



# FORESTRY

## Leaflets

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FM-3

### **Timber Sale Contract Considerations**

Selling timber is a major financial and legal venture for both buyer and seller, and often is only done once or twice in a forest owner's lifetime. Therefore, it is strongly encouraged to execute a written contract for the sale of timber. Consulting foresters can estimate your timber's value and handle your timber. The contract should be prepared or have been approved by an attorney. Doing so will protect the seller and the buyer. Consider these provisions for a timber sale contract:

#### **Start Date and Termination Date of Agreement.**

Include provisions for time extensions, if desired.

#### **Names and Addresses of Seller(s) and Buyer(s).**

Include anyone who has your expressed authority to speak on your behalf, if you are not available.

#### **Declaration of Seller's Ownership and Right to Convey.**

Seller should declare ownership of timber; and the right to convey ownership of the timber; and guarantee the title to the timber; and guarantee to defend all claims against ownership of the timber.

#### **Assignment of Contract.**

Establish whether or not the seller or buyer has the right to assign the contract to another and if so, specify those terms.

#### **Arbitration of Disputes.**

Generally, the buyer and the seller each identifies one person to arbitrate on their behalf, and these two designated individuals then agree upon a third-party to settle the dispute.

#### **Timber/Tract Location.**

Include a legal description of the area to be harvested, including acres of harvest and boundary description of the harvest area and property tract. Provide a map showing the harvest area, including important features such as streams, roads or fields.

#### **Right and Location of Ingress and Egress.**

Seller should guarantee the buyer the right to ingress (enter) and egress (exit) the property for the purposes of harvesting and removing the timber. There should also be an understanding of where this access will be provided on the property and who is responsible for improvements or repairs. Identify any gates that must be kept closed during transport of the timber and share lock/key information.

#### **Type of Harvesting.**

Explain the method of harvesting to be implemented, such as clearcut; row-thinning; select harvest; individual tree removal; seed-tree or shelterwood methods. If trees are marked, state how trees are marked for the timber harvest.

#### **Volume to be Harvested.**

State the expected volume of timber to be harvested. This could include an expected minimum and/or maximum volume. Designate the unit of volume by species and/or product class to be harvested and how the actual volume harvested will be reconciled between buyer and seller, if applicable.

#### **Utilization Requirements.**

Include specifications of products to be harvested. Describe acceptable stump heights if appropriate.

#### **Ownership of Residues.**

Establish the ownership of tree tops, limbs, chips, bark, sawdust, board slabs, cones and other tree residues.

### **Purchase Price, Method of Payment and Payment Terms.**

State the agreed-upon purchase price(s). Explain whether payment is lump-sum or paid on a per-unit basis. State when payments are to be made to the seller. For per-unit payments: (1) clearly define the prices for all species and/or product classes of timber; (2) describe what reconciliation documentation is expected to accompany per-unit payments, such as mill scale tickets; (3) explain if or how log/tree defect or cull deductions will be paid.

### **Conditions of Timber Harvest and Removal.**

Designate any specific areas that are prohibited from use during harvesting such as roads, trails, fields, pastures or other areas. Designate acceptable hours of operation for the harvesting and if prior contact is needed to access the property. Explain if specific equipment is needed to harvest the site. Determine when harvesting or transport will cease as a result of weather or inoperable site and soil conditions, and define what those site/soil condition thresholds are. Specify how limbs, tops, and other un-useable tree material will be disposed of on the site and where that material should be left.

### **Care of Other Property.**

Describe how to reconcile damage or cutting of trees that are outside the harvest area. Explain what the expectations are for the use, improvement, maintenance and repair of roads, bridges, culverts, gates, fences, ditches, buildings, utility lines or other infrastructure on the property.

### **Measures to Protect Water Quality.**

Identify streams, wetlands or other bodies of water in the harvest area and how those water areas are recognized on the ground. Cite requirements to comply with all applicable state and federal water quality regulations, including the establishment of Streamside Management Zones (SMZ's) if needed, and compliance with the other standards defined by the N.C. Forest Practices Guidelines Related to Water Quality (FPG's), and compliance with other applicable water quality rules or laws. Designate if stream or ditch crossings will be needed to harvest the timber, including the location and number of crossings. Specify who is responsible for erosion control stabilization and rehabilitation during the harvest and at what point the buyer is free and clear from further stabilization responsibilities.

### **Measures to Protect Wildlife Habitat and Recreational, Cultural or other Resources.**

If desired, specify what actions are to be taken to protect identified wildlife habitat, recreational resources or cultural resources. Wildlife habitat measures may include retention of dead standing trees ("snags"); retaining certain nut or berry-producing trees in the harvest area; and/or revegetating bare soil areas with ground cover that is favored by wildlife.

### **Fire Protection.**

Buyer should be required to comply with all fire laws and immediately suppress any fire that is a result from the timber harvest activity. Specify liability of damaging property, trees and crops that may result from the fire.

### **Natural Disaster.**

Include terms to specify how the purchase may be affected by a natural disaster that damages the timber during the time the sale contract is in effect. Situations may include wind, ice, wildfire, or insect/disease outbreaks.

### **Performance Bond and Financial Responsibility of the Buyer.**

The seller may choose to require the buyer to post a bond prior to beginning harvest. Specify if the bond is refundable, and if so, whether any interest will be paid. The buyer should be compelled to carry liability insurance, workers compensation insurance, and property/casualty insurance. The seller may wish to require that the buyer produce proof of valid insurance coverage prior to allowing harvest to occur.

### **Signatures and Notarizations.**

Includes buyer and seller. If land or timber is co-owned, then all seller parties may be required to sign a contract.

### **Recording of Contract/Deed.**

Timber is considered real property and a contract conveys ownership of that real property. Timber sale contracts should be recorded at the county courthouse. Specify who pays the costs associated with recording of the timber deed(s).



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