



Forestry Tasmania
GROWING OUR FUTURE

**FORESTRY TASMANIA
CONTRACTORS AGREEMENT
Version 1.2**

This contract is made in accordance with the Forestry (Fair Contract Codes) Act 2001 (Tas.). For the benefit of the reader, the provisions of the Forestry (Fair Contract Codes) Act 2001 (Tas) are in this Font and other provisions are in this Font

.....
(The Contractor incl. ABN/ACN)

.....
(Contract Number)

**Forestry Tasmania
79 Melville Street
Hobart Tasmania 7001**

FORESTRY TASMANIA CONTRACTORS AGREEMENT

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Date:

This Forestry Contract is made on the date in Item 1 of Schedule 1

Parties:

The parties to this Forestry Contract are Forestry Tasmania named in Schedule 1 ("Forestry");

The party named in Schedule 1 as the Contractor ("the Contractor"); and *(if applicable)*

The party named in Schedule 1 as the Guarantor ("the Guarantor").

Background:

- A. Forestry wishes to engage a Contractor to provide forestry Contract Services for its forestry operations.
- B. The Contractor may have participated in a tender process for those Contract Services.
The tender documents do not form part of the terms of this Forestry Contract.
- C. The Contractor has given warranties in the terms set out in this Forestry Contract as to its capacity to perform those Contract Services to Forestry.
- D. The Contractor agrees to provide those Contract Services, and Forestry has agreed to accept the provision of those Services, on the terms contained in this Forestry Contract.

Interpretation

In this Forestry Contract, unless the context precludes it:

- (a) the singular includes plural and the plural includes the singular;
- (b) a reference to a gender includes reference to each other gender;
- (c) a reference to a person includes a reference to a firm, corporation or other corporate body;
- (d) a reference to a statute, regulation or provision of a statute or regulation includes a reference to:
 - (i) that statutory provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted to replace that statutory provision;

- (e) a reference to writing includes a reference to printing, typing and each other method of producing words in visible form;
- (f) if a word or expression is given a particular meaning, then other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (g) headings are for convenience only and are to be ignored in construing it;
- (h) if a party consists of more than one person, then this Forestry Contract binds them jointly and each of them severally;
- (i) it binds, in addition to the parties, their respective legal personal representatives and successors;
- (j) the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation;
- (k) a reference to an act, matter or thing includes the whole or any part of that act matter or thing and a reference to a group of acts matters or things or persons includes each act matter or thing or person in that group; and
- (l) where the day on or by which any act, matter or thing is to be done is not a Business Day, such act, matter or thing must be done on the immediately following Business Day.

Definitions

In this Forestry Contract, unless the context precludes it:

"Benchmark" means a point of known height to which survey and site works are referred;

"Business Day" means any day on which banks are open for business in Hobart. Bank in this clause has the same meaning as that word is defined in the Banking Act 1959 (Commonwealth);

"Contractor" means the party named as the Contractor in Item 3 of Schedule 1 and means the Contractor personally, and where the context admits it includes the Contractor's servants authorised Sub-Contractors and agents. There is a special definition of Contractor's Associate applicable to clause 22 that is contained in clause 22.1;

"Contract Services" means the services described in Schedule 2, to be performed by the Contractor under the terms of this Forestry Contract;

"Datum" means a reference plane or surface, upon which surveying computations are carried out;

"Forestry" means Forestry Tasmania and where the context so admits includes servants authorised Sub-Contractors and agents of Forestry;

- “Forestry Contract” means a contract that provides for one party to the contract to carry out, otherwise than as an employee, a Forestry operation for another party to the contract or another person and for this Forestry Contract includes recitals and all schedules referred to herein;
- “Forest Practices Code” means the Forest Practices Code issued pursuant to Section 30 of the *Forest Practices Act 1985*;
- “Guarantor” means the party (if any) named in Item 3 of Schedule 1, as the Guarantor;
- “Liaison Officer” means the person for the time being holding, occupying or performing the duties of the office for Forestry as specified in Item 5 of Schedule 1 or such other person or persons as Forestry shall approve of;
- “Mediator” means a professional mediator appointed by agreement between the parties, or, failing agreement, by the President of the Law Society of Tasmania, or the President’s nominee at the written request of any party;
- “Nationally Based Competency Standards” means the standards of that description in the Forest and Forest Products Employment Skills Company’s Forest and Forest Products Industry Training Package from time to time;
- “Rate” means the sum of money stated in, or determined under, Item 9 of Schedule 1, that Forestry must pay the Contractor for providing the Contract Services;
- “Site” means the area, locality, coupe or compartment where the Contract Services are to be performed by the Contractor as specified within this Forestry Contract and where applicable that area as specified within the relevant Forest Practices Plan;
- “Term” means the term of this Forestry Contract fixed under clause 3.1, and includes a renewed or extended term under clause 3.3.

1. Identity of Parties

Each person who signs this Forestry Contract on behalf of a party to it, warrants separately to each other party, that the party on whose behalf he or she has signed is a validly constituted, existing legal entity, whose name, address and Australian Business Number or Australian Corporations Number (if applicable) are correctly set out in Schedule 1.

2. Engagement

Forestry and the Contractor agree that the Contractor will carry out the Contract Services for Forestry on the terms of this Forestry Contract.

3. Term, Renewal and Extension of this Forestry Contract

- 3.1 The Term starts on the Starting Date and finishes on the Finishing Date, set out in Schedule 1. Neither the Contractor nor Forestry is obliged to renew or extend the Term.
- 3.2 When at least 75% of the duration of the Term has expired, either the Contractor or Forestry may notify the other parties that the party giving the notice wishes to renew or extend the Term. Each party receiving the notice must respond within 7 days or before the Finishing Date, whichever is the sooner.
- 3.3 If Forestry and the Contractor intend to renew or extend the Term, then the parties must meet, conduct and complete all negotiations about a renewed or extended Term within 25% of the part of the Term remaining after the date of the notice under clause 3.2.

4. Relationship of Parties

- 4.1 The Contractor is an independent Contractor with Forestry to provide the Contract Services. That is the only contractual relationship between Forestry and the Contractor for the Contract Services.
- 4.2 No relationship in the nature of:
- employer/employee
 - principal/agent
 - joint venturers
 - partners
- exists between Forestry and the Contractor for the Contract Services.

