

STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE
FORESTRY DIVISION

TIMBER SALE CONTRACT

TIMBER SALE NUMBER A-CC-YY-NN

This Contract, by and between the State of Tennessee, Department of Agriculture, Forestry Division, hereinafter referred to as the "STATE" and {Purchaser's Name} , hereinafter referred to as the "PURCHASER," provides for the sale and harvesting of timber on state forest land, as further defined in this Contract.

The PURCHASER's address is:

Street
City State, Zip Code

The PURCHASER agrees to buy and the STATE agrees to sell certain timber on {State Forest Name} Forest further described in Addendum A and location depicted on maps in Addendum B.

The PURCHASER agrees to harvest said timber and provide other services in strict compliance with all of the following conditions and requirements, which are hereby, made a part of this contract.

1. **Contract Term** - This Contract shall be effective for the period commencing on the date the contract is signed by both parties, provided that the PURCHASER complies with all terms of the Sealed Bid opened on {Date}, and ending on [END DATE]. The PURCHASER shall have until [date] to complete the logging operation. The date for the completion of this contract or other dates specified for the completion of certain terms of the contract may be subject to extension(s) at STATE's discretion.
2. **PAYMENT** - Purchase price shall be paid in full by certified or cashier's check payable to the Forestry Division in the amount of **Amount** when the timber sale contract is signed.
3. **BOND** - A performance bond in the amount of **Amount** shall be furnished by the PURCHASER. Bond will be furnished in the form of a cashier's or certified check. Said amount is returnable in full to the PURCHASER at the time the terms of this agreement have been fully met. If any conditions of this agreement are not complied with, the value of such damages or violations shall be deducted and the balance, if any, shall be returned to the PURCHASER.
4. **EXTENSIONS** - STATE has the authority to grant extensions requested in writing by the PURCHASER at a fee of twelve percent (12%) of total sale price per year or a minimum of two hundred dollars (\$200.00) per month. Extensions

will be for a minimum of one (1) month. PURCHASER must request an extension in writing at least thirty (30) days prior to the expiration date of this Contract or the date specified for the applicable activity. An extension of the term of this Contract or other specified date(s) will be effected through an amendment to the Contract.

5. **Modification and Amendment** - This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
6. **SPECIAL TERMS AND CONDITIONS** – Special terms and conditions are described and listed in Addendum C. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
7. **PENALTIES** - PURCHASER agrees to exercise caution, to prevent damage to trees not designated for harvest. Any undesignated trees cut or damaged shall be paid for at the rate of **\$3,000.00 per thousand board feet except black walnut which shall be paid for at the rate of \$3,500.00 per thousand board feet, International 1/4 Inch Rule, estimated by the STATE.**
8. **PROTECTION** - PURCHASER agrees to exercise reasonable care to prevent undue damage to roads and skid trails. STATE'S authorized representative shall have authority to temporarily close down all or any part of the PURCHASER'S operations to prevent damage.
 - A. PURCHASER must keep all roads, trails, ditch lines, fields, and streams clear of tree tops, limbs and other debris. Forest roads used in connection with this sale shall be kept in passable condition for normal use.
 - B. PURCHASER will construct on temporary roads and skid trails erosion control structures such as water bars and broad based dips to satisfaction of STATE'S authorized representative. All erosion control structures will be maintained in working condition during PURCHASER'S operations.
 - C. PURCHASER must remove daily all bottles, cans, paper and other litter from the timber sale area(s).
 - D. STATE shall have authority to stop the timber harvesting operation one day before, during, and one day after hunts. Should this be necessary, an extension of time for removing the timber will be given.
 - E. PURCHASER will prevent and suppress any forest fires in or adjacent to the sale area(s).
 - F. PURCHASER must disperse logging slash and debris from timber bunching areas to the satisfaction of STATE'S Forester.
 - G. PURCHASER shall not bring any wood cut on other property onto the State Forest or shall allow third-parties to remove wood from purchased

harvest site, excepting PURCHASER's contract logger.

9. **IMPROVEMENTS** - The location of all improvements, including sawmill sets, roads, skid trails, bridges, culverts, and timber bunching areas to be made by the PURCHASER in performing this contract shall be approved by the STATE in advance of location or construction. All structural improvements are to be removed on or before the date of completion of this contract, unless otherwise agreed upon. If PURCHASER fails to remove all improvement(s) within the stated period, they shall become the property of the STATE, but that will not relieve PURCHASER of liability for the cost of their removal and restoration of the site.
10. **LIABILITY** -. The STATE shall have no liability except as specifically provided in this Contract. The PURCHASER shall be wholly and solely responsible for any and all losses or damages caused by the PURCHASER or his employees, agents or assigns to any persons or property in connection with any of this operation, and binds and obligates himself to save and hold harmless the STATE on account of any such loss or damage, including all cost and expenses to STATE on account of any action filed against it in connection therewith. All stumpage offered for sale is sold "Where Is and As Is" without recourse. No representation, warranty (either express or implied), or guaranty is made by the STATE as to the quantity, quality, condition, size or description. Any discrepancy between the STATE'S estimated volume and the volume cut will not affect the validity of the sale or be considered the basis of a claim.
11. **SUBCONTRACTOR** - Subcontractor(s) must be approved in writing by the STATE. PURCHASER assumes any and all liability incurred by subcontractor(s). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
12. **SUSPENSION** - Any violation of this contract by the PURCHASER, as determined by the STATE, constitutes just reason for immediate oral termination of the contract and eviction from State-owned property, said oral termination and/or eviction to be followed by written termination and/or eviction within twenty-four (24) hours.
13. **CROSSING PRIVATE PROPERTY** - PURCHASER shall be responsible for securing permission to cross private property as may be convenient or necessary in the performance of this contract.
14. **CONFLICT OF INTEREST** - No employee of the State of Tennessee shall be admitted to any share or part of this sale, or to any benefit that may arise therefrom.

