

AMENDED TO REMOVE COMMERCIAL IN CONFIDENCE SECTIONS

SMITHTON WOOD SUPPLY AGREEMENT

Ta Ann Plywood Sdn Bhd

Ta Ann Tasmania Pty Ltd

Forestry Tasmania

16 January 2006 as amended

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AGREEMENT made this 16th day of January 2006

BETWEEN

FORESTRY TASMANIA

ABN 91 628 769 359
of 79 Melville Street, Hobart in Tasmania
(hereinafter referred to as “Forestry Tasmania”)

AND

TA ANN TASMANIA PTY LTD

ABN 58 115 743 345
of 59 Harrington Street, Hobart in Tasmania
(hereinafter referred to as “the Purchaser”)

AND

TA ANN PLYWOOD SDN BHD

Company No: 208737-T
of No 6 Jalan Rawang, Sibu in Sarawak, Malaysia
(hereinafter referred to as “the Guarantor”).

RECITALS

- A. The Parties wish to enter into this Contract, being a contract for the supply of logs by Forestry Tasmania to the Purchaser for processing at the Purchaser’s proposed rotary peeled veneer mill at the Circular Head Wood Centre in northwest Tasmania.
- B. Forestry Tasmania owns, or has the right to harvest, State forests throughout Tasmania.
- C. The Parties have reached agreement on terms, including prices, for the supply and purchase of logs to the Purchaser by Forestry Tasmania.
- D. The Purchaser intends to construct and operate a rotary peeled veneer mill, and Forestry Tasmania intends to construct and operate a merchandiser, at the Circular Head Wood Centre in northwest Tasmania in each case.
- E. Logs will be supplied by Forestry Tasmania and purchased by the Purchaser from the Smithton Merchandiser, unless otherwise advised by Forestry Tasmania.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

The following meanings apply, unless the contrary intention appears.

“Billet” means a billet that is not Milling Timber and that meets the specification to which Clause 9 refers.

“Business Day” means a day (not being a Saturday or Sunday) on which banks (as defined in the *Banking Act 1959 (Cwlth)*) are open for business in Hobart.

“Circular Head Wood Centre” means the timber processing centre in the Circular Head district which may contain a number of individual processing plants, but which is planned to contain at least the following four fundamental elements:

- (a) the Smithton Merchandiser;
- (b) the Smithton RPV Mill; and
- (c) a woodchip mill for the production of woodchips,

and which is the property defined by title 1085113 to which Newood Smithton Pty Ltd Lease No. 002-1 refers.

“Commencement Date” means the first date by which all of the Conditions Precedent have been fulfilled or waived.

“Commissioning Commencement Date” means the date specified in a notice issued in accordance with Clause 6.1 by the Purchaser as the date upon which Billets are first required to be made available by Forestry Tasmania for processing at the Smithton RPV Mill.

“Commissioning Period” means the period from the Commissioning Commencement Date to the earlier of:

- (a) the date upon which RPV Mill Operations commence; or
- (b) one month after the Commissioning Commencement Date.

“Condition Precedent” means any of the conditions precedent specified under Clause 3.1.

“Conditions Precedent Date” means the date by which all of the Conditions Precedent must be fulfilled or waived, or another date agreed in writing between Forestry Tasmania and the Purchaser.

“Confidential Material” means:

- (a) the terms and conditions of this Contract; and
- (b) any material or data provided by a Party to the other Party about any aspect of this Contract, that:
 - (i) is by its nature confidential;
 - (ii) is designated by the providing Party as confidential; or
 - (iii) the receiving Party knows, or ought to know, is confidential.

“Contract” means this contract.

“Direct Loss” means any loss, cost, damage, liability or exposure incurred by a Party as a direct result of the failure or breach but excluding any indirect or consequential loss incurred by a Party such as loss of profit, loss of contracts, payment of damages under any agreement other than this Contract, loss of goodwill or any other indirect loss or damage.

“Default Rate” means the aggregate of two per cent per year and:

- (a) the rate published by the Commonwealth Bank of Australia and known as the “Corporate Overdraft Reference Rate” for a monthly charging cycle as published on that Bank’s website (www.commbank.com.au) on the day on which the Default Rate is calculated by the complying Party, but without reference to any customer interest margin; or
- (b) if the rate referred to in paragraph (a) is not available for any reason, a replacement rate reasonably determined by Forestry Tasmania after consultation with the Purchaser.

“Dispute” means a dispute or difference of any kind between Forestry Tasmania and either or both of the other Parties arising under, out of, or in connection with, this Contract whether before or after the termination, abandonment or breach of this Contract.

“Event of Force Majeure” means any event or circumstance, or combination of events and circumstances meeting all of the following requirements:

- (a) the event or the circumstance is beyond the reasonable control of the concerned Party and was not caused by the concerned Party’s negligent act or omission;
- (b) the event or circumstance prevents or delays the concerned Party from performing some or all of its obligations under this Contract; and

- (c) the event or circumstance comprises:
- (i) fire, flood, storm, earthquake, land slide, volcanic eruption, epidemic, quarantine restriction or other forces of nature;
 - (ii) significant mechanical failure;
 - (iii) nationwide, statewide or industry wide strikes or other labour disputes;
 - (iv) exercise of powers under a Law by a government or regulatory agency relating to emergencies, public health or safety or circumstances of a similar nature;
 - (v) a change in Law;
 - (vi) riots, revolution, civil commotion, malicious damage, sabotage or terrorist activity, act of war whether declared or not, or warlike operations;
 - (vii) confiscation, expropriation or embargo;
 - (viii) explosion or nuclear accident; or
 - (ix) the effect direct or indirect of the exercise of executive power or discretion by the Commonwealth, State, local or a foreign government,

but does not include any lack of, or an ability to use, money or available funds for any reason.

“Independent Expert Dispute” means a Dispute between the Forestry Tasmania and the Purchaser as to the classification of logs under Clause 9 and not resolved under Clause 12 or a Dispute as to whether any notice is reasonable where reasonable notice is required to be given under this Contract.

“Insolvency Event” means any of the following events:

- (a) an application is made to a court for an order (and is not stayed, withdrawn or dismissed within ten Business Days) or an order is made that a body corporate be wound up;
- (b) an application (which is not withdrawn or dismissed within ten Business Days) is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;
- (c) a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or an assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of an intention to do so or is otherwise wound up or dissolved;

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- (e) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation;
- (f) a resolution is passed to appoint a receiver, receiver manager, or administrator or any such officer is appointed to a body corporate; or
- (g) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

“Interest” means interest calculated on a simple interest basis.

“Law” includes:

- (a) Commonwealth, State or local acts, ordinances, regulations, bylaws, order, awards, local laws, statutes, proclamations, codes, standards or guidelines;
- (b) principles of law or equity established by decisions of courts;
- (c) provisions of the Constitution of Tasmania, and the Constitution of the Commonwealth of Australia; and
- (d) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (c) of this definition, whether in existence at the date of this Contract, or coming into existence after that date.

“Long Billets” means Billets of the lengths set out in Clause 4.1 of Schedule 1.

“Loss” includes any loss, liability, cost, expense, claim, proceeding, action, demand or damages, including legal costs and expenses on a full indemnity basis, indirect loss, consequential loss, liability to third Parties and loss of profit, but does not include Direct Loss.

“Memorandum of Understanding” means the memorandum of understanding dated 18 December 2005 between, amongst others, Forestry Tasmania, the Purchaser and the Guarantor.

“Merchandising Yard Logs” means logs delivered to the Smithton Merchandiser for segregation into forest products.

“Milling Timber” means logs that meet any one of the following specifications as determined by Forestry Tasmania from time to time:

- (i) eucalypt Category 1 and 3 sawlogs;
- (ii) eucalypt VQ1 veneer logs;
- (iii) eucalypt VQ2 veneer logs; or
- (iv) eucalypt VR1 veneer logs.

“Option Fee” means the option fee to which Clause 3.1(a)(i) refers.

“Parent Company” means Ta Ann Holdings Berhad (Company No: 419232-K) of No 6 Jalan Rawang, Sibul, Sarawak, Malaysia.

“Party” means a party to this Contract.

“Performance Guarantee” means the bank guarantee referred to in Clause 13.3(a), and any replacement guarantee.

“RPV Mill Operations” means that the Smithton RPV Mill is processing Billets on a regular basis at volumes which, on a pro rata basis, equate to at least 80% of the Annual Supply outlined in Clause 5.1.

“Short Billets” means Billets of the lengths set out in Clause 4.2 of Schedule 1.

