

# Model Contract No 3.

## “Variable Quantity and/or Non Lump Sum Sale“



Landowner / Harvest Manager – Purchaser

### Introduction:

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**Model contract 3 provides for the situation where a landowner or independent third party sells standing timber to a purchaser on a royalty basis and the purchaser also harvests the native forest.**

Four Native Forest Stand Management Guidelines have also been produced by the PFSQ.

### Disclaimer:

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## STANDING TIMBER PURCHASE CONTRACT (ROYALTY)

THIS AGREEMENT made this                      day of                      2005

BETWEEN:    THE LANDOWNER / HARVEST MANAGER referred to in Schedule 1 (hereinafter called "the Manager") of the One Part

AND:    THE PURCHASER referred to in Schedule 1 ("the Purchaser") of the Other Part

WHEREAS the Manager is duly authorised or entitled to sell timber now standing on the land described in Schedule 1

AND WHEREAS the Manager has agreed to sell and the Purchaser has agreed to cut and purchase certain timber standing on the land

AND WHEREAS the parties wish to reflect in writing the terms and conditions of their agreements

NOW THIS DEED WITNESSES:-

1.            The Manager agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Manager timber standing on the land satisfying the specifications and available in compliance with the conditions set out in the Forest Harvesting Operational Plan Schedule 2 ("the Plan").
2.            The purchase price for the timber hereby sold shall be in accordance with the prices set out in the Forest Harvesting Operational Plan Schedule 2 ("the Plan") and is to be paid by the Purchaser to the Manager by instalments for timber removed within 14 days of the end of the month in which the timber was removed.
3.            The Plan and Procedures shall form part of this Agreement as if the terms and conditions were embodied in this Agreement.
4.            All timber hereby sold shall be cut and removed from the land by the Purchaser at the Purchasers own cost and expense on or before the date set out in Schedule 2.

5. The Manager will allow the Purchaser or its employees servants and agents, to enter the land and remove the timber, with all necessary equipment provided:-

- (a) All operations on the part of the Purchaser shall be carried out consistently with the Plan and in a proper and workmanlike manner in accordance with all statutes, ordinances, by-laws and codes of practice for timber harvesting in privately owned forests in Queensland (including the Vegetation Management Act 1999, as amended and Forest Practices Code, and the Workplace Health and Safety Queensland Forests Harvesting Code of Practice).
- (b) All operations by the Purchaser shall be conducted so as to cause as little injury as possible to the land, retained timber, livestock, improvements or growing crops.
- (c) All product classification and measurement is to be carried out in accordance with the Procedures

6. The Purchaser shall give to the Manager a minimum of twenty four (24) hours notice, to open up fences on the land for the purposes of this agreement on the proviso that the Purchaser shall reinstate such fences.

7. The Purchaser shall leave all gates on the land as they are found unless otherwise agreed with the Manager.

8. The Purchaser its servants, agents and contractors will enter upon the land at their own risk and the Manager shall not be liable for any loss, damage or injury suffered by such person whilst upon the land.

9. The Purchaser agrees that:-

- (a) if any damage is done to the land, fences or improvements thereon, livestock grazing thereon, any crops growing thereon; or
- (b) any loss whatsoever suffered by the Grower due to the Purchasers failure to comply with any statute ordinance and by-law relating to the cutting of timber and its operations on the land;

such damage shall forthwith be made good by the Purchaser and in default thereof the amount of such damage may be recovered by the Manager from the Purchaser as a liquidated debt.

