(Nov) - 2009: Sawlog, Pulplog, Poles and Speciality Timbers Sealed Bid Auction 8-2009.

Auction End has the meaning given to that expression in the Auction Rules.

Auction Rules means the Auction Rules Sealed Bid Non-Online Auctions.

Bid means an offer by the Buyer to purchase the Timber Lots during an Auction.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne.

Cleared Payment means the confirmed cleared deposit into VicForests bank account, in accordance with **clause 7.5**, of the entire Invoiced Amount including any Default Interest owing under **clause 6.3**.

Collection Hours has the meaning given in **clause 5.2**.

Collection Site means the collection site notified to the Buyer by VicForests and as set out in **item 4** of the **Schedule** from which the Buyer collects the Specialty Timber in accordance with **clause 5.1**.

Commencement Date means, for each Timber Lot, the Auction End date on which the Lot Award is made to the Buyer as Wining Bidder by VicForests under the Auction Rules and the Deed Poll.

Consequential Loss means indirect, incidental, special or consequential damages:

- (a) including damages for loss of profits or savings (actual or anticipated) and loss of goodwill; and
- (b) whether or not the Buyer or VicForests (as the case may be) knows of the possibility of such damage or such damage was otherwise foreseeable.

Corporations Act means the *Corporations Act 2001* (Cth) and the Corporations Regulations made under it, as amended from time to time.

Deed Poll means the deed poll executed by bidders in accordance with the Auction Catalogue.

Delivery Hours has the meaning given in **clause 4.2**.

Delivery Site means a site or site nominated by the Buyer as set out in **item 3** of the **Schedule** to which Firewood is delivered by VicForests in accordance with **clause 4.1**.

Due Date means the date by which any amount due to VicForests pursuant to these Terms and Conditions must be received by VicForests.

Establishing Order means the Order in Council dated 28 October 2003, Victoria Government Gazette Notice S198.

Firewood means log timber of a type that is suitable for the purposes of fuel wood.

Insolvency Event means any of the following:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar official is appointed over any of the assets or undertaking of a Party;
- (b) a Party suspends payment of its debts generally;
- (c) a Party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent under any applicable legislation;
- (d) a Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of its creditors or any class of them;
- (e) a Party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator;
- (g) an application (other than an application dismissed within five Business Days) or order is made for the winding up or dissolution of a Party or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a Party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first Party;
- (h) a petition for the making of a sequestration order against the estate of a Party is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (i) a Party presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (j) the occurrence of anything analogous or having a substantially similar effect to any of these conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters.

Invoiced Amount means for each Timber Lot the total amount to be paid to VicForests by the Buyer under **clause 6.1**.

Lot Award has the meaning given to that expression in the Auction Rules.

Loss means any liability (whether present or contingent), loss, damage, claim, suit, action, demand, expense, cost, fees (including legal fees on a full indemnity basis) or proceedings of whatever nature, whether arising under contract or statute or otherwise at law or in equity.

New Amount has the meaning given in **clause 7.2**.

Occupational Health and Safety Act means the *Occupational Health and Safety Act 2004* (Victoria).

Party means a party to the Agreement or any of its successors and permitted assignees.

Related Body Corporate in relation to a Buyer which is a body corporate means a body corporate that is related to the Buyer by virtue of section 50 of the Corporations Act.

Shortfall has the meaning given in **clause 7.2**.

Shortfall Invoice has the meaning given in **clause 7.3**.

Small Quantity means:

- (a) in respect of Firewood, a quantity up to 200 GMT; and
- (b) in respect of Specialty Timber, any quantity.

Specialty Timber means, subject to **clause 8.3**, log timber of a type that may be suitable for sawing into furniture, woodcraft or other sawn appearance products that is either a non- eucalypt species or a species that belongs to the M5 Mixed species sawlog sub-Group as set out in the Code of Procedure for Log Buyers Log specifications set out on the VicForests website at www.vicforests.com.au, including all attachments, schedules, exhibits and annexures, as amended from time to time.

