

FORESTRY FACTS



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Understanding the Sample Timber Sale Contract

Wisconsin Department of Natural Resources, Wisconsin Woodland Owners Association, and University of Wisconsin-Extension

A timber sale contract is the most important document involved in conducting a timber sale. A well-prepared contract ensures the understanding of all parties. This *Forestry Fact* describes and clarifies the attached Sample Timber Sale Contract. The sample contract suggests key elements for inclusion in your agreement.

The Sample Timber Sale Contract contains a number of options; therefore, you will need to select the provisions and language that are appropriate to your harvest. The list of contract provisions is not meant to be exhaustive or necessarily applicable to every situation. You may choose to add or delete (by striking out) provisions. Work with your attorney and professional forester in drafting your contract.

Timber sale contracts usually include provisions that outline who, what, where, when, and how a timber sale will occur. Contracts will also spell out remedies in the event of a dispute. Contracts that are more stringent may result in fewer bidders and, potentially, lower bids. Less restrictive contracts provide for less control.

The section titles and provision numbers in the following explanations correspond to the section titles and paragraph numbers in the Sample Timber Sale Contract. Some sections are self-explanatory and not included.

1. Contracting Parties

Beyond the actual Purchaser(s) and Seller(s) named in the contract, other individuals may be able to act in their place. For the Seller, this could be a partner in an LLP or one's heir. Of particular note is 1.c., which requires that the Seller to provide written approval of subcontracting.

2-3. Entire Contract

This section defines what documents comprise the entire contract (to include a harvest site map). It also outlines what constitutes a legal amendment to the contract.

4-7. Contract performance, period, extensions, and termination

Beginning and ending dates of the contract are established. The phrase "FOR TIME IS OF THE ESSENCE" demands reasonable diligence and completion within the period of the contract. Delays should only be authorized for reasons beyond the control of the Purchaser. This is essential to achieve your management objectives.

Some provisions give you the flexibility to protect the land should unanticipated events or conditions occur. The Purchaser's authority to go on your land and conduct operations is through the contract.

8-11. Down payment, bond, remedies and damages

Down payments are earnest money, and are not performance bonds. Performance bonds assure that costs incurred due to breach can be recovered from the bond, rather than going to court or otherwise recovering costs from the Purchaser. A performance bond may take the form of cash, a check, letter of credit, or escrow account. Be aware that many

Purchasers may not agree to provide a performance bond unless it is to be held by a consulting forester or an objective third party such as an escrow agent. The Seller's remedies in the event of a breach are not just limited to routine contract damages. Other penalties or remedies may be pursued if the Seller so chooses.

Contract breach: A very serious decision

Deciding that the Purchaser has breached a timber sale contract should not be made lightly or over trivial matters. Contract breach is a very serious step that can have ramifications for you and the Purchaser well beyond this one event. Reputation is critical to a timber harvester's livelihood and to your ability to sell or resell your timber.

You may be sued: It is that important. Breach should truly be the final straw. Intermediate steps might include visiting with the Purchaser to hash out differences, having a third party intervene, or shutting the sale down temporarily.

12-14. Products to be removed

Specifications for how trees are marked or designated for harvesting are explained (for example, "trees marked with orange paint," or "all trees within a red marked boundary"). Be certain that your property boundaries are well marked and/or designated, and understood by the Purchaser. If the boundary has not been formally surveyed, you should meet with the adjoining landowners to agree on the location of the property boundary.

The Seller retains sole control over the timber and other wood products (e.g., woody biomass) until payment is made. Timber cannot be removed from the property until paid for or payment has been arranged.

15-21. Sale type, scaling, hauling, and payments

There are many ways to sell timber. Each affects at what point ownership of cut products moves from the Seller to the Purchaser and who reaps the benefit of product sort and grade. This section defines under what conditions cut products may be removed from the property, how and by whom the cut products are to be measured, and when the Seller receives payment.

Scaling procedures include on-site and mill scales. The Seller should be aware that while some mills are willing to send mill slips to the Seller, others are not.