5. The Contractor's responsibilities

- 5.1 The Contractor is responsible:
- (a) for the conduct of all operations required to perform the Contract Services;
- (b) for the timing of the performance of the Contract Services, consistently with any timing restrictions that :
- (i) Forestry has previously notified to the Contractor;
- (ii) are in accordance with each Schedule 1 that becomes applicable to this Forestry Contract;
- (iii) are in any Schedule Variation Note that applies to a schedule of this Forestry Contract.

- (c) for completing all minor items of work which are inferred from the works included in this Forestry Contract.
- (d) to engage, direct and pay each employee and Sub-Contractor engaged by the Contractor to perform the Contract Services;
- (e) to provide all materials necessary to perform the Contractor's obligations under this Forestry Contract at the Contractor's own cost, including providing all fuel, plant and equipment and labour, unless Forestry and the Contractor agree otherwise in writing;
- (f) (a) to ensure that all the Contractor's employees and subcontractors, either:
- (i) are competent;
 - (ii) have the necessary qualifications and accreditation to carry out the work necessary to perform the parts of the Contract Services for which they are employed or engaged to Nationally Based Competency Standards; or
- until they meet those criteria, are currently involved in a documented training program overseen by a person who has the necessary qualifications and accreditation to Nationally Based Competency Standards;
- (b) to ensure that all the Contractor's employees and subcontractors, have had all matters necessary for the safe operation of any equipment used by the Contractor's employees and/or sub-Contractors, for the purposes of completing the Contract Services, explained to them and the employees and/or sub-Contractors have demonstrated an understanding through completion of appropriate training programs of those matters in the use of that equipment;
- (g) to ensure that it, its employees and Sub-Contractors comply with all relevant State and Commonwealth legislation, in particular the Workplace Health and Safety Act (1995) Tas and the Forest Practices Act (1985) Tas;
- (h) to ensure, prior to the parties signing this Forestry Contract and any subsequent Schedule 1, and it coming into existence as an operative legal document, that it has a safety policy and safety prescription which complies with the Workplace Health and Safety Act (1995) Tas for the carrying out of the Contract Services;

- (i) to provide within 10 days upon request by Forestry, a copy of the relevant safety policy and safety prescription for the Contract Services contracted to be carried out under Schedule 1;
- (j) to provide within 10 days upon request by Forestry, a copy of the results of any safety audit of its operative safety policy and safety prescription;
- (k) to implement any changes, to its safety policy and safety prescription, recommended by any independent auditor appointed by Forestry to audit the same;
- (l) use all reasonable and proper precautions to prevent and suppress unplanned fires which may occur within the vicinity of the site;
- (m) use all reasonable and proper precautions to prevent the escape of fires, planned or otherwise, from within the site; and
- (n) to ensure that the Contract Services are performed to the standards:
 - (i) as specified in Schedule 2; and
 - (ii) as otherwise in accordance with the relevant industry codes and/or standards.

5.2 The Contractor must take out and keep in place throughout the Term:

- (a) public risk insurance with an insurer who is registered with the Australian Prudential Regulation Authority (APRA), as required under the Insurance Act 1973, Section 122:
 - (i) to cover liability for personal injury, death or property damage arising from the Contractor's obligations under this Forestry Contract, naming Forestry as principal
 - (ii) for at least Ten Million Dollars for any one claim, or series of claims, arising out of a single occurrence; and
 - (iii) extending to cover the Contractor's employees engaged in carrying out work or obligations under this Forestry Contract;
- (b) workers compensation insurance for all of the Contractor's employees, naming Forestry as a principal for the purposes of any liability that accrues to it under Section 29 of the Workers' Rehabilitation and Compensation Act (1988) Tas;
- (c) if the Contractor is a natural person, not covered by workers compensation insurance while providing the Contract Services, a

personal sickness and accident policy that provides for income protection in the event of accident or injury to the Contractor; and

- (d) insurance for each vehicle used by the Contractor to carry out the Contracted Services, covering third party property damage for at least Ten Million Dollars, naming Forestry as principal.

5.3 The Contractor must ensure that each vehicle used by the Contractor to carry out the Contracted Services has a current certificate issued by the Motor Accident Insurance Board confirming cover for personal injury arising out of the use of the motor vehicle.

5.4 The Contractor must either:

- (a) ensure that each of its sub-contractors and their employees and agents are covered by insurance of the type described in clauses 5.2(a) and 5.2(b) and 5.3, as if those subcontractors were the Contractor; or
- (b) take out and keep in place throughout the Term, a policy of insurance that indemnifies the Contractor against liability that would attach to the Contractor if the Contractor's sub-contractors and their employees and agents are not covered by insurance of the type described in clauses 5.2(a) and 5.2(b) and 5.3, as if those subcontractors were the Contractor.

5.5 The Contractor must give Forestry a certificate of currency, or other satisfactory evidence, of all insurance that the Contractor is required to take out and a certified copy of each policy. The Contractor irrevocably authorises Forestry and its representatives to make such enquiries as it considers necessary, to determine the nature and extent of the Contractor's insurances.

5.6 The Contractor shall not do nor permit to be done anything which may cause any insurance to be rendered void or voidable, including cancellation of any policy.

5.7 The Contractor shall, as soon as practicable, notify Forestry in writing of any event that may give rise to a claim under any insurance specified in this clause 5, or that may give rise to any action listed in this clause 5.