Term has the meaning set out in **clause 3.1**.

Termination Date in respect of each Timber Lot means the earlier of:

- (a) the date on which the Timber Lot (or any remaining part thereof) is:
 - (i) collected from the Collection Site in the case of Specialty Timber; or
 - (ii) delivered to the Delivery Point in the case of Firewood, or
- (b) the date on which VicForests terminates this Agreement in accordance with **clause 11.1**.

Terms and Conditions means these Terms and Conditions (including the Schedule) as amended from time to time.

Timber means timber that forms part of a Timber Lot.

Timber Lot and **Timber Lots** means the Small Quantity Timber Lot or Lots sold to the Buyer at the Auction as these Lots are described in the Auction Catalogue and as set out in **item 2** of the **Schedule**.

Timber Processing means a series of operations performed on round logs to make or treat a secondary timber product, including any of the following: sawing of four sides, peeling, slicing, splitting, chipping, grinding or chemical pressure treatment.

Winning Bidder has the meaning given to that expression in the Auction Rules.

1.2 Construction

Unless expressed to the contrary, in these Terms and Conditions:

- (a) words in the singular include the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) includes means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (ii) any legislation includes subordinate legislation and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) "\$" or "dollars" is a reference to Australian currency;
 - (v) this or any other document includes the Terms and Conditions as novated, varied or replaced and despite any change in the identity of the parties;
 - (vi) writing includes:
 - (A) any mode of representing or reproducing words in tangible and visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (vii) these Terms and Conditions includes all schedules and annexures to them; and
 - (viii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of these Terms and Conditions;
- (g) if the date on or by which any act must be done under these Terms and Conditions is not a Business Day, the act must be done on or by the next Business Day.

1.3 Headings

Headings do not affect the interpretation of these Terms and Conditions.

2 Authorising Provision

VicForests is authorised to enter into the Agreement by section 20 of the *State Owned Enterprises Act 1992* (Victoria), by clause 3 of the Establishing Order and section 44 of the Act.

3 Commencement and Duration

3.1 Commencement

With respect to each Timber Lot, the Agreement commences on the Commencement Date and subject to **clause 11**, ends on the Termination Date (**Term**).

3.2 Agreement

- (a) The agreement by VicForests to sell and the Buyer to purchase the Timber Lots is created by the Buyer being the Winning Bidder of the Lot Award comprising the Timber Lots in accordance with the Auction Rules and the Deed Poll on VicForests determining that the Buyer is the Winning Bidder of the Timber Lots.
- (b) The terms of the Agreement shall consist of these Terms and Conditions and the completed Schedule provided by VicForests to the Buyer pursuant to the Auction Rules.
- (c) Subject to the provisions of these Terms and Conditions, during the Term VicForests sell and the Buyer agrees to purchase the Timber Lots.

4 Delivery of Firewood by VicForests

4.1 VicForests to deliver Firewood

If the Timber Lots include any Firewood then, subject to this clause 4 and to the satisfaction of the Buyer's payment obligations under clause 6, VicForests agrees to deliver the Firewood to the Buyer's Delivery Site on a date and at a time, during Delivery Hours, to be agreed between VicForests and the Buyer, provided that the delivery date is no later than 30 days after Cleared Payment is received by VicForests in accordance with **clause 6**, unless otherwise notified by VicForests.

4.2 Delivery Hours

Except where otherwise agreed by the Parties, VicForests may only deliver Firewood between 7:00am and 7:00pm on a Business Day (**Delivery Hours**).

4.3 VicForests right to enter Buyer's Delivery Point

Subject to **clause 4.6**, the Buyer grants to VicForests, its directors, employees, agents and contractors, for the Term an irrevocable right to enter the Delivery Site for the purposes of delivering the Firewood.

4.4 Buyer representative

A representative of the Buyer shall be entitled to be present while any of VicForests' directors, employees, agents or contractors are at the Delivery Site.