Prior to signing the contract, seek the advice of a tax specialist to determine whether income may be treated as a capital gain or regular income. Spreading the payment over two years may minimize your tax liability in any single year.

The Timber Products Table (#17) summarizes the type and volume of timber expected from the harvest and the price the Purchaser agrees to pay by unit. This information is important in all sales, even lump sum sales where the price per unit information can be used for damages or contract adjustments, if necessary.

In some cases, the term, *mixed hardwoods*, is used to describe products to be removed. Mixed hardwoods are small quantities of hardwood tree species of low relative value or not in sufficient quantity to be marketed in separate species categories. High-value species or products should be identified separately, even if the volume is small. In general, the use of mixed hardwoods should be restricted to pulp and/or woody biomass.

In some cases (e.g., woody biomass), wood fiber may be sold by weight or by cord. These situations may require conversions between volume and weight measures. Specifying the conversion factors in the contract is recommended.

22-34. Utilization and operations

Detail any timber and site protection measures here. Be specific about erosion control, weather, disease and insect prevention, timing, equipment use (such as width or size limitations, use of a forwarder rather than a skidder, horses, etc.), operations during hunting seasons or other constraints you or your foresters consider necessary.

What is reasonable?

Throughout the Sample Timber Sale Contract there are references to actions being "reasonable." In legal terms, reasonable means fair, proper, just, moderate, and suitable under the circumstances. The basic question to ask is: Would an outside observer familiar with harvest practices feel the action was adequate and satisfactory?

If you've never harvested timber before or visited a logging site, it is important that you learn about and understand normal logging practices and their impact. Either visit logging sites or hire a consultant forester to help you determine if your expectations of post-harvest conditions are "reasonable."

SAMPLE TIMBER SALE CONTRACT¹

This Contract is entered into by and between _____ (Seller), and
_____ (Purchaser). Contact information is listed in par. 53 of this agreement.

The Seller hereby authorizes the Purchaser to enter upon the following described lands (the Premises) for purposes of cutting and removing timber marked or otherwise designated by the Seller:

County: _____ Town Name: _____

Town: __ N; Range __ ; Section _____ ; Legal Description(s) _____

Town: __ N; Range __ ; Section _____ ; Legal Description(s) _____

Those Premises are further described on the map(s) or diagram(s) attached to and made a part of this Contract.

FOR AND IN CONSIDERATION of the following terms and conditions the Seller and the Purchaser mutually agree:

CONTRACTING PARTIES

1. CONTRACTING PARTIES

- a. Seller and Purchaser. In this Contract, the Seller and the Purchaser include their respective officers, employees, agents, directors, partners, representatives, successors, heirs and members.
- b. Purchaser Ceases to Exist. If the Purchaser ceases to exist, in fact or by law, the Seller may terminate this Contract without waiving any remedies available to it and take all action necessary to assure its performance.
- c. Subcontracting. This Contract or work under it may not be assigned or subcontracted in part or in whole without prior written approval from the Seller and may be changed or amended only in writing. The Purchaser agrees to notify the surety, if any, of any such change or amendment.

ENTIRE CONTRACT

2. **ENTIRE CONTRACT.** This Contract, together with specifications in the request for bids as well as reference to parts and attachments, shall constitute the entire agreement and any previous communications or agreements pertaining to this Contract are hereby superseded. Any amendments to this Contract shall be in writing, signed and dated by both parties.
3. **ATTACHMENTS.** Any and all attachments to this Contract shall be made a part of this Contract and be fully complied with, including:
 - a. Map(s) or Diagram(s) of Sale Area;
 - b. Payment Schedule and Conditions of Payment;
 - c. Other: _____