- 5.8 Forestry's directions and policies in place at the Starting Date are set out in Schedule 2. The Contractor acknowledges that Forestry retains the right to add to, vary, amend or revoke its directions and policies at any time and the Contractor agrees to comply with those directions and policies if the directions and policies are fair and reasonable and are not inconsistent with the terms of this Forestry Contract. Forestry agrees to consult with the Contractor when changing these directions and policies.
- 5.9 The Contractor agrees that the completion of the Contract Services shall be personally undertaken by such person or persons as specified in Schedule 1 and by no other person.
- 5.10 The Contractor agrees that any damage caused by the Contractor directly or indirectly, during the carrying out of the Contract Services must be repaired by, and at the cost of, the Contractor.
- 5.11 If the Contractor fails to repair any damage directly or indirectly, caused by the Contractor as referred to in Clause 5.10 hereof, then Forestry has the right to carry out remedial works, and to deduct the cost of them from any moneys due or thereafter to become due to the Contractor by Forestry under this Forestry Contract and to recover any deficiency then remaining as a debt due by the Contractor to Forestry.
- 5.12 The Contractor must:
- (a) avoid interference with or damage to property on or adjacent to the Site; and
 - (b) provide temporary protection for any property on or adjacent to the Site which may be or is at risk of being damaged; and
 - (c) repair and reinstate all damage caused by the Contractor.
- 5.13 The Contractor must:
- (a) prevent nuisance or inconvenience to the owners, tenants and occupiers of properties adjoining the Site and to the public; and
 - (b) comply in all respects with the requirements of any agreements that may be made from time to time with adjoining owners or for the protection of adjoining property, to which Forestry may be subject. If an agreement of this type exists Forestry will make available to the Contractor a relevant extract.

5.14 The Contractor is responsible for the care and maintenance of:

- (a) all materials and equipment which are the property of the Contractor and which are used or intended to be used for the purpose of carrying out the Contract Services; and
- (b) all materials and plant entrusted to the Contractor or his servants or agents by Forestry for the purpose of carrying out the Contract Services.

6. Forestry's obligations

Forestry must:

- (a) provide the Contractor with valid and authorised Forest Practices Plans for the Site, before the Contractor starts work. Forestry must make every reasonable effort to consult with the Contractor, when Forestry develops the Forest Practices Plans involving the Contract Services;
- (b) use all reasonable endeavours to provide the Contractor with authorised access to the Site when carrying out the Contracted Services.

7. Payment for Contract Services

- 7.1 Forestry will pay the Contractor the Rate specified in Item 9 of Schedule 1, and other amounts due to the contractor that are payable as specified within any other schedules to this Forestry contract, those being the only payments due to the Contractor for the Contracted Services.
- 7.2 Payments by Forestry shall be made from time to time and only upon the Liaison Officer being provided with an invoice for the Contract Services.
- 7.3 The Contractor and the Guarantor, together and separately, indemnify Forestry against any claim made against Forestry by an employee or subcontractor of the Contractor in respect of any income tax, workers compensation, annual leave, redundancy payment or long service leave entitlement.

8. Dispute and Grievance Resolution

- 8.1 A party may notify all other parties when they consider there is a dispute or grievance under this Forestry Contract. Within 14 days after notice of a dispute or grievance, the parties must meet and make every effort to resolve the matter within a further 30 days.

- 8.2 If the dispute or grievance is not resolved within the period allowed in Clause 8.1, then any party may notify the other parties, in writing, that they intend to refer the dispute or grievance for mediation by a Mediator.
- 8.3 A notice under Clause 8.1 or Clause 8.2 must be in writing and include reasonable particulars of the subject matter of the dispute or the cause of the grievance.
- 8.4 A party may be represented by another person at a mediation.
- 8.5 Forestry and the Contractor are jointly responsible for the Mediator's fees and out of pocket expenses.
- 8.6 A Mediator is entitled to inform himself or herself about matters relevant to mediation of a dispute or grievance as he or she considers most appropriate in the circumstances.
- 8.7 A Mediator's determination about a dispute or grievance is not binding on a party unless that party agrees to be bound.
- 8.8 If a dispute or grievance is not resolved by mediation, only then may a party refer the dispute or grievance to arbitration under the Commercial Arbitration Act 1986 Tas, or commence formal legal proceedings.
- 8.9 The parties must continue to perform their respective obligations under this Forestry Contract pending resolution of a dispute or grievance.

9. Assignment

- 9.1 Either Forestry or the Contractor may assign or sub-contract, partially or fully, their rights and/or obligations under this Forestry Contract if:
- (a) the intending assignor or sub-contractor gives written notice of that intention to all other parties; and
 - (b) another party does not object in writing within 30 days.
- 9.2 An objection to assignment or sub-contracting must be on reasonable grounds relating to the ability of the proposed assignee or sub-contractor to carry out the terms of this Forestry Contract.
- 9.3 Forestry may object to an assignment or sub-contracting proposed by the Contractor if, within 21 days after receiving the notice under clause 9.1(a):
- (a) the Guarantor has not consented in writing to the proposed assignment or sub-contract; and

- (b) no new guarantor, acceptable to Forestry, has entered into a guarantee in the form of clause 9.1, of the proposed assignee's or sub-contractor's obligations under this Forestry Contract.

Such an objection will be taken to have been made on reasonable grounds.

- 9.4 A dispute about assignment or sub-contracting is to be dealt with under Clause 8.

10. Periodic Rate Review

- 10.1 The parties must meet to review the Rate:
- (a) on the date in Item 10 of Schedule 1 in each year during the Term; and
 - (b) as requested by any party at any other time during the Term.
- 10.2 The parties must record the outcome of the review of the Rate, including any agreed adjustment to the Rate.

11. Periodic Performance Review

- 11.1 If the Term is 18 months or longer, the parties must meet, at least annually, during the Term to discuss:
- (a) the quality of the Contractor's performance of the Contract Services;
 - (b) the quality of Forestry's performance of its obligations under this Forestry Contract; and
 - (c) the Term.
- 11.2 A party may attend a performance review with, and be represented by, any person of their choice.
- 11.3 Forestry must take minutes of each meeting held under this clause and deliver a draft copy to the other parties within 7 days after the meeting. The parties present at a meeting must use their best endeavours to agree upon a true record of the meeting, within 21 days after the meeting.

12. Supervening Events

- 12.1 In this clause, unless the context precludes it:
- (a) "supervening event" means an event on which the affected party seeks to rely, to obtain one of the remedies under this clause.
 - (b) "affected party" means the party that is affected by a supervening event.