4.5 Buyer obligations

In respect of the rights that are granted by VicForests pursuant to **clause 4.1** and the rights granted by the Buyer under **clause 4.3**, the Buyer acknowledges and agrees that it must:

- (a) provide a safe Delivery Site which complies with the Occupational Health and Safety Act and which is run in accordance with sufficient safety and operational procedures of a comparative standard to VicForests' normal safety and operational procedures;
- (b) use its best endeavours to ensure the VicForests' directors, employees, agents and contractors are not put at risk by unsafe workplace conditions or practices;
- (c) actively respond to any concerns raised by VicForests relating to the safety or conditions at the Delivery Site and shall take immediate action to remedy the concerns to VicForests' reasonable satisfaction; and
- (d) during the Delivery Hours, provide at its cost all necessary personnel and unloading facilities and carry out all unloading operations.

4.6 VicForests obligations

In respect of the rights that are granted by the Buyer pursuant to **clause 4.3**, VicForests agrees that:

- (a) it shall provide the Buyer with reasonable notice of its intention to enter the Delivery Site; and
- (b) it shall use its reasonable endeavours to ensure that its directors, employees, agents and contractors comply with the Buyer's reasonable directions when they are at the Delivery Site.

5 Collection of Specialty Timber by Buyer

5.1 Buyer to collect Specialty Timber

If the Timber Lots include any Specialty Timber then, subject to the provisions of this clause 5 and to the satisfaction of the Buyer's payment obligations under clause 6, the Buyer must collect that Speciality Timber from VicForests' Collection Site on a date and at a time, during Collection Hours, to be agreed between VicForests and the Buyer, provided that the collection date is no later than 30 days after Cleared Payment is received by VicForests in accordance with **clause 6**, unless otherwise notified by VicForests.

5.2 Collection Hours

Except where otherwise agreed by the Parties, the Buyer may only collect Specialty Timber between 7:00am and 5:00pm on a Business Day (**Collection Hours**).

5.3 Buyer right to enter Collection Site

Subject to **clauses 5.4, 5.5** and **11**, VicForests shall use its reasonable endeavours to grant to the Buyer, its directors, employees, agents and contractors, for the Term a right to enter the Collection Site during the Collection Hours for the sole purpose of collecting the Specialty Timber of which the Buyer is the Winning Bidder.

5.4 Conditions

In respect of the rights that are granted by VicForests pursuant to **clause 5.3**, the Buyer acknowledges and agrees that:

- (a) it must provide VicForests with reasonable notice of its intention to enter the Collection Site;
- (b) it must ensure that its directors, employees, agents and contractors comply with reasonable directions when they are at, or in connection with, the Collection Site, including but not limited to directions relating to site induction or safety; and
- (c) a representative of VicForests must be present while any of the Buyer's directors, employees, agents or contractors are at the Collection Site.

5.5 Buyer Obligations

The Buyer must to ensure that its directors, employees, agents and contractors, when they are at the Collection Site:

- (a) observe both VicForests' normal safety and operational procedures, the Occupational Health and Safety Act and any other safety and operational procedures that apply at the Collection Site;
- (b) cause as little harm and inconvenience as possible;
- (c) not stay on the land for any longer than is reasonably necessary;
- (d) leave the land as nearly as possible in the condition in which the Buyer found it;
- (e) take reasonable care not to cause loss or damage to property or injury on the land;
- (f) cooperate as much as possible with VicForests;
- (g) provide log transport vehicles and arrangements which comply with the Occupational Health and Safety Act and which are run in accordance with sufficient safety and operational procedures of a comparative standard to VicForests' normal safety and operational procedures; and
- (h) use its best endeavours at the Collection Site to ensure that any VicForests' directors, employees, agents and contractors and any other personnel at the Collection Site are not put at risk by unsafe workplace practices.