“Smithton Merchandiser” means a facility on the Smithton Merchandiser Site at the Circular Head Wood Centre for the segregation of Merchandising Yard Logs into Billets and other forest products, operated by Forestry Tasmania.

“Smithton Merchandiser Site” means the land defined as “Premises” in the Newwood Smithton Pty Ltd Lease No. 001-1 dated 20 April 2003.

“Smithton RPV Mill” means the rotary peeled veneer mill on the Smithton RPV Mill Site at the Circular Head Wood Centre designed and built to process the estimated quantity of Billets to be made available under this Contract and operated by the Purchaser.

“Smithton RPV Mill Site” means that land referred to in FT Drawing 9152-15.

“Supply Year” means either:

- (a) if a period of twelve months commencing on 1 July comes within the term of this Contract, that twelve month period; or
- (b) if any part of a twelve month period commencing on 1 July precedes the Commencement Date or does not come within the term of this Contract, that twelve month period (referred to in Clause 23.1 as “the first Supply Year”) less the period that precedes the Commencement Date or that does not come within the term of this Contract as the case may be (referred to in Clause 5.1 as an “Incomplete Supply Year”).

1.2 Interpretation

Unless expressed to the contrary in this Contract, the following interpretations apply to this Contract.

- (a) Derivatives of any term to which a meaning is assigned in this Contract shall have a corresponding meaning.

- (b) If any provision of this Contract is void, voidable by any Party or illegal, then it shall be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or, where possible, the offending words) shall be severed from this Contract without thereby affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Contract, which shall continue in full force and effect.
- (c) Words importing the singular number include the plural and vice versa.
- (d) A reference to a gender includes the other gender.
- (e) Headings are included as a convenience only and do not affect the interpretation or construction of this Contract.
- (f) The Parties acknowledge that, where the term “reasonable endeavours” is used in this Contract, that term:
 - (i) requires only that the relevant Party will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities; and
 - (ii) does not impose any obligation on a Party:
 - (A) to act to the Party’s detriment or to the detriment of any third party;
 - (B) to alter any method of operation to the Party’s detriment; or
 - (C) to place the other Party’s interests before its own or before any other customer’s interests (including the interests of its new customers).
- (g) A reference to this Contract includes schedules and appendices and any variation or replacement of any part of it.
- (h) A reference to a Party includes a reference to the Party’s executors, administrators, successors and permitted assigns.
- (i) A term of inclusion must not be interpreted to be a term of limitation.
- (j) All references to money in this Contract are to Australian dollars and all payments made in accordance with this Contract are to be in Australian dollars.
- (k) A reference to the payment of money within a specified time is a reference to the full clearance of any cheque into the account of the payee within that time.

2. TERM

- 2.1 Subject to Clause 3.1 and this Clause 2, this Contract commences on signing and expires on 31 December 2022.

2.2 The Purchaser may, by written notice given to Forestry Tasmania during the period between 1 January 2019 and 31 December 2019, extend the term of this Contract by a further five years and, if such notice is given, the term of this Contract will be deemed to be extended to expire on 31 December 2027, provided that, this Clause 2.2 will not apply to any such extended period.

2.3 The Parties agree that they will meet during the period between 1 January 2022 and 31 December 2022 to discuss whether, and may agree that, this Contract will be extended by a second term of fifteen years, with provision for a further extension of an additional five years. The parties make no representations or warranties as to what the outcome of those discussions may be.

3. CONDITIONS PRECEDENT

3.1 The rights and obligations of the Parties under this Contract, other than those rights and obligations to which this Clause 3 and Clauses 1, 4, 6, 9, 13.3, 15, 16, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 refer, are conditional on:

(a) the Purchaser:

- (i) making payment to Forestry Tasmania of the non refundable Option Fee in two parts by the relevant dates as follows:
 - (A) , by 30 June 2006; and
 - (B) , by 31 December 2006;
- (ii) advising Forestry Tasmania by 31 December 2006 that it has received from the Parent Company advice that the necessary approval has been obtained from the Parent Company's shareholders for the Purchaser to proceed with construction and operation of the Smithton RPV Mill;
- (iii) appointing the principal construction contractor for the construction of the Smithton RPV Mill building and providing evidence of any such building contracts to the reasonable satisfaction of Forestry Tasmania by 31 May 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing);
- (iv) providing, by 31 May 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing), evidence to the reasonable satisfaction of Forestry Tasmania that:
 - (A) the Purchaser has clear and available funds sufficient to complete the construction of the Smithton RPV Mill and to conduct RPV Mill Operations; or

- (B) all financing documents and agreements required for the Purchaser to obtain sufficient finance from a solvent and reputable financier to enable the Purchaser to complete the construction of the Smithton RPV Mill and to conduct RPV Mill Operations have been fully executed and that such finance is available for immediate draw down by the Purchaser;
 - (v) receiving confirmation in writing from Newood Smithton Pty Ltd, by 18 January 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing), that the Circular Head Council has issued a planning and environment permit that allows operation of a rotary peeled veneer mill on the Smithton RPV Mill Site;
 - (vi) providing details and evidence of agreements to sell veneer produced at the Smithton RPV Mill on or before 31 May 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing);
 - (vii) obtaining, by 16 June 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing), all building and other approvals and permissions required for the lawful construction of the Smithton RPV Mill;
 - (viii) confirming in writing to Forestry Tasmania, by 18 March 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing), the planned dates for construction and commissioning of the Smithton RPV Mill;
 - (ix) completing the construction of all building and structural works needed for the Smithton RPV Mill other than works needed for installation of equipment for the Smithton RPV Mill by 31 January 2008 (or such other date as Forestry Tasmania and the Purchaser may agree in writing);
 - (x) issuing the notice referred to in Clause 6.1 to Forestry Tasmania such that the Commissioning Commencement Date occurs by 28 April 2008 (or such other date as Forestry Tasmania and the Purchaser may agree in writing);
and
 - (xi) commissioning the Smithton RPV Mill during the Commissioning Period such that RPV Mill Operations have commenced by 8 May 2008 (or such other date as Forestry Tasmania and the Purchaser may agree in writing).
- (b) Forestry Tasmania:
- (i) confirming in writing to the Purchaser, by 18 March 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing), the planned dates for construction and commissioning of the Smithton Merchandiser;

- (ii) obtaining, by 14 December 2007 (or such other date as Forestry Tasmania and the Purchaser may agree in writing), all building and other approvals and permissions required for the lawful construction of the Smithton Merchandiser; and
 - (iii) completing construction of the Smithton Merchandiser by 28 March 2008 (or such other date as Forestry Tasmania and the Purchaser may agree in writing), such that it is capable of processing Merchandising Yard Logs.
- 3.2 The Purchaser must use its reasonable endeavours to fulfil the Conditions Precedent referred to in Clauses 3.1(a) by the required dates.
- 3.3 Forestry Tasmania must use its reasonable endeavours to fulfil the Condition Precedent referred to in Clause 3.1(b) by the required dates.
- 3.4 The Conditions Precedent are for the benefit of Forestry Tasmania and the Purchaser and may only be waived by the agreement of those Parties.
- 3.5 If either Forestry Tasmania or the Purchaser considers that a Condition Precedent has been fulfilled or waived, then it must promptly give the other Party a notice to that effect.
- 3.6 If either Forestry Tasmania or the Purchaser receives a notice under Clause 3.5, then it must promptly inform the other Party whether or not it agrees that a Condition Precedent has been fulfilled or waived.
- 3.7 If Forestry Tasmania and the Purchaser do not agree as to whether or not a Condition Precedent has been fulfilled or waived then either Party may refer the matter as a dispute in accordance with Clause 22.
- 3.8 After the last Condition Precedent is:
 - (a) fulfilled; or
 - (b) waived under Clause 3.4,all remaining rights and obligations of the Parties under this Contract become unconditional.
- 3.9 If any of the Conditions Precedent have not been fulfilled (or waived) by the required dates (or such other dates as may be agreed in writing by Forestry Tasmania and the Purchaser), then either Forestry Tasmania or the Purchaser may give notice to the other that this Contract will terminate, specifying:
 - (a) the Conditions Precedent that have not been fulfilled or waived; and
 - (b) the date on which this Contract will terminate, being a date not earlier than fourteen days after the date on which the notice is given.
- 3.10 If the Conditions Precedent are not fulfilled or waived by the date specified in accordance with Clause 3.9(b), then this Contract will terminate on the date specified in the termination notice under Clause 3.9(b).