- (c) “non-affected party” means each party that is not the affected party, in relation to a particular supervening event.
- 12.2 If a supervening event frustrates the affected party’s ability to perform its obligations under this Forestry Contract, then the affected party may seek:
- (a) to terminate this Forestry Contract under this clause; or
 - (b) to delay the affected party’s performance of its obligations under this Forestry Contract; or
 - (c) to extend the time for the affected party to complete particular obligations under this Forestry Contract; or
 - (d) to extend the Term of this Forestry Contract.
- 12.3 If the affected party seeks one of the remedies in clause 12.2 (other than a termination of this Forestry Contract), then that remedy applies only for a delay or an extension for the period that the supervening event, or the consequences of the supervening event, actually caused.
- 12.4 If the affected party seeks to obtain the benefit of this Clause 12 to excuse their non-performance, then:
- (a) the affected party must:
 - (i) promptly give notice to the other parties of the occurrence and circumstances of the supervening event;
 - (ii) promptly take all reasonable steps to mitigate the effects of, and remedy the consequences of, the supervening event; and
 - (iii) resume performance of its obligations, in full, under this Forestry Contract as soon as reasonably practicable, unless a termination of this Forestry Contract is sought.
- If the affected party does not do all of those things, they will not be entitled to the remedy sought.
- (b) the event alleged as a supervening event by the affected party on which that party relies as a reason for non-performance, must:
 - (i) have been beyond the affected party’s control;
 - (ii) not have been the result of the affected party’s fault or negligence; and
 - (iii) not be a matter on which the affected party has given a warranty to the non-affected party.

12.5 The initial burden of proof lies with the affected party.

- (a) As part of the burden of proof, the affected party has a duty to show:
- (i) that all of the conditions in sub-clause 12.4 are satisfied;
 - (ii) that the supervening event operated in a manner that prevented the affected party from performing its obligations under this Forestry Contract;
 - (iii) that the supervening event in fact prevented the affected party from fulfilling its obligations under this Forestry Contract;
 - (iv) that the supervening event was the cause, and the only relevant cause, of the affected party's inability to perform its obligations under this Forestry Contract;
 - (v) that if it had not been for the supervening event, the affected party was ready, willing and able to perform its obligations under this Forestry Contract, without the benefit of the remedy sought;
 - (vi) that the affected party has the resources available to meet its obligations under this Forestry Contract, and would do so but for the supervening event;
 - (vii) that the supervening event was not induced by the affected party;
 - (viii) what action has been taken to perform its obligations under this Forestry Contract, regardless of the occurrence of the supervening event.
- (b) If the affected party has discharged the burden of proof under sub-clause 12.5(a), then the non-affected party bears the burden of proof to show that the affected party would not have performed its obligations under this Forestry Contract in any event.

- (c) The affected party cannot rely on the benefit of this clause if the supervening event is:
- (i) a pre-existing cause, or state of affairs, known to the affected party; or
 - (ii) intentionally or negligently caused by the affected party; or
 - (iii) reasonably foreseeable by the affected party in the context of the warranties as to competence, capacity, expertise and otherwise given by the affected party, and not expressly disclosed to the non-affected party before the date of this Forestry Contract; or
 - (iv) an act of a third party making performance impossible, if that act of a third party was reasonably foreseeable by the affected party, and not expressly disclosed to the non-affected party before the date of this Forestry Contract; or
 - (v) a lack of funds, or an inability to use available funds.

12.6 Neither party is required to settle any strikes, lockouts or other industrial disputes or disturbances on terms that are contrary to its interests. The decision as to whether the terms are contrary to the interests of the affected party rests with the affected party.

12.7 If this Forestry Contract is terminated under this clause, then the affected party must give at least fifteen (15) Days notice to the non-affected party.

12.8 If this Forestry Contract is terminated under this clause, then Forestry must pay for Contract Services completed before the effective date of termination but is not liable to make any other payments.

13. Termination

13.1 Either Forestry or the Contractor may, by written notice to the other, terminate this Forestry Contract immediately and without giving prior notice if there is a serious or persistent breach by the other of them, of this Forestry Contract.

- 13.2 Despite clause 13.1, upon breach of this Forestry Contract by Forestry or the Contractor, the other of them may, at its option, give notice to all other parties, that if the breach is not rectified within 14 days from the date of service of the notice, the party giving the notice will be entitled to terminate this Forestry Contract immediately. If the breach is not rectified within that time period, the party giving the notice may terminate this Forestry Contract by written notice to all other parties.
- 13.3 Forestry may terminate this Forestry Contract immediately by giving written notice to the other parties, if any of the following events happen:
- (a) the Contractor without reasonable cause, wholly suspends the carrying out of the Contract Services
 - (b) the Contractor fails to proceed with the Contract Services with reasonable diligence or in a competent manner
 - (c) the Contractor refuses or persistently neglects to comply with a written notice from Forestry requiring the Contractor to remove defective or improper work, materials or goods or any other direction properly given;
 - (d) the Contractor is otherwise guilty of a substantial breach of the provisions of this Forestry Contract;
 - (e) there is a change in the direct or indirect beneficial ownership or control of the Contractor without Forestry's prior written consent;
 - (f) the Contractor disposes of all or part of any assets, operations or business that are required to provide the Contract Services without Forestry's prior written consent and other than in the ordinary course of business;
 - (g) the Contractor ceases to carry on business;
 - (h) the Contractor ceases to be able to pay its debts as they become due;
 - (i) a mortgagee takes a step to take possession or dispose of all or part of the Contractor's assets, operations or business;
 - (j) the Contractor takes a step to enter into an arrangement with its creditors;
 - (k) a step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, an administrator or other like person of all or part of the Contractor's assets, operations or business;
- or

- (l) if the Contractor is a partnership, a step is taken to dissolve or otherwise change the partners in that partnership, without Forestry's prior written consent.
- 13.4 Forestry must not unreasonably withhold, or delay giving its consent under clauses 13.3 (e), (f) or (l).
- 13.5 If Forestry elects to exercise the power to determine conferred on it by clause 13.2 Forestry may:
- (a) complete the whole or any part of the Contract Services remaining to be completed and for that purpose may employ and pay other persons to carry out and complete the Contract Services;
 - (b) take possession of and use and permit other persons to use any materials, construction plant and other things which are owned by the Contractor and located at the Site and as are required or may be necessary for the purpose of carrying out and completing the Contract Services;
 - (c) require the Contractor to assign to Forestry or its nominees within five (5) days with or without payment, the benefit of any agreement to supply materials for or to perform any works under this Forestry Contract;
 - (d) upon completion of the Contract Services, retain for its own use or otherwise dispose of all constructional equipment and other things which are owned by the Contractor and located at the Site in order to make good any difference between monies due under this Forestry Contract and the final cost to Forestry of performing the Contract Services and Otherwise these items must be returned to the Contractor, but without payment and without allowance for fair wear and tear that may have been sustained in the meantime.