6 Charges and Interest

6.1 Invoice

- (a) Once VicForests has determined that the Buyer is the Winning Bidder in respect of a Timber Lot in accordance with the Auction Rules, VicForests shall provide written notice to the Buyer that it is the Winning Bidder.
- (b) Where the Buyer is the Winning Bidder of Specialty Timber, VicForests shall at the same time as it provides written notice to the Buyer pursuant to **clause 6.1(a)**, provide the Buyer with an invoice setting out the Invoiced Amount and the Due Date on which Cleared Payment in respect of the Timber Lots must be received by VicForests in accordance with **clause 6.2**.
- (c) Where the Buyer is the Winning Bidder of Firewood, on receipt of a request from the Buyer that it wishes VicForests to deliver that Firewood to it, VicForests shall provide the Buyer with an invoice setting out the Invoiced Amount and the Due Date on which Cleared Payment in respect of that Firewood must be received by VicForests in accordance with **clause 6.2**.

6.2 Payment in advance

- (d) In respect of a Timber Lot, the Buyer must make the Cleared Payment by the Due Date.
- (e) The Buyer has no rights in respect to any Timber Lot, including under **clauses 4 and 5**, until it has made, and VicForests has received, Cleared Payment by the Due Date.
- (f) For the avoidance of doubt, VicForests has no obligation to deliver any Firewood under **clause 4** or to make any Specialty Timber available for collection under **clause 5** until it has received all payments, including GST under **clause 12** and Default Interest under **clause 6.3**, due to it by the Buyer under this Agreement.

6.3 Interest on overdue charges

Interest on any overdue amount that is due to VicForests by the Buyer under these Terms and Conditions is immediately payable at such rates fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) (Default Interest).

7 Effect of Non-Payment by Buyer

7.1 VicForests entitled to re-sell Timber Lots

If the Buyer fails to pay any or all amounts due under these Terms and Conditions by the Due Date, at any time after the Due Date VicForests is entitled to terminate this Agreement and to sell the Timber Lots to another buyer without notice to the Buyer and the Buyer acknowledges and agrees that it shall have no right or recourse in law or equity to prevent or restrain VicForests from so doing.

7.2 Buyer liable for shortfall

If VicForests re-sells the Timber Lots under **clause 7.1** and the amount received from the new buyer (**New Amount**) is less than the Invoiced Amount, the Buyer must reimburse VicForests for the difference between the New Amount and the Invoiced Amount (**Shortfall**).

7.3 Buyer to be notified of Shortfall

Once VicForests has received cleared payment of the New Amount, VicForests shall provide the Buyer with an invoice setting out the Shortfall amount to be paid and the due date for payment of the Shortfall amount (**Shortfall Invoice**).

7.4 Action to recover charges

VicForests may take action in a court of competent jurisdiction to recover any charge or interest under these Terms and Conditions which is due and payable by the Buyer.

7.5 Payment by electronic transfer only

All amounts to be paid by the Buyer to VicForests under these Terms and Conditions are to be paid by electronic transfer into the following bank account or into such other bank account as VicForests may notify the Buyer from time to time:

Bank: Westpac
BSB: 033 222
Account No.: 130688
Account Name: VicForests

8 Buyer Acknowledgements

8.1 Inspection of Specialty Timber

In respect of any Specialty Timber, the Buyer acknowledges and agrees that it:

- (a) has been provided with the opportunity to inspect the Specialty Timber at the Collection Site;
- (b) has made its own enquiries as to the quality, quantity and condition of the Specialty Timber;
- (c) has not relied on any information provided by or on behalf of VicForests or any written or verbal representations made by or on behalf of VicForests; and
- (d) unconditionally accepts the quality, quantity and condition of the Specialty Timber.

8.2 Acknowledgements in relation to Firewood

In respect of any Firewood, the Buyer acknowledges and agrees that it:

- (a) has not relied on any information provided by or on behalf of VicForests or any written or verbal representations made by or on behalf of VicForests; and

- (b) unconditionally accepts the quality, quantity and condition of the Firewood.