3.11 If this Contract terminates under Clause 3.10, then, in addition to any other rights, powers or remedies provided by law:

- (a) each Party is released from its obligations to further perform this Contract other than those obligations to which Clauses 4, 13.3, 19, 22, 23, 25, 26, 30, 31 and 32 refer; and
- (b) each Party retains the rights it has against any other Party in respect of any past breach.

4. WARRANTY AND ACKNOWLEDGEMENTS

4.1 The Purchaser and the Guarantor each warrant that they have not relied upon any representation made by Forestry Tasmania which has not been stated expressly in this Contract, nor upon any description or illustration or specification contained in any document produced by Forestry Tasmania.

4.2 Forestry Tasmania warrants that it has not relied upon any representation made by either or both the Purchaser and the Guarantor which has not been stated expressly in this Contract, nor upon any description or illustration or specification contained in any document produced by either or both the Purchaser and the Guarantor.

4.3 The Parties each acknowledge that:

- (a) in entering into this Contract they have not relied upon any statement representation, warranty, condition or other conduct which may have been made by another Party or by any person purporting to act on behalf of such other Party, other than those stated expressly in this Contract;
- (b) no representation or warranty, either express or implied, is made by any Party, nor does any Party have any liability to any other Party, in relation to:
 - (i) the Circular Head Wood Centre;
 - (ii) the Smithton RPV Mill; or
 - (iii) RPV Mill Operations,

including, but not limited to, the development, construction, completion, commencement or operation of any of them as the case may be and each Party waives all present and future rights to claim against any other Party for loss of any kind arising out of or connected with any such matter;

- (c) except as expressly set out in this Contact:
 - (i) no other representation or warranty, either express or implied, is made by any Party in relation to the Smithton Merchandiser; and
 - (ii) no Party has any other liability to another Party in relation to the Smithton Merchandiser,

and each Party (referred to in this Clause 4.3(c) as “the first Party”) waives all present and future rights to claim against another Party for loss of any kind arising out of or connected with the Smithton Merchandiser, other than in accordance with the first Party’s rights under this Agreement;

- (d) they have had the opportunity to conduct due diligence connected with the Smithton RPV Mill and the Circular Head Wood Centre and have satisfied themselves in relation to all matters arising from that due diligence; and
- (e) they have independently, and without the benefit of any inducement, representations or warranty from another Party or its representatives, determined to enter into this Contract.

5. QUANTITY AND TIMING OF SUPPLY

- 5.1 From the Commencement Date and subject to the provisions of this Contract, Forestry Tasmania must make available to the Purchaser, and the Purchaser must purchase from Forestry Tasmania, Billets at an annual rate of cubic metres for each Supply Year, or the relevant pro rata amount for any incomplete Supply Year that may occur during the term of this Contract (the “Annual Supply”).
- 5.2 Forestry Tasmania gives first right of refusal at market price to the Purchaser, to purchase logs:
 - (a) that are suitable for peeling;
 - (b) that are surplus to the amount required to supply the Annual Supply to the Purchaser under this Contract;
 - (c) that are from the area of State forest from which the logs used to supply the Annual Supply under this Contract are generally obtained; and
 - (d) that Forestry Tasmania would otherwise sell to a third party for peeling by that party.
- 5.3 For each Supply Year, subject to Clause 5.12:
 - (a) the nominal amount the Purchaser is to purchase and Forestry Tasmania is to make available in each month is one twelfth of the Annual Supply (“the Nominated Monthly Supply”);

- (b) the minimum monthly amount to be made available by Forestry Tasmania and purchased by the Purchaser is 90% of the Nominated Monthly supply (the “Minimum Monthly Supply”);
- (c) the maximum amount to be made available by Forestry Tasmania and purchased by the Purchaser is 110% of the Nominated Monthly supply (the “Maximum Monthly Supply”); and
- (d) Forestry Tasmania will use its reasonable endeavours to supply the monthly amount to be made available by Forestry Tasmania in the following proportions:
 - (i) 70% in the form of Long Billets; and
 - (ii) 30% in the form of Short Billets,unless Forestry Tasmania and the Purchaser agree otherwise.

- 5.4 The Purchaser and Forestry Tasmania will agree upon a system of orders for the supply of Billets on a daily basis, to ensure the smooth operation of the Smithton Merchandiser and the Smithton RPV Mill. The Purchaser and Forestry Tasmania acknowledge that the relevant daily amount will be based on the Purchaser’s anticipated requirement for cubic metres of Billets per day and that it is the Purchaser’s intention to operate the Smithton RPV Mill on the basis of three shifts per day, five days per week.
- 5.5 Forestry Tasmania agrees to maintain at the Merchandiser Yard Site such quantity of Merchandiser Yard Logs as is estimated to be required to produce two weeks’ supply of Billets under this Contract. The quantity to which this Clause 5.5 refers may be varied by agreement between the Parties.
- 5.6 Subject to Clause 5.12, Forestry Tasmania must make available and the Purchaser must purchase during each month throughout this Contract not less than the Minimum Monthly Supply.
- 5.7 The Purchaser requests Forestry Tasmania to make available during each month throughout the period of this Contract the Nominated Monthly Supply. The Purchaser must purchase the quantity of Billets made available each month in accordance with this Clause 5.7.
- 5.8 Subject to Clause 5.9, Forestry Tasmania must use its reasonable endeavours to comply with the request of the Purchaser under Clause 5.7, but, in so doing, Forestry Tasmania may make available to the Purchaser and the Purchaser may purchase in that month a quantity of Billets up to the Maximum Monthly Supply.
- 5.9 If, during or in respect of any month, Forestry Tasmania offers to make available to the Purchaser a further quantity of Billets which is such that:
- (a) the further quantity, when added to the Minimum Monthly Supply would exceed the Maximum Monthly Supply; or

- (b) the further quantity, when added to the Minimum Monthly Supply and the total quantity already made available for that Supply Year, would exceed the Annual Supply for that Supply Year,

then the Purchaser is not required to, but may, purchase the excess quantity or such part thereof as the Purchaser thinks fit.

- 5.10 Any quantity made available under Clause 5.9 will be taken in satisfaction of the required Annual Supply.
- 5.11 Subject to Clause 7, the Purchaser may vary the Nominated Monthly Supply quantity for any month provided that Forestry Tasmania consents to the variation and provided that Forestry Tasmania is given reasonable notice of the variation by the Purchaser. Any assessment of reasonable notice that may arise as a result of the application of this Clause 5.11 is to take into account:
 - (a) Forestry Tasmania's total supply obligations at that time; and
 - (b) the time reasonably required to alter operations and scheduling in an economic manner to accommodate the proposed variation.
- 5.12 In complying with its obligation to make the Annual Supply available to the Purchaser, Forestry Tasmania will use its reasonable endeavours to make available to the Purchaser the Nominated Monthly Supply in each month, provided that Forestry Tasmania:
 - (a) must make available to the Purchaser not less than the Minimum Monthly Supply in each month; and
 - (b) will be deemed to have satisfied its monthly supply obligation in respect of any month in which it has supplied less than the Nominated Monthly Supply, provided that it must use its reasonable endeavours to make up the shortfall over the next month, or as otherwise agreed, at as even a rate of supply as is reasonably practical and provided that the Annual Supply is not thereby exceeded, unless the Purchaser and Forestry Tasmania have agreed that the Annual Supply may be exceeded.
- 5.13 Subject to the preceding parts of this Clause 5, and unless otherwise agreed between the Purchaser and Forestry Tasmania, Forestry Tasmania will use its reasonable endeavours to maintain as even a rate of supply as is reasonably practicable.
- 5.14 The Purchaser and Forestry Tasmania may agree from time to time on terms for the supply of additional quantities of Billets to those set forth in Clause 5.1.
- 5.15 Notices under this Clause 5 may be given by facsimile or by letter.

6. SUPPLY DURING THE COMMISSIONING PERIOD

- 6.1 Within one month of the Condition Precedent described in Clause 3.1(a)(ix) being fulfilled, the Purchaser must give Forestry Tasmania written notice which:
- (a) provides at least two months written notice of the date upon which Billets are first required to be made available by Forestry Tasmania for processing at the Smithton RPV Mill; and
 - (b) includes with it an original and duly executed Performance Guarantee.
- 6.2 The following supply arrangements will apply for the Commissioning Period:
- (a) the Commissioning Period will apply for no more than one month;
 - (b) subject to the Purchaser providing reasonable notice to Forestry Tasmania of the quantities of Billets it requires for commissioning, Forestry Tasmania will supply up to 10,000 cubic metres of Billets to the Purchaser unless the Purchaser and Forestry Tasmania agree otherwise; and
 - (c) the price payable by the Purchaser for Billets supplied during the Commissioning Period will be the relevant price payable under Clause 10 as though the Commencement Date had occurred.