13.6 Notwithstanding any provisions within clauses 13.2, 13.3 or 13.4, where the Liaison Officer is not satisfied as to adherence by the Contractor to the provisions of either of the Forest Practices Code, the Workplace Health and Safety Act 1995 (Tas), Environmental Management and Pollution Control Act 1994 (Tas), Agriculture and Veterinary Chemicals (Control of Use) Act 1995 (or any regulations thereunder) or to the quality or standard of the Contract Services as otherwise specified within this Forestry Contract:

- (a) the Liaison Officer may instruct the Contractor to immediately cease work, and
- (b) the Liaison Officer may instruct the Contractor to make good, and the Contractor must immediately comply.

14. Guarantee

14.1 In return for Forestry granting this Forestry Contract to the Contractor at the Guarantor's request, the Guarantor guarantees and indemnifies Forestry on the following terms:

- (a) the Guarantor guarantees to Forestry that the Contractor will punctually observe and perform its obligations under this Forestry Contract so far as is reasonably practical;
- (b) the Guarantor indemnifies Forestry against any loss Forestry suffers because:
 - (i) the Contractor does not perform the guaranteed obligations; or
 - (ii) Forestry cannot enforce this Forestry Contract against the Contractor, because the Contractor:
 - A. has not validly executed this Forestry Contract;
 - B. is subject to a legal disability or limitation;
 - C. has acted without power; or
 - D. is insolvent;
- (c) the Guarantor agrees that:
 - (i) the guarantee is a continuing guarantee; and
 - (ii) the indemnity is a continuing indemnity,
 and both remain in full force and effect during this Forestry Contract or while the Contractor fails to comply with this Forestry Contract;

- (d) the Guarantor's liability under the guarantee or indemnity will not be discharged or reduced just because:
- (i) Forestry, without first advising the Guarantor in writing or getting their consent:
 - A. grants time, or any other indulgence, to the Contractor or to any one or more persons constituting the Guarantor;
 - B. compounds, compromises or enters an arrangement with the Contractor or any one or more persons constituting Guarantor; or
 - C. releases the Contractor or any one or more persons constituting Guarantor,in relation to this Forestry Contract, the guarantee or the indemnity or any security held by Forestry in relation to this Forestry Contract, the guarantee or the indemnity;
 - (ii) Forestry, without first advising the Guarantor in writing or getting their consent:
 - A. agrees to vary this Forestry Contract or this guarantee;
 - B. waives any breach by the Contractor of its obligations under this Forestry Contract; or
 - C. fails to enforce this Forestry Contract against the Contractor;
 - (iii) this Forestry Contract is disclaimed because the Contractor is insolvent;
 - (iv) any security that Forestry holds in relation to this Forestry Contract, the guarantee or the indemnity is void or defective;
- (e) each person who signs this Forestry Contract as a Guarantor is bound by this guarantee and indemnity even though another Guarantor:
- (i) does not sign; or
 - (ii) is not bound by this guarantee and indemnity for any reason;
- (f) the Guarantor must pay all amounts due to Forestry under this guarantee and indemnity without:
- (i) any deduction; or
 - (ii) any set-off;

- (g) if Forestry receives a payment that reduces the Contractor's liability to Forestry from any source, Forestry may apply it to any amount that the Contractor owes to Forestry, as Forestry chooses;
- (h) the Guarantor must not claim the benefit or require the transfer of any security, guarantee or indemnity held by Forestry until the Guarantor discharges all their liability to Forestry;
- (i) if the Contractor is insolvent:
 - (i) Forestry may:
 - A. prove in the insolvency for any money that the Guarantor has paid to Forestry under this guarantee; and
 - B. credit to a suspense account and apply any dividends it receives from the insolvency as it chooses until the Contractor's liability to Forestry has been paid in full; and
 - (ii) the Guarantor must not prove in the Contractor's insolvency unless Forestry first agrees in writing;
- (j) each Guarantor acknowledges that:
 - (i) they have read this Forestry Contract and the guarantee and indemnity;
 - (ii) in deciding to sign this Forestry Contract as guarantor, they did not rely on any promise, statement or information made or given by or on behalf of Forestry except those set out in this Forestry Contract;
 - (iii) they had an opportunity to get independent legal and financial advice before signing this Forestry Contract as guarantor; and
 - (iv) they are responsible to find out about this Forestry Contract, the financial position of the Contractor and any other Guarantor and any other matter affecting their decision to sign this Forestry Contract as guarantor.

14.2 Despite anything to the contrary in clause 14.1, if, without obtaining each Guarantor's prior written consent, Forestry agrees to the Contractor assigning the Contractor's rights and obligations under this Forestry Contract, then each Guarantor is released from all future obligations under this Forestry Contract from the date that the assignment takes effect. None of the Guarantor's obligations under clause 14.1, in respect of the period before an assignment takes effect, are released under this clause 14.2.

15. No legal effect

15.1 Any part of this Forestry Contract that is not in writing in the English language, has no legal effect.

15.2 Only mutually agreed written terms in the form of Schedule 4 or purchase order, as applicable, shall be legally effective as a variation of the terms and conditions contained in this Forestry Contract, timing restrictions under clause 5.1(b)(i) excepted.

16. Liaison Officer

The Contractor shall liaise with the Liaison Officer as reasonably required by the Liaison Officer during the term of this Forestry Contract.

17. Taxes

17.1 The consideration payable for any supply of goods, services or other things under this Forestry Contract is exclusive of any goods and services tax ("GST"). Notwithstanding any other term in this Forestry Contract, payments will only be made upon receipt of a complying tax invoice.

17.2 All monetary sums expressed in this Forestry Contract are deemed to be exclusive of any GST payable.

18. Payment on Submission of Claims

18.1 Invoices as referred to in Clause 7 are to be submitted to the Liaison Officer by the fifth working day of each month.

18.2 Claims subject to Clause 7, will be paid by Forestry within 30 days of the date calculated under Clause 18.1

- 18.3 Forestry is entitled to defer any payment or a proportion of a payment until the Contractor has completed those Services to the satisfaction of the Liaison Officer, including satisfaction as to the quality and standard of the same.
- 18.4 Invoices in a form approved by the Liaison Officer are to be remitted to the Liaison Officer at the address specified in Schedule 1.