8.3 No warranty

The Buyer acknowledges and agrees that VicForests makes no warranties, express or implied, and excludes to the maximum extent permitted by law all warranties, representations, terms or conditions, whether express or implied, oral or written, statutory or otherwise, relating in any way to the Firewood and Specialty Timber, including but not limited to the quality or condition of the Firewood or Specialty Timber.

8.4 Timber processing

The Buyer acknowledges and agrees it must:

- (a) undertake Timber Processing; and
- (b) ensure that any contractor undertaking Timber Processing on behalf of the Buyer must undertake Timber Processing,

of all Timber supplied under these Terms and Conditions in Australia and in compliance with applicable safety and environmental law and regulations.

9 Indemnities

9.1 Buyer's indemnity

The Buyer acknowledges and agrees to indemnify VicForests and its directors, employees, agents and contractors against all Loss (other than Consequential Loss) in respect of:

- (a) personal injury (which expression shall include illness and disability) to, or death of, any of VicForests' directors, employees, agents or contractors while any of them are at the Delivery Site and/or Collection Site as the case may be; or
- (b) loss or destruction of, or injury or damage to or loss of use of property, real or personal (including but not limited to the property of VicForests) at the Delivery Site and/or Collection Site as the case may be,

to the extent that such Loss is caused by the Buyer's negligent or wilful acts or omissions.

9.2 VicForests' indemnity

VicForests agrees to indemnify the Buyer and its directors, employees, agents and contractors against all Loss (other than Consequential Loss) in respect of:

- (a) personal injury (which expression shall include illness and disability) to, or death of, any of the Buyer's directors, employees, agents or contractors while any of them are at the Delivery Site and/or Collection Site as the case may be; or

- (b) loss or destruction of, or injury or damage to or loss of use of property, real or personal (including but not limited to the property of the Buyer) at the Delivery Site and/or Collection Site as the case may be,

to the extent that such Loss is caused by VicForests' negligent or wilful acts or omissions.

10 Title and Risk

10.1 Title and risk in Firewood

Subject to **clauses 6, 7, 11 and 12**, all title and risk in Firewood supplied by VicForests under these Terms and Conditions passes to the Buyer at the time when the Firewood is delivered to the Delivery Site.

10.2 Risk in Specialty Timber

All risk relating to Specialty Timber to be supplied by VicForests under these Terms and Conditions passes to the Buyer on Lot Award. For the avoidance of doubt, any storage costs incurred with respect to storage of Specialty Timber at the Collection Site after the Lot Award and prior to collection shall be borne by the Buyer.

10.3 Title in Specialty Timber

Subject to **clauses 6, 7, 11 and 12**, all title relating to Specialty Timber supplied by VicForests under these Terms and Conditions passes to the Buyer at the time when the Specialty Timber is collected from the Collection Site.

11 Termination

11.1 VicForests Right to Terminate

VicForests shall be entitled to terminate the Agreement by notice in writing to the Buyer:

- (a) if an Insolvency Event occurs in relation to the Buyer; or
- (b) if the Buyer ceases to carry on its business or a substantial part of its business;
- (c) if the Buyer fails to make any payment under these Terms and Conditions by the Due Date;
- (d) if the Buyer commits a breach of these Terms and Conditions and within 5 days of receiving a request from VicForests to remedy that breach, has:
 - (i) failed to commence effective action to remedy the breach to the satisfaction of VicForests; or
 - (ii) where the failure does not permit a remedy, fails to tender fair compensation to VicForests or take such other steps to address the failure as are satisfactory to VicForests (acting reasonably) as being appropriate in the circumstances, or

- (e) if VicForests exercises its rights under **clause 7.1**;

11.2 Effect of Termination

- (a) **Clause 11.1** does not prejudice VicForests power to enforce any right or claim which arises before termination (as the case may be).
- (b) **Clauses 1, 6, 9, 12, 13, 14, 16 and 17** of these Terms and Conditions will remain in full force and effect and survive the expiry or termination of the Agreement.

12 GST

12.1 Definitions

In this **clause 12**:

- (a) words and expressions which are not defined in these Terms and Conditions but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

12.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under these Terms and Conditions are exclusive of GST.