7. QUALIFICATION OF COMMITMENT TO SUPPLY AND TAKE OR PAY

- 7.1 If the quantity of Billets purchased by the Purchaser for use in the Smithton RPV Mill is less than of the Annual Supply in each of any three consecutive Supply Years, then Forestry Tasmania may reduce its obligation to supply Billets for the remaining term of this Contract to an amount equal to the average quantity of Billets purchased by the Purchaser for use in the Smithton RPV Mill in those Supply Years (hereinafter referred to as the “New Annual Supply Amount”).
- 7.2 Subject to Clause 7.4, Forestry Tasmania may sell to other Parties any Billets not taken by the Purchaser in any Supply Year in accordance with this Contract.
- 7.3 Subject to Clause 7.4, the Purchaser may sell to other Parties any Billets taken by the Purchaser in any Supply Year in accordance with this Contract.
- 7.4 In the event of an unavoidable cessation of processing at the Smithton RPV Mill and subject to Clause 18.4, the Purchaser and Forestry Tasmania will seek to agree on alternative Billet supply arrangements for the period. If agreement is not made then Forestry Tasmania may make supply available to a third party, without prejudice to its rights under the remainder of this Contract.

7.5 If the quantity of Billets purchased by the Purchaser for use in the Smithton RPV Mill in any Supply Year is less than of:

- (a) the Annual Supply; or
- (b) if applicable, the New Annual Supply Amount,

then the Purchaser shall make an additional payment in Australian dollars to Forestry Tasmania calculated by the following formula:

7.6 The additional amount payable under Clause 7.5 is payable by the Purchaser:

- (a) after verification by the Purchaser and Forestry Tasmania; and
- (b) upon receipt of an invoice for the relevant amount from Forestry Tasmania.

7.7 If any part of the Commissioning Period occurs in a Supply Year, Clauses 7.1 and 7.5 do not apply in respect of that Supply Year.

8. METHOD OF MEASUREMENT

8.1 The quantity of Billets supplied by Forestry Tasmania to the Purchaser under this Contract will be determined in cubic metres based on the small end diameter and length of each Billet, as determined by a scanner. The point at which the invoice quantity is to be determined will be either the Smithton Merchandiser or the infeed deck of the Smithton RPV Mill as agreed between the Parties.

8.2 The Purchaser and Forestry Tasmania will agree on an equitable and reasonable method to periodically verify the accuracy of the scanner to which Clause 8.1 refers.

9. BILLET SPECIFICATIONS

9.1 Subject to the remainder of this Clause 9, the specification for Billets to be made available under this Contract is the specification determined in accordance with the Huon Wood Supply Agreement between the Parties dated 16 January 2006.

- 9.2 The specification to which Clause 9.1 refers may only be varied by agreement between the Purchaser and Forestry Tasmania.

10. PRICE

- 10.1 Subject to the following parts of this Clause 10 and to Clauses 11.9 and 11.10, the Purchaser agrees to pay Forestry Tasmania the relevant price determined in accordance with Schedule 1 for Billets supplied under this Contract at the infeed deck of the Smithton RPV Mill.

- 10.6 During the fifth year of the initial term defined in accordance with Clause 2.1, and during every fifth year thereafter, the Purchaser and Forestry Tasmania will review the price adjustment mechanism set out in Clause 10.4.

11. SUPPLY MANAGEMENT

- 11.1 Billets will be made available to the Purchaser by Forestry Tasmania from the Smithton Merchandiser, unless Forestry Tasmania gives the Purchaser notice in writing nominating an alternative method of making the Billets available, in which case the method specified in the notice will apply. If Forestry Tasmania issues the Purchaser with such a notice, Forestry Tasmania may supply Billets in accordance with the notice and Clause 10 and all other terms of this Contract will apply.
- 11.2 Subject to Clause 12, the Purchaser must accept all Billets made available to it in accordance with this Contract. If the Purchaser fails to accept delivery of any Billet which has been made available by Forestry Tasmania in accordance with this Contract, other than a Billet to which Clause 12 applies, then each of the following will apply.
- (a) Forestry Tasmania will be entitled to charge the Purchaser and to be paid as if that Billet had been accepted by the Purchaser. The Purchaser will not be entitled to receive any other Billet at a later date, in lieu of the Billet that was not collected.
 - (b) Forestry Tasmania will be entitled to sell any such Billets in any manner that is reasonable. If it does sell such Billets, then it will credit the Purchaser with the lesser of the following two amounts:
 - (i) the price charged to the Purchaser for the Billet; or
 - (ii) the price charged to the third party that purchased the Billet.
 - (c) If the Purchaser alleges that Forestry Tasmania did not sell the Billets under Clause 11.2(b) in a reasonable manner, then in any proceedings that follow the Purchaser shall bear the onus of proof to show that the sale was unreasonable in the circumstances in which Forestry Tasmania was placed by the default of the Purchaser.
 - (d) If the Purchaser has not, at any stage, received a credit for those logs in accordance with Clause 11.2(b), then for the purposes of Clause 7 the quantity of Billets paid for by the Purchaser in accordance with Clause 11.2(a) will be taken into account as Billets purchased by the Purchaser for use in the Smithton RPV Mill.
- 11.3 The Purchaser must not communicate with any third party to influence or attempt to influence the distribution of Billets.
- 11.4 The Purchaser may inspect the Smithton Merchandiser Site from time to time. The Purchaser must always be accompanied by a Forestry Tasmania representative during any such inspection, unless otherwise agreed by Forestry Tasmania.
- 11.5 If, as a result of an inspection to which Clause 11.4 refers, the Purchaser has any concerns in relation to the distribution and allocation of Billets from the Smithton Merchandiser, then the Purchaser may raise these concerns with Forestry Tasmania.

- 11.6 Until the Purchaser has paid in full for a Billet, Forestry Tasmania retains a lien over that Billet.
- 11.7 Subject to Clause 11.8, the Purchaser will be deemed to have taken possession of each Billet upon delivery to the infeed deck of the Smithton RPV Mill.
- 11.8 Forestry Tasmania and the Purchaser will consult about the process, responsibilities, cost of management and point of sale for Billets, including the capacity and design of equipment to store Billets in a stockpile. Forestry Tasmania and the Purchaser may agree to vary Clause 11.7 with respect to Billets stored in such a stockpile, following the consultation to which this Clause 11.8 refers.
- 11.9 If Forestry Tasmania and the Purchaser agree that it is necessary to store Billets in a stockpile and that the Purchaser is to manage that stockpile, then subject to Clause 11.10 the price set out in Schedule 1, for Billets delivered to the infeed deck of that stockpile, will be reduced by per cubic metre.
- 11.10 If the cost of managing the stockpile to which Clause 11.8 refers is estimated to be greater than per cubic metre, then the amount by which that cost exceeds per cubic metre will be shared equally between Forestry Tasmania and the Purchaser by amending the relevant prices set out in Schedule 1.
- 11.11 The Parties agree that the Billets sold constitutes goods and that this Contract is an agreement for the sale of goods which neither creates nor disposes of any proprietary or other interest in land.
- 11.12 If Forestry Tasmania determines, at its sole discretion, to cease to operate the Smithton Merchandiser, then Forestry Tasmania must notify the Purchaser of the basis upon which Forestry Tasmania is prepared to offer to transfer the right to operate the Smithton Merchandiser to other parties and, following consultation with the Purchaser, will provide the Purchaser with the first right to accept or reject that offer within a period of time to be nominated by Forestry Tasmania. If, within the period nominated by Forestry Tasmania, the Purchaser does not unconditionally accept Forestry Tasmania's offer, or if it rejects that offer, Forestry Tasmania may transfer, assign, or otherwise deal with its rights to operate the Smithton Merchandiser as it sees fit in its unfettered discretion but will retain its obligations with respect to Clause 5 and to the remainder of this Contract.

12. REJECTION OF BILLETS

- 12.1 Forestry Tasmania will classify the Billets to be made available to the Purchaser and will advise the Purchaser at or prior to the Billets being made available of the grade and dimensions of the Billets being made available.
- 12.2 If the Purchaser wishes to dispute the grade or dimensions of any Billet made available under this Contract, then the Purchaser must notify Forestry Tasmania of that dispute in accordance with both the timeframe and the procedure for feedback dockets set out in Schedule 2.
- 12.3 The procedures for feedback dockets to which Clause 12.2 refers may be amended from time to time in writing by mutual agreement.

