

Model Contract No 1.

“Landowner Engaging a Harvest & Sales Manager”

Landowner - Harvest Manager



This model contract (No 1) provides for the situation where a landowner engages an independent third party to supervise and manage the harvest, and the sale of the landowner’s native forest products to a purchaser or purchasers. It may be adapted for use for the provision of other services such as post harvest thinning, inventory or management planning.

Disclaimer:

This publication is provided as a guide to parties involved in the native forest industry and should not be relied upon as providing all necessary or appropriate terms and conditions in any particular situation. Readers should make their own enquiries and obtain professional legal and accounting advice where appropriate, before entering any contract. The people involved in the development and issue of this guide cannot be held responsible or accept any liability for the use of this information.

- (c) walking the boundary with the Manager's representative and pegging the boundary.

3. Growers Warranties

The Grower warrants that:

- 3.1 The Grower has full right and title to the timber and to cut and sell same free of encumbrances.
- 3.2 That the consent of the mortgagee if any of the land has been obtained.
- 3.3 That no local government zoning, by-laws or local laws prevent cutting and removal of timber.
- 3.4 That the Grower shall not:
 - (a) sell to anyone timber the subject of this Agreement during the term of the Agreement;
 - (b) sell or sub-lease the land during the term;
 - (c) burn the land.

4. Agency

- 4.1 The Grower appoints the Manager as exclusive agent for:
 - (a) the engagement and supervision of harvest contractors; and
 - (b) for the sale of timber product harvested during the currency of this agreement.
- 4.2 All employees contractors and agents employed by the Manager as agent for the Grower shall be subject to the Manager's direct and exclusive supervision and control and the employment of such employees contractors and agents so employed shall be at the Grower's cost and expense and they shall for all relevant purposes be deemed to be employees contractors and/or agents of the Grower.
- 4.3 The employee's contractors and agents of the Manager shall not be subject to the direction and control of the Grower while carrying out their duties nor shall the Manager be subject to directions by the Grower as to the manner in which the Manager chooses to carry out its obligations and responsibilities hereunder.

5. Payment of the Manager

5.1 The Grower shall pay to the Manager the fees and charges set out in the Second Schedule at the times and in the manner set out in Schedule 2.

5.2 The Manager shall be authorised to deduct from any proceeds of sale received the Manager's fees and charges.

6. Harvesting Plan and Procedures.

6.1 The Manager shall immediately prepare a Forest Harvest Operations Plan (the "Plan") containing relevant detail generally in accordance with the attached pro forma (Schedule 3) and procedures for classification and documentation (the "Procedures") Schedule 4

6.2 The Grower shall within 7 days of the Plan being presented to the Grower sign a copy of such Plan confirming the Grower's agreement with the Operational Plan.

6.3 In the event that the Grower does not sign the Plan within the time limited then:

6.3.1 This agreement is at an end however the Grower will pay and the Manager may recover fees and charges involved with preparing the Plan

6.3.2 The Grower will return to the Manager if requested all material and documents provided by the Manager.

7. Performance of Management Services

7.1 The Manager must provide the management services in accordance with:

(a) milestones performance standards and timeframes specified in Schedule 2 (if any);

(b) all statutes, ordinances, by-laws and codes of practice for timber harvesting in privately owned forests in Queensland (including the Queensland Vegetation Management Act 1999, as amended and Forest Practices Code, and the Workplace Health and Safety Queensland Forests Harvesting Code of Practice).

7.2 **Warranty as to expertise, etc.**

The Manager warrants that:

- (a) the Manager and its personnel are suitably qualified and have sufficient expertise to perform the management services;
- (b) in performing the management services the Manager will not:
 - (i) breach an obligation owed to another person; or
 - (ii) cause any breach of the Vegetation Management Act or any other act.

7.3 **Responsibilities of the Manager**

The Manager must:

- (a) ensure performance of the management services and compliance with this Agreement. The Manager will not be relieved of this responsibility because of any:
 - (i) payment made to the Manager on account of the management services; or
 - (ii) subcontracting of the management services.
- (b) liaise with and comply with any reasonable requests made by the Grower.

8. **Books and Records**

8.1 The Manager must:

- (a) keep and must require its contractors to keep adequate books and records in sufficient detail to enable the amounts payable by and to the Grower under this agreement to be determined; and
- (b) keep and require its contractors to comply with procedures for log classification and documentation (Schedule 4).

8.2 **Examination of books and records**

The Grower and the Grower's representatives may at reasonable times after notice examine and copy material in the possession of the Manager which is relevant to the management services (including the Manager's books and records).