12.3 Payment of GST

If GST is payable in respect of any supply made by a supplier under these Terms and Conditions, the recipient will pay to the supplier an amount equal to the GST payable on the supply. Subject to **clause 12.4**, the recipient will pay the amount referred to in this **clause 12.3** in addition to and at the same time that the consideration for the supply is to be provided under these Terms and Conditions.

12.4 Tax Invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 12.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

12.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under these Terms and Conditions, the amount payable by the recipient under **clause 12.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

12.6 Reimbursements

Where a Party is required under these Terms and Conditions to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled;
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

13 Confidentiality

13.1 Confidentiality Obligation

The Parties must keep and procure to be kept the terms of these Terms and Conditions and all information disclosed, made available, communicated or delivered to the Parties under or in connection with these Terms and Conditions or during the negotiations of the Parties relating to the matters contemplated by these Terms and Conditions (**Confidential Information**) strictly confidential and must not disclose such terms or information to any person without first obtaining the written consent of the other Party.

13.2 Exceptions

Notwithstanding **clause 13.1**, the Parties may without the prior approval of the other Party disclose any Confidential Information:

- (a) which is reasonably required by law;
- (b) to its employees, officers, professional advisers, and financiers and to the employees and officers of its Related Bodies Corporate to the extent that they need to know the information for purposes related to these Terms and Conditions and on condition that they agree to be bound by the terms of this **clause 13**;
- (c) if the information is in the public domain at the date of these Terms and Conditions, or comes into the public domain after the Commencement Date without a breach of these Terms and Conditions or other breach of confidence;
- (d) if the recipient party already knew or had, on a non-confidential basis, the information before receiving it;
- (e) if the recipient party independently developed or acquired the information, without a breach of these Terms and Conditions or other breach of confidence; or
- (f) as required as part of open market timber allocation processes implemented by VicForests,

provided the Party disclosing the Confidential Information must (except in the case of disclosure under **clause 13.2(b)**) notify the other Party in writing before disclosing any such Confidential Information.

14 Dispute Resolution

14.1 Informal Resolution

In the event of any dispute arising between the Parties in respect of or in connection with the Agreement (including the validity, breach or termination of it), the dispute shall be referred to the chief executive officers of both Parties or their nominees, who shall confer at least once to resolve the dispute or to agree on methods of doing so. All aspects of every such conference, except the fact of its occurrence, will be privileged.

14.2 Mediation

- (a) If the dispute is not resolved within the following five Business Days (or such further period as the representatives may agree is appropriate), the Parties in dispute agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in these Terms and Conditions.

14.3 Continuation of Obligations

The Parties must at all times continue to perform and otherwise comply with its obligations pursuant to these Terms and Conditions despite the existence of any dispute.

14.4 Agreement to Arbitrate

If the Parties fail to settle any dispute in accordance with **clause 14.2**, that dispute will be submitted to final and binding arbitration under the Rules of Commercial Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules. The *Commercial Arbitration Act 1984* (Victoria) shall apply.

14.5 Costs of Resolution

The costs of resolving the dispute shall be borne equally by the Parties unless otherwise determined by the mediator or arbitrator (as the case may be).

14.6 Interim Relief

Notwithstanding **clauses 14.1, 14.2 and 14.4**, a Party may seek interim or provisional relief in respect of the subject matter of the dispute from any Court having jurisdiction. Such interim or provisional relief may be vacated, continued or modified by the arbitral tribunal at the request of any Party. Any Party may seek, to the full extent allowed by law, judicial enforcement, in a Court having jurisdiction, of any interim or provisional relief granted by the arbitral tribunal.

15 Compliance with Laws

VicForests and the Buyer must carry out or perform any duty, function or power referred to in these Terms and Conditions in accordance with these Terms and Conditions and the Act and all other relevant laws and procedures.

16 Notices

16.1 General

A notice, demand, certification, process or other communication relating to these Terms and Conditions must be in writing in English and may be given by an agent of the sender.