12.4 If the procedure for feedback dockets does not resolve a dispute, then either Party may refer it as an Independent Expert Dispute to the dispute resolution procedures set out in Clause 22.

12.5 If either:

- (a) it is agreed that a Billet does not meet the relevant specification; or
- (b) it is determined in accordance with this Clause 12 that a Billet does not meet the relevant specification,

then Forestry Tasmania will:

- (c) reduce the amount payable by the Purchaser in respect of such Billet by the relevant amount; and
- (d) supply, and invoice the Purchaser for, a Billet of equivalent quantity to replace the rejected Billet as soon as is reasonably practical.

12.6 Forestry Tasmania and the Purchaser acknowledge that the procedures for feedback dockets to which Clauses 12.1 to 12.5 refer rely upon a manual process that may prove to be inefficient for their respective purposes. On this basis, Forestry Tasmania and the Purchaser agree to consult about the design and implementation of a new procedure that enables the efficient and timely resolution of the matters to which this Clause 12 refers.

13. PAYMENT AND SECURITY

13.1 Forestry Tasmania will be entitled to demand, by way of invoice, payment for a Billet as soon as the Purchaser or its agent has taken possession of that Billet. Forestry Tasmania will use reasonable endeavours to provide an invoice, supported by the relevant dockets, to the Purchaser within five Business Days of the end of the month in which supply was made.

13.2 The Purchaser must pay any amount due within fifteen days from the end of the month within which the Billets to which the amount due refers were made available to the Purchaser.

13.3 In order to secure the Purchaser's performance of its obligations under this Contract, the Purchaser must provide security to Forestry Tasmania as follows:

- (a) the security must be provided by way of a bank guarantee:
 - (i) for an amount equivalent to the amount payable under this Contract for seven weeks' Nominated Monthly Supply of Billets; and
 - (ii) in a form and from an Australian bank reasonably acceptable to Forestry Tasmania.
- (b) Forestry Tasmania may draw down on the Performance Guarantee to satisfy any amount overdue according to an invoice issued by Forestry Tasmania for a payment to be made by the Purchaser under this Contract or at law.

- (c) Drawing on the Performance Guarantee by Forestry Tasmania will not prevent Forestry Tasmania from seeking alternative or additional remedies.
 - (d) If Forestry Tasmania draws down on the Performance Guarantee then, no later than five Business Days after Forestry Tasmania gives the Purchaser a notice asking for it, the Purchaser must deliver to Forestry Tasmania a replacement or additional bank guarantee so that the amount available under the Performance Guarantee is equivalent to the amount referred to in Clause 13.3(a)(i).
- 13.4 Forestry Tasmania may at any time during this Contract by notice require the Purchaser to implement an arrangement with a bank to provide a direct debit system, approved by Forestry Tasmania and the Purchaser, for the immediate payment of Forestry Tasmania's accounts upon request by Forestry Tasmania of the bank. At all times the Purchaser must ensure that sufficient money is available in the relevant account to meet its payments to Forestry Tasmania.
- 13.5 If any amount payable to Forestry Tasmania by the Purchaser is not paid within the time specified for that payment, then:
- (a) the Purchaser must still pay that amount to Forestry Tasmania; and
 - (b) the Purchaser shall pay Interest at the Default Rate on the unpaid amount in accordance with Clause 19 as required by Forestry Tasmania; and
 - (c) Forestry Tasmania may claim payment against the security provided by or on behalf of the Purchaser in accordance with Clause 13.3.
- 13.6 If any account is disputed by the Purchaser, then the Purchaser must within fifteen days of receipt of the account give Forestry Tasmania:
- (a) notice of the dispute; and
 - (b) notice of the proportion of the account which is disputed and the grounds for disputing that proportion.
- 13.7 Notwithstanding any account being disputed in accordance with Clause 13.6, the Purchaser must make payment of any account tendered by Forestry Tasmania in accordance with Clause 13.2.
- 13.8 Following resolution of a disputed account, the amount of money paid by the Purchaser to Forestry Tasmania will be adjusted, if required, to reflect that resolution. If such an adjustment by Forestry Tasmania requires either a payment to the Purchaser or a credit to the Purchaser's account, then Forestry Tasmania will pay Interest at the Default Rate on the amount of that adjustment.
- 13.9 The fact that notice is given that all or part of an account is disputed shall not prevent Forestry Tasmania from exercising any of its rights under Clauses 17 and 18.

14. CONTRACT ADMINISTRATION PROCEDURES

The Purchaser and Forestry Tasmania must comply with each others' reasonable requirements for the recording and processing of transactions relating to this Contract. Any such requirements may be altered from time to time, after reasonable consultation between the Purchaser and Forestry Tasmania.

15. VARIATION OF CONTRACT

Forestry Tasmania, the Purchaser and, in the case of Clause 32 only, the Guarantor may from time to time by written agreement add to or substitute or cancel or vary all or any of the provisions of this Contract for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Contract.

16. INSURANCE

16.1 Each Party must have in place all policies of insurance reasonably necessary to protect the other Party and its officers, employees, agents and subcontractors from any wrongful act or omission of the Party taking out the insurance or of its officers, employees, agents and subcontractors including but not limited to:

- (a) public liability insurance to the value of not less than \$20,000,000 per claim; and
- (b) workers' compensation insurance in accordance with its obligations under the *Workers Rehabilitation and Compensation Act 1988 (Tas)* or any other legislation in force from time to time and any such insurance is to include protection against common law liability for death or injury.

16.2 Each Party shall on request produce to the other satisfactory evidence of such insurance.

16.3 All such policies of insurance shall be maintained for the duration of this Contract.

16.4 Notwithstanding anything hereinbefore contained in respect of workers' compensation insurance (including common law liability) Forestry Tasmania shall satisfy the requirement for insurance if it is lawfully a self insurer under an existing statute or any other legislation in force from time to time.

17. SUSPENSION OF OBLIGATIONS

17.1 In addition to its rights under Clause 18, Forestry Tasmania may in its discretion by notice in writing to the Purchaser suspend from time to time the whole or any part of its obligations under this Contract if:

- (a) the Purchaser fails to pay any amount due to Forestry Tasmania under this Contract within the time in which that amount is required to be paid;
- (b) the Purchaser fails to remedy a breach of this Contract within five Business Days of Forestry Tasmania giving the Purchaser written notice of that breach; or

- (c) an Insolvency Event occurs with respect to the Purchaser or any company having control of the Purchaser.

17.2 In addition to its rights under Clause 18, the Purchaser may in its discretion by notice in writing to Forestry Tasmania suspend from time to time the whole or any part of its obligations under this Contract if Forestry Tasmania fails to remedy a breach of this Contract within five Business Days of the Purchaser giving Forestry Tasmania written notice of that breach.

17.3 A notice of suspension to which Clause 17.1 or Clause 17.2 refers must specify the reasons for the suspension and, if practicable, the period of suspension.

17.4 Forestry Tasmania must, by notice in writing to the Purchaser, revoke the suspension:

- (a) if the suspension is under Clause 17.1(a) or 17.1(b), as soon as is reasonably practicable after the Purchaser remedies the breach giving rise to the suspension; or
- (b) if the suspension is under Clause 17.1(c), as soon as is reasonably practicable after Forestry Tasmania considers the necessity for the suspension has passed.

17.5 No claim may be made by the Purchaser against Forestry Tasmania for any non performance under this Contract, to the extent that the non performance is due to a suspension imposed under this Clause 17 and the Annual Supply of Billets for the relevant year will be deemed to be reduced accordingly.

17.6 The Purchaser's obligations under this Contract continue despite any suspension under this Clause 17.

17.7 Forestry Tasmania may exercise its rights to terminate this Contract despite any suspension under this Clause 17.

18. TERMINATION

18.1 If the Purchaser is in default under this Contract, Forestry Tasmania may, without prejudice to any right of action or remedy which has accrued or may accrue in favour of either Party, by notice in writing served on the Purchaser, specify the relevant default and require the Purchaser to remedy the default within 30 days.

18.2 Forestry Tasmania may by notice in writing terminate this Contract forthwith in any of the following events:

- (a) if the Purchaser is in breach of a material term of this Contract, whether or not Forestry Tasmania has given notice under Clause 18.1 in relation to that breach and such default is not remedied. For the purposes of this Clause 18.2(a) a material term is a term the breach of which whether alone or by its recurring nature substantially interferes with the proper performance by the Purchaser of its obligations under this Contract;
- (b) where the Purchaser has failed to comply with a notice under Clause 18.1; or
- (c) if an Insolvency Event occurs with respect to the Purchaser or any company

having control of the Purchaser.