19. Contract Documents

- 19.1 This Forestry Contract and each new additional schedule must be read as complementary documents. Anything required by or contained in one but not the other is equally binding as if required by or contained in both of them.
- 19.2 Any ambiguity, discrepancy or inconsistency may be explained by Forestry upon reference by the Contractor to the Liaison Officer. Upon receipt of a notice of this type the Liaison Officer will advise the Contractor of the interpretation to be followed. No direction of this type is to be construed as a variation to the Contract Services, or to be a reason for any adjustment of a contractual sum. If the Contractor finds any such ambiguity, discrepancy or inconsistency the Contractor must immediately refer it in writing to the Liaison Officer.
- 19.3 Minor items not expressly mentioned in this Forestry Contract but which are necessary for the proper execution and completion of the Contract Services must be supplied, and executed by the Contractor without adjustment to the contractual sum.
- 19.4 The Contractor must make allowance for slight variations in dimensions shown on drawings and in quantities. Forestry is not liable for any costs incurred by the Contractor as result of any such variation.
- 19.5 All documents supplied to the Contractor by Forestry for the purpose of executing the Contract Services must be returned to the Liaison Officer on completion of all work.

20. Acknowledgments as between the parties:

The Parties acknowledge that:

- (a) this Forestry Contract is intended to regulate the terms of the agreement between them;
- (b) any tender documents do not form part of this Forestry Contract;
- (c) the Contractor must only execute any schedules to this Forestry Contract or if any one executes any one of those Schedules on behalf of the Contractor, then the Contractor warrants that that person has the capacity and authority to bind the Contractor to the Schedule or other document that that person signs; and
- (d) The specific terms on which the Contract Services are to be supplied to Forestry by the Contractor will come into force by virtue of the parties signing Schedules to this Forestry Contract.
- (e) The Contract Services for each relevant schedule are to be completed on or before the date on which they are required to be completed under that schedule;
- (f) The Contract Services must be completed to the reasonable satisfaction of the Liaison Officer.

21. Contractor's Warranties

21.1 The Contractor acknowledges that Forestry has entered into this Forestry Contract on the basis of the warranties given by the Contractor in this Forestry Contract.

21.2 The Contractor warrants that it will obey all Federal, State and Local Government laws. This includes all regulations, codes of conduct, codes of practice, by-laws and any other law of competent jurisdiction.

Examples of relevant law include, but are not limited to:

Workplace Health and Safety Act 1995(Tas);

Aboriginal Relics Act 1975(Tas);

Forest Practices Code 2001;

Current Department of Labour and Industry Regulations;

Workplace Health & Safety Regulations 1998 (Tas);

Environmental Management and Pollution Control Act 1994 (Tas);

Agriculture and Veterinary Chemicals (Control of Use) Act 1995 (Tas);

and current industrial awards

- 21.3 Without limiting the generality of clause 21.2 the Contractor warrants that it will obey:
- (a) the provisions of the Workplace Health and Safety Act 1995 (Tas) and any regulations under that Act;
 - (b) all relevant Forestry directions, safety prescriptions and policies;
 - (c) the safety prescription for the Contract Services referred to in Clause 5.1(h) of this Forestry Contract; and
 - (d) any applicable Federal, State and Local Government laws relating to workplace health and safety.
- 21.4 The Contractor acknowledges that:
- (a) the Contractor must immediately notify Forestry of all accidents involving the Contractor's employees or people engaged by the Contractor which result in:
 - (i) cessation of that person's work;
 - (ii) medical treatment;
 - (iii) damage to or failure of plant and equipment.
 - (b) the Contractor must, within one working day of an accident occurring, provide to Forestry a copy of an accident report in compliance with the requirements of any applicable statutes or statutory regulations.
- 21.5 The Contractor warrants that it is able to obtain the use of all on-road vehicles and all other equipment necessary to complete the Contract Services;
- 21.6 The Contractor warrants all vehicles and equipment utilised by the Contractor for the provision of the Contract Services as:
- (a) being safe and suitable, for that purpose;
 - (b) compliant with all relevant legislation;
 - (c) being maintained in good running order; and that all repairs that need to be made on the same will be immediately carried out upon breakdown or loss of efficiency due to condition of the equipment;
- 21.7 The Contractor warrants that it possesses, or can obtain:
- (a) the financial resources necessary to carry out its obligations under this Forestry Contract; and

- (b) has control over all necessary vehicles and equipment to carry out its obligations under this Forestry Contract.

21.8 The Contractor warrants that all information given by or on behalf of the Contractor to Forestry:

- (a) in the course of the negotiation leading to this Forestry Contract is true and accurate in all respects; and
- (b) in the course of negotiations leading to new Schedules or Schedule Variation Notes to be true and accurate in all respects.

21.9 The Contractor warrants that:

- (a) the execution and delivery of this Forestry Contract has been duly and validly authorised by all necessary corporate action on behalf of the Contractor;
- (b) the Contractor has full corporate power and lawful authority to execute and deliver this Forestry Contract and to consummate and perform or cause to be performed its obligations; and
- (c) this Forestry Contract constitutes a legal, valid and binding obligation of the Contractor enforceable in accordance with its terms by appropriate legal remedy and does not conflict with or constitute or result in a breach of or default under any provision of:
 - (i) the Contractor's constitution; or
 - (ii) any material term or any provision of any agreement or any deed or any writ, order or injunction, judgment, law, rule or regulation to which the Contractor is party of, is subject, or by which the Contractor is bound; and
 - (iii) no statutory, government or other consent, authority or permit is necessary for the execution and performance of this Forestry Contract by the Contractor.