10. The Purchaser shall not light any fires on the land, unless specified within the Plan.
11. The Purchaser shall provide to the Manager at the end of each fortnight whilst the Purchaser is conducting operations upon the land and at any other time on request of the Manager copies of cutter and load docket and such other information as reasonably required by the Manager, to the satisfaction of the Manager.
12. In the event that the Purchaser fails to make payment of any instalment of the purchase price then no further timber shall be cut or removed by the Purchaser under the terms of this Agreement until the instalment plus interest has been paid to the Manager by way of bank cheque.
  - 12.1 The Purchaser shall pay the Manager interest at the rate of 2% per month or part thereof on any moneys due and payable under this agreement (including any liquidated damages) from the due date for payment of such moneys until payment.
13. In the event that the purchaser is in breach of the Plan or Procedures or fails to comply with the reasonable directions of the Manager the Manager may notify the purchaser of the suspension of contract works and the purchaser shall immediately cease operations.
  - 13.1 After notification the parties shall immediately meet in an effort to resolve procedures, agree on rectification works, the application of penalties set out in the Procedures or Plan and all matters in dispute.
  - 13.2 If the dispute is not resolved by agreement of the parties within 7 days of the date of the notice then the Manager may terminate this contract by notice in writing.
14. The Manager may determine this Agreement at any time and without prior notice should the Purchaser, his, her or its servants, agents or contractors be guilty of any dishonesty, serious misconduct or serious neglect of duty or refuse to comply with any reasonable instructions or directions given by the Manager.
15. If by the due date of completion, the Purchaser having complied with all other terms and conditions of this agreement, including payment of all instalments, the Purchasers have been delayed and unable, due to no fault of the Purchaser, to complete cutting and removal of timber from the land then the Purchasers may continue to cut and remove timber for a period equivalent to the period of delay.

16. This Agreement is for the sale of goods and nothing in this Agreement is to be construed as granting profit-a-prendre to the Purchaser or granting any exclusive rights of occupation or any right of way in or over the land.

17. The Manager will not, dispose of or charge any interest in the land to any person without first disclosing provisions of this Agreement to the person and notifying the Purchaser as soon as possible.

18. Goods and Services Tax

18.1 The parties agree that:-

- (a) unless the context so excludes then the terms used in this clause shall have the same meaning as they do in the A New Tax System (Goods and Services) Act 1999 *as amended (The GST Act)*;
- (b) the consideration or payments reserved pursuant to the terms of this contract are expressed as the GST exclusive value of the supply to which they relate; and
- (c) the amount payable for any supply pursuant to this contract shall be the price of the supply calculated pursuant to this clause.

18.2 In the event that GST is payable on any supply pursuant to the terms of this contract, then the price of the supply to be paid pursuant to this contract shall be equal to the GST exclusive value of the supply plus GST payable on the supply.

19. The Manager shall supply to the Purchaser a tax invoice in relation to the supply of timber or if so required will authorise the preparation of a recipient created tax invoice.

20. The parties shall each bear their own costs of and incidental to the preparation of the agreement.

21. The risk of damage to the timber hereby sold will hereby pass from the Manager to the Purchaser as and when timber is felled.

22. The Manager reserves the following rights in relation to the timber until the full purchase price owed by the Purchaser to the Manager is fully paid:-

- (a) Legal ownership of the timber hereby sold;
- (b) To enter the Purchaser's premises or any associated company or agent where the timber hereby sold is located (without liability for trespass or any resulting damage) and retake possession of the timber hereby sold; and

- (c) To keep or sell any timber repossessed pursuant to the preceding sub-clause.
- 22.1 If the timber hereby sold is re-sold by the Purchaser, it must hold part of the proceeds of any such sale as represents the price of the timber hereby sold in a separate identifiable account as the beneficial property of the Manager and must pay the amount to the Manager on request. Notwithstanding the provisions above, the Manager is entitled to maintain an action against the Purchaser for the purchase price.
23. The law of Queensland governs this Agreement.
- 23.1 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.
24. Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.
25. If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
26. This Agreement:
- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
  - (b) supersedes any prior agreement or understanding on anything connected with that subject matter; and
  - (c) embodies and includes the provisions of the Plan and Procedures as if they were terms and conditions of this agreement
27. An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
28. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 28.1 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 28.2 A waiver is not effective unless it is in writing.
- 28.3 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

SIGNED SEALED AND DELIVERED as a )  
Deed by the Manager )

in the presence of: \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
Witness (who warrants that he is not a party to this deed or named herein)

Full name of Witness \_\_\_\_\_

Full address of Witness \_\_\_\_\_

\_\_\_\_\_  
SIGNED SEALED AND DELIVERED as a \_\_\_\_\_ )  
Deed by the Purchaser \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
Witness (who warrants that he is not a party to this deed or named herein)

Full name of Witness \_\_\_\_\_

Full address of Witness \_\_\_\_\_

## SCHEDULE 1

The Grower:  
(Name in Full) Not applicable  
Address

The Manager:  
(Name in Full) Optimum Forests Pty. Ltd.  
(Address) 236 Main Street, City

The Purchaser:  
(Name in Full) Joe Greengrass  
(Address) Forest Road, Bushville

The Contractor:  
(Name in full) Not applicable  
(Address)

The Seller  
(Name in full) Not applicable  
(Address)

The Land

ALL THAT the property containing 300 hectares or thereabouts situated at  
Forest Road, Bushville

And comprised and described as: Lot 1 on RP 666666

County of Bostich Parish of Taurus

Shire of Black Stump, the approximate position of which is shown on the Plan.