- 18.3 The Purchaser may, by notice in writing, terminate this Contract forthwith if Forestry Tasmania fails to comply with any material term of this Contract and such default is not remedied by Forestry Tasmania within a period of 30 days after written notice of same has been served on Forestry Tasmania. For the purposes of this Clause 18.3 a material term is a term the breach of which whether alone or by its recurring nature substantially interferes with the proper performance by Forestry Tasmania of its obligations under this Contract.
- 18.4 If RPV Mill Operations cease for a continuous period of 60 days or longer for any reason other than an Event of Force Majeure, either Forestry Tasmania or the Purchaser may terminate this Contract by giving 30 days written notice to the other Party and, in this event and subject to Clause 18.5, the Parties will have no further obligations under this Contract (except that the Parties' accrued rights and obligations with respect to this Contract will survive and continue to apply).
- 18.5 Termination of this Contract under this Clause 18 shall not affect any rights and liabilities of either Party arising before such termination.
- 18.6 This Clause 18 survives the termination or expiry of this Contract.

19. INTEREST ON OVERDUE ACCOUNTS

- 19.1 If a Party fails to pay an amount on the date it is due under this Contract, then that Party must pay Interest to the other Party on the outstanding amount until that amount is paid.
- 19.2 Interest will accrue daily at the Default Rate for each day from the date on which the amount became due and payable until payment is made, and is payable on the date payment of the principal amount is made.
- 19.3 If a liability under this Contract becomes merged in an order or judgment of a court of competent jurisdiction, then the Party must pay Interest to the other Party on the amount of that liability as an independent obligation. This Interest accrues from the date the liability becomes due for payment (after or at the time of the order or judgment) until it is paid, at a rate that is the higher of the rate payable under the order or judgment and the Default Rate

20. FORCE MAJEURE

- 20.1 Where a Party (referred to in this Clause 20 as "the Concerned Party") is unable, in whole or in part, by reason of an Event of Force Majeure to carry out any obligation under this Contract and that Party:
- (a) gives the other Party proper notice of that event and of the probable extent to which the Concerned Party will be unable to perform or will be delayed in performing that obligation, with reasonable particulars thereof so far as they are then known; and
 - (b) subject to Clause 20.4 uses all reasonable endeavours to remove or mitigate the effect of that event as quickly as possible,

then that obligation is suspended but only to the extent, and for so long as, that obligation is affected by that Event of Force Majeure and this Contract must be interpreted to give effect to that suspension.

20.2 Without limiting the generality of Clause 20.1, a Party is deemed to be unable to carry out an obligation under and for the purposes of that Clause if, by reason of an Event of Force Majeure, the carrying out by the Party of the obligation would, more probably than not, involve the incurring of expense or the doing of some act or thing which would:

- (a) put seriously at risk; or
- (b) result in the failure of,

the business of the Party as a going concern.

20.3 The other Party must cooperate with and assist the Concerned Party to ameliorate the effect of an event of Force Majeure, to the extent that:

- (a) it is requested to do so; and
- (b) is reasonable in the circumstances.

20.4 Nothing in this Clause 20 requires any Party to settle any strike, lockout, other labour dispute, civil commotion, protest, blockade, civil disobedience, sabotage or other malevolent conduct, or any government or quasi governmental demand on terms that in the reasonable opinion of the Concerned Party compromise the interests of that Party.

20.5 If the disabling effect of any event of Force Majeure is claimed by either Party to have extended beyond six months, then the Party so claiming must give notice to the other Party within seven days of the expiration of the six months that either:

- (a) it is terminating the Contract; or
- (b) it is not terminating the Contract but maintains that the disabling effect of the event of Force Majeure continues and that its obligations are suspended,

and if no notice is given then the disabling effect of the Event of Force Majeure will be deemed to have ceased immediately prior to the expiration of the six month period.

20.6 Upon receipt of a notice pursuant to Clause 20.5, the other Party may:

- (a) if the notice is a notice to terminate the Contract, either accept or reject the termination of the Contract and in the latter case must institute legal proceedings, if at all, within 30 days of the notice contesting the termination and if such proceedings are not so instituted, then no claim based on the termination whether for breach of contract, repudiation, wrongful termination or otherwise may be made; or
- (b) if the notice claimed the extension of the disabling effect of the Event of Force Majeure and did not elect to terminate the Contract, either:

- (i) within seven days of receipt of the notice, terminate the Contract by notice to the concerned Party; or
- (ii) accept the extension of the disabling effect of the Event of Force Majeure and the continued suspension of obligations and in that event the other Party may at any time thereafter, but prior to receiving notice from the concerned Party that the disabling effect of the event of Force Majeure has ceased, give notice to the Concerned Party that the Contract is terminated,

and if no notice of termination is given pursuant to Clause 20.6(b)(i), then the other Party will be deemed to have accepted the extension of the event of Force Majeure and the provisions of Clause 20.6(b)(ii) will apply whether notice of the acceptance of the extension was given or not.

20.7 The onus of proof of inability, including deemed inability, to carry out an obligation under this Contract by reason of any event of Force Majeure rests upon the concerned Party.

21. SOVEREIGN RISK

21.1 If an Event of Force Majeure arises due to a change in Law, or an exercise of executive power, the Purchaser and Forestry Tasmania agree to cooperate with each other to the extent reasonably practical in order that each Party may seek compensation from the relevant Crown for loss suffered as a result of that Event of Force Majeure.

21.2 For the avoidance of doubt, the Purchaser acknowledges that, despite being a governmental statutory corporation, Forestry Tasmania does not have the power to prevent the occurrence of the Events of Force Majeure referred to in Clause 21.1.

22. DISPUTE RESOLUTION

22.1 Each Party agrees to comply with this Clause 22 to seek to resolve a Dispute expeditiously if either Party wishes to have that Dispute resolved by external dispute resolution mechanisms of any kind, subject to:

- (a) Clause 22.14;
- (b) the other Party complying with this Clause 22;
- (c) this Clause 22 being without prejudice to the rights of a Party to take, or continue to take, action or remedies expressly provided for under this Contract.

22.2 If a Dispute that is an Independent Expert Dispute is not resolved between the Purchaser and Forestry Tasmania, then unless it is withdrawn by the Party raising the Dispute, the Dispute must be referred to an independent expert in accordance with the provisions of this Clause 22 relating to independent expert resolution. The Purchaser and Forestry Tasmania may agree to refer any other Dispute to an independent expert.

22.3 The Parties agree to refer all Disputes not referred under Clause 22.2:

- (a) first, to mediation; and

(b) if the mediation is unsuccessful, then to arbitration under the Arbitration Act.

22.4 When a Dispute arises, one Party may serve a notice on the other specifying:

- (a) the nature and substance of the matter or issue in Dispute; and
- (b) that it is a Dispute to be resolved in accordance with this Clause 22.

22.5 Within seven days of notice under Clause 22.4 being served the Parties must attempt to settle the dispute or, in default of agreement, to appoint either:

- (a) an independent expert to resolve the Dispute; or
- (b) a mediator to conduct a mediation concerning the matter or issue in dispute.

22.6 Where the Parties agree that the Dispute is to be resolved by an independent expert, but they are unable to agree on the person to be appointed, the matter is to be referred to the President of the Institute of Foresters of Australia to nominate an independent expert.

22.7 The decision of the independent expert who resolves a Dispute is final and binds the Parties.

22.8 If the Parties fail to appoint an independent expert or mediator, any of them may request the person who holds office as the President of the Institute of Foresters of Australia to nominate an independent expert or mediator as the case may be to conduct the mediation.

22.9 The costs of the mediator under this Clause are to be shared equally between the Parties.

22.10 The Parties must meet to appoint an arbitrator within seven days of an unsuccessful mediation.

22.11 If the Parties are unable to agree on the appointment of an arbitrator, any of them may refer the matter to the President of the Institute of Foresters of Australia for the purposes of nominating a suitable arbitrator.