- 21.10 The Contractor warrants that there are not any claims, demands, litigation or disputes in respect of the Contractor's business or any of the assets to be used or employed in the execution of this Forestry Contract, nor are there any disputes, claims or demands in respect of them which may give rise to litigation.
- 21.11 The Contractor warrants that there are no facts or circumstances known to the Contractor that are likely to result in a material industrial dispute involving the Contractor.
- 21.12 The Contractor warrants that there are no facts or circumstances known to the Contractor that are likely to result in the revocation or non-renewal of or variation in any material respect of any permit or licence held by the Contractor in connection with the carrying out of the Contract Services or which would hinder or prevent the Contractor from undertaking the Contract Services.
- 21.13 The Contractor warrants that save for disclosure in accordance with statutory obligations, no disclosure has or will be made of any information arising from or incidental to the Contract Services by the Contractor except to Forestry.
- 21.14 The Contractor warrants that the Contractor has:
- (a) examined any drawings, specifications, schedules, conditions of tendering, contract conditions, performance standards, and all other information made available to the Contractor by Forestry;
 - (b) made independent inquiries and examined all information which is relevant to the risks, contingencies and other circumstances which could affect the Contractor's offer and which is obtainable by the making of reasonable enquires;
 - (c) obtained information, as far as is practicable, about the availability of materials, equipment and personnel necessary for the execution of the Contract Services; and
 - (d) examined the Site and its surroundings.

- 21.15 The Contractor warrants to Forestry that the Contractor has in fact undertaken the steps contemplated by clause 21.14 for the purposes of this Forestry Contract and will do so in relation to each new Schedule 1 prior to agreeing to each new Schedule 1 forming part of this Forestry Contract.
- 21.16 The Contractor warrants that:
- (a) where an expense is incurred in the performance of a warranty, that expense will be borne by the Contractor.
 - (b) at the date of this Forestry Contract no conflict of interest exists or is likely to arise in the provision of the Contract Services; and
 - (c) if during the term of this Forestry Contract a conflict or risk of conflict of interest arises the Contractor agrees to immediately notify the Liaison Officer in writing of that conflict of interest or risk of conflict of interest.

22. Waiver, Release and Indemnity

- 22.1 For the purposes of this clause:
- (a) "Contractor's Associates" means any agent, employee, sub-contractor, licensee, invitees or any similar person engaged, or invited, by the Contractor as part of providing the Contract for Services;
 - (b) "Property" includes an interest in property, and property of any kind.
- 22.2 The waiver, release and indemnity given by the Contractor to Forestry in clause 22.3 does not operate as a waiver, release or indemnity for the benefit of Forestry where the liability for the event arises from, or is attributable to any:
- (a) negligent act or omission; or
 - (b) a civil or criminal wrongful act or omission; on the part of Forestry.
- 22.3 The Contractor:
- (a) waives the benefit and protection of any rights at law, or in equity, the Contractor has or becomes entitled to against Forestry ; and

- (b) releases and surrenders any right, claim or cause of action the Contractor has or becomes entitled to against Forestry; and
- (c) indemnifies Forestry against any claim for damages or loss presently or in the future made by any person; for:
 - (i) personal injury to the Contractor or the Contractor's Associates;
 - (ii) the death of the Contractor or the death of a Contractor's Associate; and
 - (iii) damage to any Property of the Contractor or any property of a Contractor's Associate;to the maximum extent possible at law where an event of this type arises out of or is incidental to this Forestry Contract.

23. Contractor's Possession of the Site

- 23.1 Forestry grants to the Contractor exclusive possession of the Site for the duration of the carrying out of the Contract Services and any other work or activity required of the Contractor as contemplated within Schedule 1, whilst such work is being conducted by the Contractor. This grant is subject to any other rights extant at the time of the commencement of the Contract Services.
- 23.2 If Forestry meets the safety and operational requirements of the Contractor, referred to in Clause 5.1(h) of this Forestry Contract, then the Contractor may give permission to Forestry, and to any person authorised by Forestry, to access the Site.
- 23.3 The Contractor must not unreasonably withhold or delay giving its permission under Clause 23.2
- 23.4 A Forest Practices Officer pursuant to Section 40 of the Forest Practices Act 1985(Tas) may at any time, subject to meeting the safety and operational requirements of the Contractor, referred to in Clause 5.1(h) of this Forestry Contract, enter the Site.

- 23.5 Notwithstanding Clause 23.1, any valuable minerals, fossils, articles, objects of antiquity, objects of anthropological or archaeological interest, coins or articles of value found at the Site during the carrying out of the Contract Services and Forest Produce on or from the Site are and remain the property of Forestry. The Contractor must immediately notify the Liaison Officer of any such discovery. The Contractor must take all reasonable precautions to prevent the loss, removal or damage to any articles or property of that type.
- 23.6 Nothing in this Clause 23 provides a right to the Contractor to deal with the Site, or anything thereon, except as otherwise stated within this Forestry Contract.
- 23.7 Forestry may, at its discretion, revoke the grant to which this Clause 23 refers in the event of interruption, likely or actual, to the Contract Services by third parties or events, including but not limited to protest action and wild fires.

24. Timely Delivery of Materials and Availability of Staff and Equipment

- 24.1 The Contractor must as soon as practicable after the signing of this Forestry Contract and each new Schedule 1, take all steps reasonably necessary to secure the timely delivery of all materials, equipment and services, and the engagement of all personnel necessary so as not to adversely affect the progress of the Contract Services.
- 24.2 If the Contractor chooses to store materials and articles for use in the providing of the Contract Services at or near the Site, then the Contractor must take steps to protect those items from theft and damage. Any work necessary to achieve this level of security or protection is at the cost of the Contractor. The Contractor acknowledges the risk in these items is with the Contractor. The Contractor indemnifies Forestry against any loss of this type.

24.3 If Forestry chooses to store materials and articles for use in the providing of the Contract Services at or near the Site, then Forestry must take steps to protect those items from theft or damage. Any work necessary to achieve this level of security or protection is at the cost of Forestry. Forestry acknowledges the risk in these items is with Forestry. Forestry indemnifies the Contractor against any loss of this type.

25. Estimations

If Forestry provides estimations to the Contractor, then these are provided as a guide only to the extent of the Contract Services and are not guaranteed correct and do not form part of this Forestry Contract.