## SCHEDULE 2

# FOREST HARVESTING OPERATIONAL PLAN

Version 1 (Nov 2005)

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# FOREST HARVESTING OPERATIONAL PLAN

## PROPERTY DETAILS

Property manager/Landowner:

Address:

Property Address:

Postal Address:

Phone Number:

Home:

Mobile:

Property Description:

Vegetation Management Act Classification/s of Harvest Areas (if applicable):

## HARVEST MANAGER and/or CONTRACTOR DETAILS

Name:

Address:

Postal Address:

Phone Number:

Home:

Mobile:

## HARVEST CONTRACTOR DETAILS (if different from the above)

Name:

Address:

Postal Address:

Phone Number:

Home:

Mobile:

## RESOURCE DETAILS

**Size of Area to be Harvested (ha):**      **Gross:**                      ha      **Net:**                      ha

### **Forest Type:**

Example: Dry Eucalypt Forest, Wet Eucalypt Forest, Cypress, etc

### **Commercial Species:**

Example: Spotted gum, Grey box, Blackbutt, White mahogany, Gympie messmate, etc

### **Range of Commercial Products:**

Example: Sawlog, salvage, poles, girders, veneer billets, fencing timbers, etc

### **Management Unit Description:**

Example: Specific areas to be logged as per attached map (attach an example map)

### **Utilities Present:**

Example: Power lines, buildings, underground cables, etc as per attached map

## OPERATION LIMITATIONS

### **Safety in Harvest Operations:**

Example: All standard harvest operation signage must be erected before and during harvest operations and placed according to Workplace Health and Safety Queensland (WPHS) requirements, including the most current WPHS Queensland 'Forests Harvesting Code of Practice'.

Appropriate person protective equipment (PPE) must be worn at all times during harvest operations.

No person is to enter harvest area without appropriate PPE, which includes helmet, safety boots and high visibility vest.

All harvest machinery will have appropriate 'Roll over protection systems' (ROPS) and 'Falling object protective systems' (FOPS) according to WPHS.

### **Buffer and No Logging Zones:**

Example: Areas where no logging is permitted should be identified, zones to be marked with red paint and recorded on the attached map.

### **Filter Zones:**

Example: Areas where no felling of trees is permitted in the direction of any waterway or watercourse. Filter zones should be identified in field with paint marking and then recorded on the attached map.



**Equipment Restrictions:**

Example: A rubber tyred skidder is the only acceptable machinery for snigging operations on this property. OR A dozer with winch may be used to access steep areas.

**Roading (Construction and Maintenance):**

Example: Road maintenance for access to the property and maintenance of loading ramps for log haulage, if required, will be negotiated between the Landowner/Property Manager and Harvest Manager and/or Contractor.

**EMERGENCY FIRE EQUIPMENT**

<b>Contact</b>	<b>Contact Phone</b>	<b>Fire Equipment:</b>
E.g. Blue Ridge Rural Fire Brigade	07 59966555	Tankers, mop up

**Water Access Points:**

Example: As per attached map or identified to the Harvest Manager and/or Contractor by Landowner/Property Manager.

**HARVEST MANAGEMENT**

**Responsibility for Compliance with Regulations:**

Example: The Harvest Manager and/or Contractor “ will take full responsibility for compliance with Local, State and Commonwealth Government regulations which pertain to forest operations performed on this property under this agreement.

1. Acceptance of liability is reliant upon the accuracy of information provided by the current Landowners/Property Manager such as:
  - A. Property ownership details
  - B. Property boundaries
  - C. Local Government preservation zones
  - D. Other harvesting operation constraint
  
2. Acceptance of liability is also reliant upon the landowner/Property Manager’s abidance of the conditions set out within this agreement.