22.12 At an arbitration under this Clause:

- (a) the Parties are entitled to representations by a legal practitioner qualified to practice in any state of Australia;
- (b) the arbitrator may regulate the procedures necessary to complete the arbitration;
- (c) the arbitrator may allow the Parties to raise as a set off or cross claim any question which is relevant to the subject matter of the Dispute;
- (d) the arbitrator may direct that the arbitration is to be by way of oral evidence, whether on oath or not, or by way of written submissions, or a combination of both;
- (e) the arbitrator may order the Parties to discover any relevant documents prior to the hearing;

- (f) the arbitrator may order the Parties to exchange proofs of evidence of witnesses (whether expert or not) prior to the hearing;
- (g) the arbitrator is not bound by the rules of evidence;
- (h) the arbitrator may take advice from any other person as to the matters in issue, but if so, the arbitrator must provide the Parties with an opportunity to:
 - (i) make submissions on the matter in which the advice is to be taken;
 - (ii) make submissions on the identity of the person from whom the advice is to be taken; and
 - (iii) make submissions on the substance of any advice given before making any decision on the issue on which the advice is taken;
- (i) the arbitrator must conduct the arbitration in accordance with general justice and fairness;
- (j) the arbitrator must give reasons (including the material findings of fact or law) for any ruling, decision or award made during the arbitration;
- (k) subject to sections 31 and 32 of the *Commercial Arbitration Act 1986 (Tas)*, the arbitrator may award interest, including compound interest on any sum ordered to be paid by one Party to the other.

22.13 The Parties may appeal to the Supreme Court on a point of law arising out of the award of an arbitrator under this Clause 22 and the Parties:

- (a) acknowledge that the appeal is without leave of the court; and
- (b) give their consent to the appeal.

22.14 Notwithstanding the provisions of this Clause 22, either Party may commence proceedings in a competent Court relating to any Dispute at any time in order to seek urgent interim relief.

22.15 If for any reason the President of the Institute of Foresters of Australia is unable to make an appointment under this Clause 22 the matter is to be referred to the President of the Law Society of Tasmania to make an appointment.

22.16 Despite the Parties being in Dispute or taking steps to comply with this Clause 22, the Parties must continue to perform their obligations under this Contract in a timely manner.

22.17 This Clause 22 survives the termination or expiry of this Contract.

23. LIABILITY AND INDEMNITY

- 23.1 Despite any other provision of this Contract but subject to Clause 23.3, in each relevant Supply Year, the aggregate liability of Forestry Tasmania under or in connection with this Contract in tort (including negligence), contract, statute or otherwise for any loss, damage, cost or expense incurred by the Purchaser and arising out of or in connection with any act or omission by Forestry Tasmania (which act or omission occurs during such a Supply Year or during such Supply Years) under or in relation to this Contract, is limited in aggregate for any and all such claims for each such Supply Year to a maximum of an amount determined by multiplying the Annual Supply or the New Annual Supply Amount as the case may be for the Supply Year in which the cause of action arose by the average price per cubic metre for Billets supplied during the preceding Supply Year or in the case of the first Supply Year by per cubic metre.
- 23.2 For the avoidance of doubt, Clause 23.1 applies in any Supply Year, Supply Years or remaining Supply Years during the period of this Contract, including any Supply Year, Supply Years or remaining Supply Years that follow an act or omission by Forestry Tasmania to which that Clause refers.
- 23.3 Clause 23.1 does not apply to liability under the indemnity provided by Forestry Tasmania under Clause 23.8.
- 23.4 Forestry Tasmania is only liable for Direct Loss incurred by the Purchaser:
- (a) as a result of any default under this Contract or negligence by Forestry Tasmania in connection with a specific obligation under this Contract; and
 - (b) to the extent that such Direct Loss is not incurred as a result of action or omission by the Purchaser.
- 23.5 Other than Direct Loss, the Purchaser releases Forestry Tasmania from any Loss in connection with this Contract.
- 23.6 The Parties agree that:
- (a) except as expressly provided for in this Contract and to the maximum extent permitted by law, all terms, conditions, warranties and representations whether written, oral, collateral, implied by law or otherwise are excluded and the Parties disclaim all liability in relation to them; and
 - (b) subject to any law to the contrary, each of the Parties agrees not to make and waives any right it may have to make any claim against the other under Section 52 of the *Trade Practices Act 1974 (Cwlth)*, or the corresponding provision of any State enactment, for any statement or representation concerning this Contract; and
 - (c) liability for a non excludable term implied by law into this Contract is, so far as the law permits, limited (at the defaulting Party's option):
 - (i) in relation to services, to either resupplying the service or paying the cost of resupplying the service; and

- (ii) in relation to goods, to repairing or replacing the goods or paying the cost of replacing the goods.

23.7 The Purchaser indemnifies Forestry Tasmania against, and must pay Forestry Tasmania on demand, the amount of all Direct Loss suffered or incurred by Forestry Tasmania or arising as a result of any claim against Forestry Tasmania in connection with or caused by:

- (a) any injury, loss of, or damage to, any property (real or personal), including property of Forestry Tasmania, as a result of any act or omission of the Purchaser, its employees, agents or subcontractors in connection with this Contract; and
- (b) or arising under any statute or at common law, for personal injury to, or death of, any person occurring as result of any act or omission of the Purchaser, its employees, agents or subcontractors in connection with this Contract,

except that the Purchaser's liability to indemnify Forestry Tasmania will be reduced proportionally to the extent that any negligent act or omission of Forestry Tasmania, its employees, agents or subcontractors contributed to the Direct Loss or claim.

23.8 Forestry Tasmania indemnifies the Purchaser against, and must pay the Purchaser on demand, the amount of all Direct Loss suffered or incurred by the Purchaser or arising as a result of any claim against the Purchaser in connection with or caused by:

- (a) any injury, loss of, or damage to, any property (real or personal), including property of the Purchaser as a result of any act or omission of Forestry Tasmania, its employees, agents or subcontractors in connection with this Contract; and
- (b) or arising under any statute or at common law, for personal injury to, or death of, any person occurring as a result of any act or omission of Forestry Tasmania, its employees, agents or subcontractors in connection with this Contract,

except that Forestry Tasmania's liability to indemnify the Purchaser will be reduced proportionally to the extent that any negligent act or omission of the Purchaser, its employees, agents or subcontractors contributed to the Direct Loss or claim.

23.9 This Clause 23 survives the termination or expiry of this Contract.

24. ASSIGNMENT

24.1 Neither Party may assign, transfer or otherwise deal with all or any part of its rights or obligations under this Contract without the written consent of the other, provided that such consent will not be unreasonably withheld where it is established by the Party seeking the assignment that the proposed assignee is of sound financial standing, of good reputation and will be able to carry out its obligations for the balance of the term remaining without any foreseeable risk of default or failure.

24.2 Once the assignee has entered into a deed of assignment in a form reasonably required by the non assigning Party and has paid the non assigning Party's reasonable legal and other costs incurred in relation to the assignment and the giving of its consent, then the assigning Party shall be released from any liability for a breach of the Contract by the assignee but shall remain liable for any breach occurring prior to the assignment.

25. CONFIDENTIALITY

25.1 Each of the Parties agrees that it will not disclose any Confidential Material to any third party without the consent of each other Party, except to the extent that:

- (a) the information is available to the public generally other than through a breach of this Contract;
- (b) the disclosure is required by law; or
- (c) the disclosure is made confidentially to the professional advisers of the Party to obtain professional advice about this Contract.

25.2 This Clause 25 survives the termination or expiry of this Contract.

26. LAWS OF THE STATE TO PREVAIL

This Contract shall be governed by and interpreted in accordance with the laws for the time being in force in the State of Tasmania and the Parties consent and submit to the jurisdiction of the Courts of Tasmania.

27. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the Parties for the subject matter to which it refers. Any prior arrangements, agreements, representations or undertakings in relation to that subject matter, including the Memorandum of Understanding, are hereby superseded. No modifications of or alterations to any Clause in this Contract will be valid unless in writing signed by each Party.

28. WAIVER

No right under this Contract shall be deemed to be waived unless by notice in writing signed by each Party.

29. TERMINATION OF PREVIOUS CONTRACTS

As at the date hereof all previous contracts between the Parties for the supply of logs are terminated and replaced by this Contract. This shall not prevent either Party from enforcing any obligations under a replaced Contract which arose prior to the date hereof or from taking any action in respect of any breach which arose prior to the date hereof. Without loss of generality Forestry Tasmania will be entitled to enforce payments for logs supplied under any prior contract whether the supply was made before or after the date hereof and whether payment became due before or after the date hereof.

30. NOTICES

30.1 Unless expressly stated otherwise in this Contract, all notices, certificates, requests consents, approvals, waivers and other communications in connection with this Contract must be in writing signed by an authorised officer of Forestry Tasmania or the Purchaser (as the case may be) and must be marked for the attention of the person identified in Schedule 3 or, if the recipient has notified otherwise, then marked for attention in the last way notified.