26. Site Measurement and Setting Out of Work

- 26.1 Forestry will take all measurements that are necessary in relation to the site as are necessary for the execution of the Contract Services.
- 26.2 The term "mark" used in this clause means a survey mark, bench mark, reference mark, level mark or any other mark used or intended to be used for the purpose of setting out, checking and measuring Contract Services under this Forestry Contract.
- 26.3 Forestry will supply the information necessary to enable the Contractor to set out the work contemplated by this Forestry Contract and will provide the Contractor with marks on site or with datum and bench marks on or adjacent to the Site.
- 26.4 Subject to clause 26.3 the Contractor must at the Contractor's expense set out the works in a form as required from time to time by Forestry, and in accordance with this Forestry Contract .
- 26.5 The Contractor must preserve and maintain in their true position all marks, except in so far as the work under this Forestry Contract requires anything to be covered or removed.

26.6 If any mark is disturbed or obliterated by the Contractor, then the Contractor must:

- (a) immediately notify the Liaison Officer; and
- (b) rectify disturbance or obliteration to the satisfaction of Forestry.

The Contractor must bear the cost of rectification. If the disturbance or obliteration has been caused by Forestry or any other person for whom the Contractor is not responsible, then the cost of the rectification is not the responsibility of the Contractor.

26.7 If at any time during the progress of the Contract Services, any error is discovered in the position, level, dimension or alignment of any part of the site then:

- (a) the Contractor must immediately when the error is discovered, notify the Liaison Officer; and
- (b) rectify the error.

The Contractor must bear the cost of rectification. If the error has been caused by Forestry or any other person for whom the Contractor is not responsible, then the cost of the rectification is not the responsibility of the Contractor.

26.8 Forestry may check the Contractor's setting out, but is not obliged to do so. If Forestry has carried out a check of this type, the Contractor is not relieved of any responsibility for the correct setting out.

27. Latent Conditions

27.1 The Contractor is deemed to have undertaken:

- (a) all actions and investigations that are contemplated by this Forestry Contract and each Schedule 1; and
- (b) those actions and investigations that a contractor experienced and competent in carrying out work of the type that this Forestry Contract and the relevant Schedule 1 contemplates; prior to entering into each Schedule 1;

27.2 If the Contractor encounters at the Site or in any area that the Contractor needs to traverse or use near the Site for the purposes of undertaking the Contract Services any natural or artificial obstructions or structures which the Contractor considers differ materially from those that

would have been ascertainable if the Contractor had undertaken the actions contemplated by clause 27.1 then the presumptions in that clause apply.

- 27.3 If in applying the presumptions under clause 27.1, it can be reasonably said that the natural or artificial obstruction or structure could not reasonably have been anticipated by the Contractor at the date of this Forestry Contract or at the date of the relevant Schedule 1 then the Contractor must forthwith (and where possible before the conditions are disturbed), notify the Forestry's Liaison Officer in writing of the conditions encountered.

28. Acceptance of Prior Work

- 28.1 If in the opinion of the Contractor any previous work is unsatisfactory or unsuitable and inhibits the carrying out of the Contract Services, then the Contractor must:
- (a) immediately notify the Liaison Officer of its opinion; and
 - (b) not proceed to carry out any further part of the Contract Services over that other work which the Contractor alleges is unsatisfactory or unsuitable; unless Forestry issues a written instruction overriding the Contractor's objection. If an instruction of this type is issued by Forestry to the Contractor, then Forestry will accept responsibility for the work that subsequently proceeds to the extent that it is affected by the prior unsatisfactory work.
- 28.2 Subject to clause 28.1, commencement of any work by the Contractor is conclusive evidence that the Contractor:
- (a) has accepted the previous work;
 - (b) will not require any extra payment or special recompense as a result of that previous work.
- Any such commencement renders the Contractor liable for all costs, expense or damage incurred by Forestry in making good any defects which result from that action in the Contractor failing to notify Forestry of prior unsatisfactory work.

29. Applicable Law

This Forestry Contract shall be governed by the law for the time being in force in the State of Tasmania and subject to Clause 8 the parties submit to the jurisdiction of the Courts of Tasmania.

30. Notices

- 30.1 Any notice demand consent in writing or other communication unless otherwise provided by this Forestry Contract is to be in writing.
- 30.2 Any notice demand consent in writing or other communication to be given or made under or pursuant to this Forestry Contract will be deemed to have been duly given or made when hand delivered or sent by prepaid post or by facsimile transmission (to the listed facsimile number) to the party to which that notice or demand or consent is required or permitted to be given or made under this Forestry Contract at the addresses specified in Schedule 1.
- 30.3 Any notice demand consent in writing or other communication shall be deemed to have been duly served:-
- (a) in the case of hand delivery when delivered;
 - (b) if sent by prepaid post on the third Business Day after the date of posting;
 - (c) if sent by facsimile transmission (provided that the sending facsimile machine produces a print out of the time date and uninterrupted transmission record of the sending of the notice) upon completion of sending if that completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9.00 a.m. on the next following Business Day in such place.
- 30.4 Any notice demand consent in writing or other communication requiring to be given or made pursuant to this Forestry Contract shall be sufficient if:-
- (a) in the case of Forestry it shall be under the hand of Forestry or its authorised agent or solicitors;
 - (b) in the case of the Contractor under the hand of the Contractor or the Contractor's agent or solicitors.
- A printed or copied signature shall be sufficient for the purposes of sending any notice demand consent in writing or other communication by facsimile transmission.

31. Severance

- 31.1 If a provision of this Forestry Contract is void or voidable by the Contractor or unenforceable by Forestry but would not be void or voidable or unenforceable if it were read down and is capable of being read down, it must be read down accordingly.
- 31.2 If, after the saving provisions of clause 31.1 have been applied, a provision of this Forestry Contract is still void or voidable by the Contractor or unenforceable by Forestry:-
- (a) if the provision would not be void or voidable or unenforceable if a word or words were omitted then that word or those words (as the case may be) are severed; and
 - (b) in any other case the whole provision is severed, and the remainder of this Forestry Contract has full effect.

32. Set Off

Forestry may recover from the Contractor or the relevant party whose default has led to this Forestry Contract's termination any loss or damage suffered by Forestry as a consequence of that party's default, which recovery may be effected, in part or in full, by way of set off against any moneys owed by or which become due from Forestry to that party whether arising under this Forestry Contract or otherwise.

33. Whole agreement

The Terms and conditions contained in this Forestry Contract and its schedules expressly or by statutory implication cover and comprise the whole of the agreement between the parties, timing restrictions under clause 5.1(b) (i) excepted.