**Loading areas/log dumps:**

Example: The location of loading areas and log dumps will be negotiated between the Harvest Contractor and the Landholder/Property Manager and identified as per attached map. Any further loading areas, log dumps, and ramps will be negotiated.

**Snig Tracks:**

Example: The location of all major snig tracks will be negotiated with the Landholder/Property Manager.

**Drainage and Erosion Control:**

Example: The Harvest Contractor will drain all snig tracks and major road access after harvest completion in accordance with Queensland's Vegetation Management Act 1999, as amended, and Forest Practices Code. All associated costs of drainage will be borne by the Harvest Contractor.

**Special Feature Management Areas:**

Example: No machinery will traverse the designated SFMA as identified on the attached map.

**Post Harvest Inspection:**

Example: At the completion of harvest operations and post harvest drainage, before any harvest machinery leaves the site there will be a joint site inspection by the landholder/Property Manager and the Harvest Contractor. (The Harvest Contractor will provide appropriate notice of anticipated inspection date and time).

**INFRINGEMENT PENALTY CLAUSES****Damage to fencing:**

Example: All damage caused by harvest operations must be repaired at the Harvest Contractor's expense.

**Penalty for felling trees into a watercourse:**

Example: Harvest Contractor will avoid felling trees towards watercourses, if unavoidable all tree heads must be removed immediately.

**Penalty for harvesting marked or non available trees:**

Example: Any marked trees felled without the Landholder/Property Manager's permission will have the appropriate stumpage calculated and the Harvest Contractor will pay double the determined value. No cutting and snig rate will be paid for unauthorised removal.

**Penalty for excessive stump height:**

Example: If stump height is regularly excessive in the opinion of the harvest manager, the Harvest Contractor will be required to re-cut all identified stumps as directed by the Landholder/Property Manager.

**Management of logging smash/damage to retained trees:**

Example: The Harvest Contractor will avoid causing damage to retained trees by applying skilled directional felling techniques. In the case where tree weight distribution determines that the tree will cause damage to a retained tree, the Harvest Contractor will consult the Landholder/Property Manager.

The Harvest Contractor will take all necessary care to avoid damage to marked trees during snigging and loading operations.

The Landholder/Property Manager has the right to cease all harvest operations instantly, when excessive smash/damage to retained trees is occurring.

**Felling Debris:**

Example: The Harvest Contractor will avoid pushing logging debris or leaving felled tree heads around the base of retained trees.

**Tree Hang-ups:**

Example: All hang-up trees must be removed instantly unless for unavoidable reasons this cannot happen. In the case where a hang-up has to be left for a period, the danger zone of one tree length around the hang-up must be cordoned off with flagging tape and appropriate danger signage erected.

**HARVEST RATES AND TERMS**

**Stumpage Payment Rate:**

Example: 1000m3 @ \$80,000.00

**Stumpage Payment Terms:**

Example: Payment to landholder at ramp prior to haulage or within 14 days of receipt of timber, etc

**Cut and Snig rates:**

Example: Cut = \$10/m<sup>3</sup>      Snig = \$15/m<sup>3</sup>

**Cut and Snig rates for special products:**

Example: Rate to be paid for cut and snig of various products, if applicable.

**Proposed Commencement Date:**

Example: Date and approximate time harvest operations will commence.

**Proposed Completion Date:**

Example: An indication of the likely time frame required to complete the harvest operation.

**Harvest Plan prepared by:**

Example: Person who was responsible for the completion of this Forest Harvesting Operational Plan.

**PROPERTY OWNER RESPONSIBILITY**

Example: The Landholder/Property Manager shall not perform any forest management activities such as controlled burning, felling, tree paint marking, etc during the period of time the property is being harvested by the Harvest Contractor.



**Landholder/Property Manager:**

**Signed:** .....

**Signed:** .....

**Date:** .....

**Harvesting Manager and/or Contractor:**

**Signed:** .....

**Date:** .....

**Harvesting Contractor (if different from the above):**

**Signed:** .....

**Date:** .....

## SCHEDULE 3

# PROCEDURES FOR LOG CLASSIFICATION AND DOCUMENTATION

Version 1 (Nov 2005)

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## PROCEDURES FOR LOG CLASSIFICATION AND DOCUMENTATION

**Purpose:** The purpose of the system described and agreed to by the parties is to record all timber product cut and removed in the harvesting operation and to facilitate reconciliation of product sold with product harvested and merchandised.