30.2 Notices must be:

- (a) left at the address set out or referred to in Schedule 3;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in Schedule 3;
- (c) sent by fax to the fax number set out or referred to in the Schedule 3; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

- 30.3 (a) Notices take effect from the time they are received unless a later time is specified.
- (b) If sent by post, notices are taken to have been received three days after posting.
 - (c) If sent by fax, notices are taken to have been received at the time shown in the transmission report as at the time that the whole fax was sent.

30.4 Despite this Clause 30, the manner in which communications or notices under Clause 6 may be given is not restricted.

31. GOODS AND SERVICES TAX

31.1 Unless expressly stated otherwise, all fees or other sums payable or any other consideration provided, or to be provided, under or in connection with this Contract, are exclusive of GST.

- 31.2 Unless expressly stated otherwise, a Party (in this Clause 31 called “the Supplier”) making a taxable supply under or in connection with this Contract, may recover from the Party (in this Clause 31 called “the Recipient”) to whom the taxable supply is made, the amount of GST (the “Additional Amount”) payable under the GST Act on the taxable supply.
- 31.3 The Additional Amount must be paid at the time when payment of the monetary consideration for the taxable supply is due.
- 31.4 Terms and expressions used in this Clause 31, which are defined in the GST Act, have the same meaning given to those terms and expressions in that Act. “GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* including all amendments made to the GST Act and any other regulations and other instruments made under the GST Act.

32. GUARANTEE AND INDEMNITY

- 32.1 The Guarantor acknowledges that it is a condition of Forestry Tasmania entering into this Contract that the Guarantor gives the guarantee and indemnity under this Clause 32 and the Guarantor acknowledges it has received valuable consideration for doing so.
- 32.2 The Guarantor agrees to:
- (a) unconditionally and irrevocably guarantee to Forestry Tasmania the due and punctual performance by the Purchaser of its obligations under this Contract; and
 - (b) separately indemnify Forestry Tasmania against any Direct Loss which may be suffered or incurred by Forestry Tasmania in connection with:
 - (i) any default or delay by the Purchaser in the due and punctual performance of any of its obligations under this Contract; or
 - (ii) an obligation the Purchaser would otherwise have to Forestry Tasmania is found to be void, voidable, illegal, invalid or unenforceable; or
 - (iii) Forestry Tasmania being obliged, or agreeing, to pay an amount to a liquidator in connection with a payment by the Purchaser or the Guarantor; or
 - (iv) the Guarantor defaulting under this guarantee and indemnity,
- and the Guarantor agrees to pay amounts due under this indemnity on demand from Forestry Tasmania.
- 32.3 The obligations of the Guarantor under this Clause 32 extend to any change in the obligations of the Purchaser as a result of:
- (a) any amendment, supplement, renewal or replacement of this Contract; or
 - (b) the occurrence of any other thing.

32.4 This Clause 32 is not affected, nor are the obligations of the Guarantor under this Contract released, discharged or otherwise affected, by anything which, but for Clauses 32.3 or 32.5, might have that effect.

32.5 This Clause 32 applies:

- (a) regardless of whether the Guarantor is aware of, or has consented to, or has been given notice of, any amendment, supplement, renewal or replacement of any agreement or deed to which Forestry Tasmania or the Purchaser is a party or the occurrence of any other thing; and
- (b) irrespective of any rule of law or equity to the contrary.

32.6 If any payment, conveyance, transfer or other transaction relating to or affecting any obligation of the Purchaser under this Contract is:

- (a) void, voidable, unenforceable, illegal or invalid in whole or in part; or
- (b) is claimed to be void, voidable, illegal or invalid or unenforceable and that claim is upheld, conceded or compromised in whole or in part,

the liability of the Guarantor under this Clause 32 is the same as if:

- (c) that payment, conveyance, transfer or transaction (or the void, voidable, illegal, invalid or unenforceable part of it); and
- (d) any release, settlement or discharge made in reliance on any thing referred to in Clause 32.6(c),

had not been made and the Guarantor must immediately take all action and sign all documents necessary or required by Forestry Tasmania to restore to Forestry Tasmania the benefit of this Clause 32.

32.7 Clause 32.6 applies whether or not Forestry Tasmania knows, or ought to have known, of anything referred to in that Clause.

32.8 This Clause 32 is a continuing obligation of the Guarantor, despite:

- (a) any settlement of account;
- (b) the termination of this Contract; or
- (c) the occurrence of any other thing,

and remains in full force and effect until the obligations of the Purchaser under this Contract have been performed. The Guarantor waives any rights it has of first requiring Forestry Tasmania to commence proceedings or enforce any rights against the Purchaser or any other person before claiming from the Guarantor under this guarantee or indemnity.

THE COMMON SEAL of)
FORESTRY TASMANIA)
ABN 91 628 769 359)
was affixed in the presence of:)

.....
Director

.....
Director / Secretary

THE COMMON SEAL of)
Ta Ann Tasmania Pty Ltd)
ABN 58 115 743 345)
was affixed in the presence of:)

.....
Director

.....
Director / Secretary

THE COMMON SEAL of)
Ta Ann Plywood Sdn Bhd)
Company No: 208737-T)
was affixed in the presence of:)

.....
Director

.....
Director / Secretary

SCHEDULE 1

Prices

SCHEDULE 2
Feedback docket procedures

1. The feedback docket (FBD) comprises two parts.
 - 1.1 Part 1 is completed by the Purchaser to advise Forestry Tasmania that the Purchaser is disputing the classification or measurement of a Billet. The quantity represented by the adjustment that is sought in Part 1 is referred to in this Schedule 2 as “the disputed quantity”.
 - 1.2 Part 2 is completed to advise the Purchaser and Forestry Tasmania of the final outcome. The quantity represented by any adjustment that is agreed in Part 2 is referred to in this Schedule 2 as “the agreed adjustment”.
2. Part 1 must be completed by the Purchaser and communicated to Forestry Tasmania within three days of the date of delivery of the offending Billet. The Purchaser must retain the offending Billet in whole until at least noon on the following Friday.
3. Part 2 may only be completed following an inspection by one of Forestry Tasmania’s accredited Log Classification Officer (LCO), in accordance with this Clause 3 of this Schedule 2. Either:
 - 3.1 a Forestry Tasmania LCO will inspect the Billet to which this Schedule 2 refers to determine the matter and if the matter is resolved then Part 2 must be signed by the Purchaser and by that LCO; or
 - 3.2 if the matter can not be resolved, then the Purchaser and Forestry Tasmania will refer the matter for determination to an expert, being either an alternative LCO or an independent expert. An independent expert appointed as an expert under this Schedule 2 must be an accredited LCO, with a minimum of three years experience and, wherever possible, with no vested interest in the offending Billet.
4. The appointment of an expert for the purposes of Schedule 2 is to be agreed by the Purchaser and Forestry Tasmania. The decision of that expert will be final.
5. Part 2 must be completed within three days of the final inspection and the outcome communicated to each Party.
6. Within three working days of the receipt of a duly authorised Part 2, Forestry Tasmania will make any related adjustments to the Purchaser’s account.
7. The following requirements must be met in order to ensure that an FBD is valid and that it can be processed by each Party.
 - 7.1 An LCO must base his determination on visual assessment of the entire Billet according to the specifications determined in accordance with Clause 9 of this Contract.
 - 7.2 An FBD may only be raised and the offending Billet may only be inspected before that Billet is sawn or peeled in any manner. The offending Billet must be presented in the form in which it was delivered to the Purchaser. Once the offending Billet has been sawn or peeled in any manner it is no longer possible to initiate an FBD on that Billet.

AMENDED TO REMOVE COMMERCIAL IN CONFIDENCE SECTIONS

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- 7.3 For adjustments to any amounts payable to Forestry Tasmania by the Purchaser, the duly authorised Part 2 must be submitted to Forestry Tasmania. Forestry Tasmania will not process a Part 2 for adjustments unless it is authorised by the Purchaser or nominee and by an LCO.
- 7.4 The signature of that expert alone is sufficient to authorise Part 2 for a determination made under Clause 3.2 of this Schedule 2.

**SCHEDULE 3
Address for notices**

1. Forestry Tasmania's address details are as follows.

1.1 Postal address

The Managing Director
Forestry Tasmania
GPO Box 207
HOBART TAS 7001

1.2 Street address

79 Melville Street
HOBART TAS 7000

1.3 Facsimile

(03) 6233 8156

2. The Purchaser's address details are as follows.

2.1 Postal address

59 Harrington Street
HOBART TAS 7000

2.2 Street address

59 Harrington Street
HOBART TAS 7000

2.3 Facsimile

(03) 6223 6633