9. Insurance

9.1 In connection with the management services the Manager must have and maintain during the term valid and enforceable insurance policies for:

- (a) public liability in respect of each occurrence for at least \$10,000,000.00;
- (b) professional indemnity;
- (c) workers' compensation; and
- (d) any other insurance relevant to the management services.

9.2 Evidence of Insurance required

The Manager must give evidence of insurance required under this clause when the Grower asks for it.

10. Goods and Services Tax

10.1 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.

10.2 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.

11. Resolution of Disputes

The parties must endeavour to resolve any dispute under this agreement by mediation or other dispute resolution method before they commence legal proceedings.

SIGNED SEALED AND DELIVERED as a)
Deed by the Grower)
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 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 _____

SCHEDULE 2

Management Service Details

Commencement Date:

Term of agreement:

Management Services:

Prepare Operational Harvesting Plan:)

Prepare Procedures document for)
classification and sales documentation:)

Tree mark harvest area:

Provide or engage contractors to provide
Work and labour necessary for carrying
out harvest of timber:

Supervise for compliance with
Operational Plan harvest operations and
Product Classification:

Invite tenders or offers for sale of
product:

Owner responsible for top disposal, post
harvest silvicultural thinning treatment
and clean up.

Payment of the Manager

Insert any basis of payment this may be commission on sales/lump sum fee for service/ or rates as follows:

SCHEDULE 3

FOREST HARVESTING OPERATIONAL PLAN

Version 1 (Nov 2005)

Introduction:

This publication has been produced by the Private Forests Southern Queensland (PFSQ) and is No 3 of a series of 5 model contracts. The contracts are provided to assist parties involved in the native forest industry in their business dealings. 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.

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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:

Commercial Species:

Range of Commercial Products:

Management Unit Description:

Utilities Present:

OPERATION LIMITATIONS

Safety in Harvest Operations:

Buffer and No Logging Zones:

Filter Zones:

Stand Hygiene Standards:

Wet/Dry weather operations:

Harvesting Slope Limit:

Property Access Points:

Tree Selection Basis:

Tree Marking System:

Boundary/Logging areas clearly identified:

Maximum Stump Height:

Equipment Restrictions:

Roading (Construction and Maintenance):

EMERGENCY FIRE EQUIPMENT

Contact

Contact Phone

Fire Equipment:

Water Access Points:

HARVEST MANAGEMENT

Responsibility for Compliance with Regulations:

Loading areas/log dumps:

Snig Tracks:

Drainage and Erosion Control:

Special Feature Management Areas:

Post Harvest Inspection:

INFRINGEMENT PENALTY CLAUSES

Damage to fencing:

Penalty for felling trees into a watercourse:

Penalty for harvesting marked or non available trees:

Penalty for excessive stump height:

Management of logging smash/damage to retained trees:

Felling Debris:

Tree Hang-ups:

HARVEST RATES AND TERMS

Stumpage Payment Rate:

Stumpage Payment Terms:

Cut and Snig rates:

Cut and Snig rates for special products:

Proposed Commencement Date:

Proposed Completion Date:

Harvest Plan prepared by:

PROPERTY OWNER RESPONSIBILITY

Landholder/Property Manager:

Signed:

Signed:

Date:

Harvesting Manager and/or Contractor:

Signed:

Date:

Harvesting Contractor (if different from the above):

Signed:

Date:

SCHEDULE 4

PROCEDURES FOR LOG CLASSIFICATION AND DOCUMENTATION

Version 1 (Nov 2005)

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Model contract 1 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.

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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. (25) 4.5 x 38.

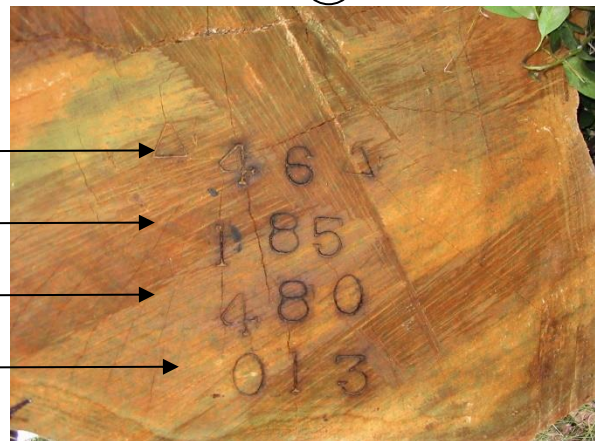
Poles are to be branded with:

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:

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

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