CONTRACT PERFORMANCE, PERIOD, EXTENSIONS AND TERMINATION

4. PERFORMANCE

- a. **Commencement.** Cutting and removal of timber in conformance with this Contract may commence and continue only after the signing of this Contract by both parties and only after submission and maintenance of all bonds, certificates or statements required under it.
- b. **Contract Oversight.** Cutting and removal of timber purchased under this Contract shall be conducted in conformance with this Contract and in a good and workmanlike manner with reasonable diligence to assure completion of all performance within the Contract period specified in par. 5. The Purchaser shall notify the Seller or the Seller's Agent 36-48 hours prior to commencing harvest of the timber designated herein and upon completion of the cutting. In the event that the harvest is temporarily discontinued for more than one week, the Purchaser agrees to notify the Seller or the Seller's Agent _____ (Agent's name) both upon discontinuance and resumption of harvest. Notification under this paragraph may be made by telephone to _____ (phone number). The Seller or the Seller's Agent may require an onsite meeting before commencement of harvesting.
- c. **Inspection.** The Seller retains the right of ingress and egress to and on the sale area and may inspect the sale area and trucks hauling forest products from or traveling on the sale area at any time. If the inspection reveals any violations of this Contract the Seller shall promptly notice the Purchaser. Upon notice from the Seller, the Purchaser shall promptly take measures to remedy the violation.
- d. **Access.** The Purchaser has no access or privilege to go upon the Seller's property other than to comply with this Contract and may not authorize access or use to others except for the sole purpose of performing this Contract.

¹ Where options are listed with "OR", strike the option(s) that does not apply.

5. **CONTRACT PERIOD**

- a. All work under this Contract shall be completed between the signing of the Contract by both Parties and _____ (Contract ending date), FOR TIME IS OF THE ESSENCE. Contract amendments or extensions may not be relied upon by the Purchaser for the purpose of completing performance under this Contract.
- b. The Seller may temporarily suspend operations under this Contract due to excessive property damage, wet conditions or at other reasonable² times upon notice to the Purchaser or other persons operating on the sale area under this Contract with subsequent equitable adjustment of this Contract as mutually agreed upon by the parties.

6. **CONTRACT EXTENSIONS.** If extensions of this Contract are deemed reasonable by the Seller, the stumpage price agreed upon herein shall be adjusted as follows:

- a. First six-month extension: 0% increase
- b. Second six-month extension: 5% increase
- c. Additional six-month extensions: 10% increase
- d. Other applicable charges or fees: _____

7. **TERMINATION.** The Seller may terminate this Contract by oral or written notice to the Purchaser upon its breach. Upon such notice, the Purchaser shall cease all operations on and immediately leave, and not return to, the Seller's property unless otherwise provided by the Seller.

DOWNPAYMENT, BOND, REMEDIES AND DAMAGES

8. **DOWNPAYMENT.** The Purchaser has given the Seller a down payment in the form of cash, a certified check, or other form acceptable to the Seller in the amount of \$ _____ [if none, enter "zero"] to commit to completion of the timber sale in a timely manner as specified in the Contract.

9. **BOND.**

- a. A performance bond in the Seller's favor in the amount of \$ _____, in cash, by surety bond, or in any other form accepted by the Seller, shall be submitted by the Purchaser no later than _____ to be retained by the Seller to assure full and complete performance of the Contract by the Purchaser to the Seller's satisfaction. Failure to submit the bond shall be considered a breach of this Contract and subject the Purchaser to liability for damages. The Purchaser agrees that the bond shall be forfeited to the Seller as liquidated damages upon the Seller's determination that a condition or term of this Contract has been breached by the Purchaser, unless the Seller chooses and can reasonably determine the actual damages suffered as a result of the breach of the Contract. Damages assessed under this Contract are the responsibility of the Purchaser and may be deducted from this performance bond and otherwise collected by the Seller.
- b. The Purchaser agrees that the performance bond may be retained by the Seller until all performance under this Contract has been completed to the Seller's satisfaction and the Seller determines the performance has been so completed. If the Seller determines the performance has not been completed satisfactorily and in conformance with this Contract, the performance bond may be retained by the Seller until the Seller can determine damages caused by the lack of performance. Only in the event the Purchaser provides written notice of sale completion to the Seller shall the Seller have sixty (60) days to determine that performance has been completed as required under this Contract