15. **BEST MANAGEMENT PRACTICES** - Where a more strict standard is not required by the preceding paragraphs of this contract or where this contract does not provide a standard, the standard of performance will be consistent with Department of Agriculture, Forestry Division publication "Best Management Practices (BMPs) for Timber Harvesting in Tennessee." The PURCHASER's on-site supervisor must have successfully completed Tennessee's Master Logger Program, or an equivalent program in another state. Documentation of successful completion must be provided to the STATE's Forester before any timber is cut and/or removed from the sale area(s). If a subcontractor is to be used, documentation of successful completion of the Master Logger Program, or an equivalent program by the subcontractor's on-site supervisor must be provided to the STATE's Forester at the time the subcontractor is submitted for approval.

16. **STRICT PERFORMANCE**. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision.

17. **INDEPENDENT CONTRACTOR**. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

18. **STATE AND FEDERAL COMPLIANCE**. The PURCHASER shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

19. **GOVERNING LAW**. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The PURCHASER agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The PURCHASER acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-

401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*

20. **COMPLETENESS**. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
21. **SEVERABILITY**. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
22. **HEADINGS**. Section headings are for reference purposes only and shall not be construed as part of this Contract.
23. **STATE FURNISHED PROPERTY**. The PURCHASER shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the PURCHASER's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the PURCHASER shall be responsible to the STATE for the residual value of the property at the time of loss.
24. **PROHIBITED ADVERTISING**. The PURCHASER shall not refer to this Contract or the PURCHASER's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the PURCHASER or the PURCHASER's services are endorsed.
25. **COMMUNICATIONS AND CONTACTS**. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth in Addendum D or to such other party, facsimile number, or address as may be hereafter specified by written notice.

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission

shall also be sent by United States mail on the same date of the facsimile transmission.

26. **INCORPORATION OF ADDITIONAL DOCUMENTS**. Included in this Contract by reference are the following documents:

- A. The Contract document
- B. Addenda

In the event of a discrepancy or ambiguity regarding the PURCHASER’s duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

Notwithstanding the above, the PURCHASER shall not be relieved of liability to the STATE for damages sustained by virtue of any breach of this agreement by the PURCHASER.

The STATE agrees to grant the right of ingress and egress to and from the sale area(s) across STATE-owned land.

**The Purchaser
Purchaser**

Owner or Authorized Representative

Date

Tennessee Department of Agriculture

Commissioner, Ken Givens

Date

Forestry Division

State Forester, Steven G. Scott

Date

Addendum A

EXAMPLE

Description of the Timber Sale Property and Timber being sold.

The Tennessee Department of Agriculture, Forestry Division, offers for sale certain marked timber described below:

| Forest | Tract | Comp./Stand | Acres | Boundary Color |
|--------------|-------|-------------|-------------|----------------|
| Chuck Swan | #1 | 13/78 | 17.7 | BLUE |
| Chuck Swan | #2 | 13/83 | 8.0 | BLUE |
| Chuck Swan | #3 | 13/69 | 14.1 | BLUE |
| Chuck Swan | #4 | 13/93 | 9.6 | BLUE |
| Chuck Swan | #5 | 13/73 | 13.4 | BLUE |
| Total | | | 62.8 | |

The locations of the tracts are depicted on the attached timber sale map.

Although the Forestry Division does not guarantee the accuracy of these figures, the species, estimated number of trees, and estimated board foot volume (International ¼ Inch Rule) are as follows:

| Total Sale Volume | | |
|--------------------------|----------------------------------|------------------------------------|
| Species | Estimated Number of Trees | Estimated Board Foot Volume |
| Red Oak | 793 | 318,994 |
| White Oak | 368 | 95,660 |
| Hickory | 214 | 30,233 |
| Yellow Poplar | 327 | 84,012 |
| Chestnut Oak | 269 | 78,624 |
| Pine | 35 | 9,583 |
| Miscellaneous*** | 472 | 56,581 |
| Total | 2,478 | 673,687 |

*** Miscellaneous can include post oak, black gum, beech, elm, cedar, cherry, red maple and sassafras.

Addendum B Maps

{attach map of the region and a map of the area of the timber sale. Areas of the sale should be highlighted clearly.}

Addendum C

Special Terms and Conditions

Addendum D

Communications and Contacts

The State:

Name

Address

Phone

Fax

The PURCHASER:

Name

Address

Phone

Fax

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.