16.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the Party's current address for notices;
- (c) sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the Party's current fax number for notices; or
- (e) emailed to the email address last notified by the addressee.

16.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are set out in **item 3** of the **Schedule**.
- (b) Each Party may change its particulars for delivery of notices by notice to each other Party.

16.4 Communications by post

Subject to **clause 16.7**, a communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

16.5 Communications by fax

Subject to **clause 16.7**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

16.6 Communications by email

Subject to **clause 16.7**, if a communication is emailed, a delivery confirmation report received by the sender, which records the time that the email was delivered to the addressee's last notified email address is prima facie evidence of its receipt by the addressee, unless the sender receives a delivery failure

notification, indicating that the electronic mail has not been delivered to the addressee.

16.7 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

16.8 Process service

Any process or other agreement relating to litigation, administrative or arbitral proceedings relating to these Terms and Conditions may be served by any method contemplated by this **clause 16** or in accordance with any applicable law.

17 General

17.1 Duty

- (a) As between the Parties, the Buyer is liable for and must pay all duty (including any fine or penalty except where it arises from default by VicForests) on or relating to these Terms and Conditions, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than the Buyer pays any duty (including any fine or penalty) on or relating to these Terms and Conditions, any document executed under it or any dutiable transaction evidenced or effected by it, the Buyer must pay that amount to the paying party on demand.

17.2 Cooperate

VicForests and the Buyer agree to cooperate and liaise with the other as much as possible to ensure that the Agreement operates effectively throughout its term.

17.3 Legal costs

Except as expressly stated otherwise in these Terms and Conditions, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under the Agreement.

17.4 Assignment

The Buyer must not assign any of its rights, obligations or interests under these Terms and Conditions without the prior written agreement of VicForests, which agreement can be given or withheld by VicForests in its absolute discretion.

17.5 Amendment

These Terms and Conditions may only be varied or replaced by a document executed by each of the Parties.

17.6 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to these Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

17.7 Rights cumulative

Except as expressly stated otherwise in these Terms and Conditions, the rights of a Party under these Terms and Conditions are cumulative and are in addition to any other rights of that Party.

17.8 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to these Terms and Conditions and to perform its obligations under it.

17.9 Governing law and jurisdiction

- (a) These Terms and Conditions is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

17.10 Liability

An obligation of two or more persons binds them separately and together.

17.11 Counterparts

These Terms and Conditions may consist of a number of counterparts, including without limitation the completed Schedule, and, if so, the counterparts taken together constitute one document.

17.12 Entire understanding

- (a) These Terms and Conditions, including the completed Schedule contain the entire understanding between the Parties as to the subject matter of the Agreement.

All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement (including without limiting the generality of the foregoing, all previous drafts of these Terms and Conditions) are merged in and superseded by these Terms and Conditions and are of no effect. No

Party is liable to any other Party in respect of those matters. Each party acknowledges that in entering into the Agreement it does not rely on any previous negotiations, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement and that (subject to any non-excludable rights at law) its rights and obligations in respect of the subject matter of the Agreement are limited to those set out in the Terms and Conditions.

- (b) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of these Terms and Conditions; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

17.13 Relationship of parties

These Terms and Conditions are not intended to create a partnership, joint venture or agency relationship between the Parties.

Schedule

1. Buyer details	
Name	[insert details]
ABN	[insert details]
Address	[insert details]
Reference No.	[insert details]

2. Timber Lots [Complete for each Timber Lot purchased]		
SBA-8 Timber Lot No.	Type [Firewood or Specialty Timber]	

3. Delivery Site (for Firewood only)

4. Collection Site (for Specialty Timber)

5. Notice Particulars	
(a) VicForests	
Address:	Level 7, 473 Bourke Street, Melbourne, Victoria 3000
Fax:	(03) 9608 9588
Email:	
Attention:	

(b) Buyer	
Address:	[insert details]
Fax:	[insert details]
Email:	[insert details]
Attention:	[insert details]