**Open book:** The record of timber cut and product removed shall be open and made available to the landowner, harvest manager, haulage contractor and product purchaser.

**Initial Product identification branding:** Initial branding of each log and its stump will be done and recorded at stump by the cutter. Minimum branding details will include: Cutter number and log number.

**Snigging:** No unmarked log will be snig from the place where it was felled.

### Classification and measurement details:

Sawlogs and salvage logs are to be branded at the log dump with the log number, log length and log centre diameter (under bark) in either paint pen or by wheel hammer on the end of each log.

All salvage log numbers are circled to delineate 'salvage class' eg.

42538.

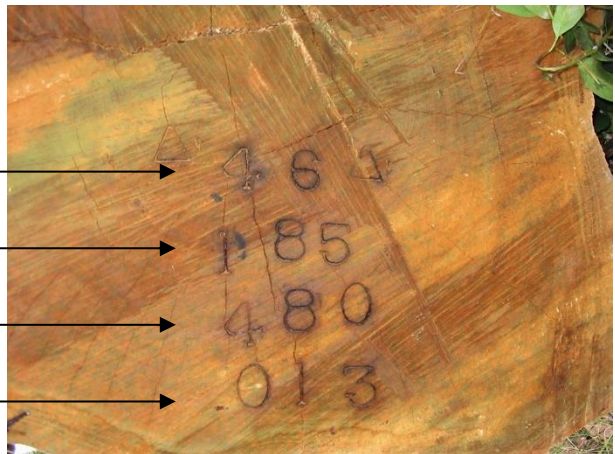
Poles are to be branded with:

Cutter number

Pole length

D-line

Pole number



Rounds are to be branded with species code, length and small end diameter on the butt of each length.

e.g. Spg 6.0 x 200

**Cutters docket:** The classification and measurement details of each log shall be recorded in a cutters docket as they are merchandised. A Copy of the cutter dockets will be made available as directed by the Landowner and/or Harvest Manager at least weekly and preferably daily.

**Multiple products:** Logs containing multiple products (eg sawlog and salvage log) shall be recorded in the cutters docket separately under the same log number with A, B, C identifiers.

The butt of the log shall be marked with the separate classification and measurement details of each product contained in the log.

**Re-entering details:** If a log already recorded in the cutters docket is further merchandised the original information is to be ruled through by a single line through the original entry in a way that the original information can still be read. Classification and measurement details of each piece (if cross cut into multiple products) shall be recorded on separate lines of the cutters docket under the original log number with A, B, C identifiers.

**Reclassifying:** The Landowner and/or Harvest Manager may re-classify or re-measure any log and the new classification or measurement shall be final. Details of the new classification or measurement shall be re-entered in the cutters docket.

**Priority Products:** All logs are to be merchandised to the highest value products as follows:

<b>PRODUCT</b>	<b>PRODUCT CODES</b>
Veneer billets	<b>V</b>
Girders	<b>G</b>
Poles	<b>P</b>
Saw log	<b>S</b>
Salvage	<b>SL</b>
Round	<b>R</b>
Fencing timber	<b>F</b>

**Product Specification:** All products shall be classified in accordance with the specifications provided by the Landowner and/or Harvest Manager or as per the attached Schedule.

**Product removal procedures:** Prior to the removal of any product from the landing the haulage contractor shall complete a load docket with sufficient details of each product loaded such as log number and log dimensions.

**Infringements:** Failure to brand any sawlog or billet at log landing may warrant suspension of operations.

**Missing logs:** Any log appearing on the cutters docket but absent from log landing or any load docket will not be paid for and a penalty deduction equal to twice product value deducted from payments.

**Payment:** All payment for cut snig and haul shall be calculated in accordance with the cutters docket details.

#### **PRODUCT SPECIFICATION**

Example: As per 'Forest Products and Marketing Guide 4', available from Private Forestry Service Queensland.

Or detail as per specific products.