10. **REMEDIES.**

- a. If timber or other forest products not specifically described in this Contract or designated by the Seller for cutting are cut, unreasonably damaged or removed by the Purchaser, the Seller may pursue any and all remedies for the unlawful use of the Seller's property and the cutting, unreasonable damage or removal of property without consent, including the seeking of criminal or civil charges for theft, timber theft or criminal damage to property, in addition to any Contract remedies for breach.
- b. If the Seller or Purchaser seeks damages for breach of this Contract through court proceedings, and if either party prevails in such proceedings, in whole or in part, then the non-prevailing party agrees to pay all of the prevailing party's actual and reasonable expenses, including attorneys and expert witness fees.
- c. The Seller agrees to mitigate the damages for breach by offering the timber for resale if it determines the timber is saleable based upon its volume or quality.
- d. The Seller may, when it deems it reasonable and in the best interest of the Seller, allow the Purchaser to continue performance under the Contract and the Purchaser shall pay as liquidated damages double the mill value as determined by the Seller for the timber or other forest products cut, removed or damaged without authorization under or in violation of this Contract. The Seller's permission to continue cutting shall not be considered a waiver of breach nor prevent it from considering such breach for purposes of asserting any other remedies available to it. It is agreed that the double mill scale sum is a reasonable estimate of the probable damages suffered by the Seller and shall not be construed as or held to be in the nature of a penalty.

² "Reasonable" in this contract is defined as fair, proper, just, moderate, and suitable under the circumstances, not arbitrary or capricious.

11. **DAMAGES.** The damages to be paid to the Seller upon the Purchaser's failure to perform this Contract include, but are not limited to:
- The difference between the Purchaser's bid value of timber not cut and removed under this Contract and the value returned to the Purchaser. The Seller agrees to mitigate the damages for breach by offering the timber for resale within 12 months if the Seller determines the timber is salable based upon its volume or quality.
 - Triple average stumpage rate established in NR 46.30, Wisconsin Administrative Rules, for timber cut, removed or unreasonably damaged without authorization under or in violation of this Contract. The Seller's decision to assess triple damages as provided here and to allow the Purchaser to continue performance under this contract shall not be construed as a waiver of other contract performance requirements.
 - All costs of sale area cleanup or completion of performance not completed by the Purchaser.
 - All costs of resale of timber not cut and removed as required under this Contract.
 - The Purchaser agrees that if the timber identified in this Contract for cutting is to be resold due to a breach of this Contract, the Seller is not obligated to give oral or written notice to the Purchaser of the resale.
 - Additional damage provisions:
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PRODUCTS TO BE REMOVED

12. No forest products may be removed from the Premises until the Purchaser pays for the products or guarantees payment for the products to the satisfaction of the Seller.
13. Title to stumpage and any forest products cut under this Contract shall remain with the Seller until payment is received. Title to stumpage and cut products that are not cut and removed before the end of the Contract period, even though paid for, shall revert to the Seller, and the Seller shall be under no obligation to return payments to the Purchaser.
14. During the period of this Contract, the Purchaser is authorized and shall cut, remove and pay for the timber or forest products marked or designated as follows:
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SALE TYPE, SCALING, HAULING AND PAYMENTS

15. **SALE TYPE**³ [select one of the following three choices and strike the others]

LUMP SUM SALE:

The Purchaser agrees to pay Seller an amount of \$ _____, to be paid in full prior to the commencement of timber cutting, based on the volume estimates and unit values in Par. 17 Timber Products Table. The Seller is not obligated to return the payment or any portion of it in the event the Purchaser fails to remove all timber or forest products authorized for removal.

OR

SCALED PRODUCTS SALE:

FLAT RATE METHOD. The payment as established by the Price per Unit in Par. 17 shall be based on sawtimber, cordwood, or piece product volume as measured by product dimensions. **The price paid per board feet, cord or piece is a flat rate regardless of the quality, final destination or use of the cut product.** Hardwood less than 10.6 inches in diameter at the small end of the log, inside the bark (d.i.b.), shall be measured as cordwood and 10.6 inches or greater d.i.b. as sawtimber. For conifers, the division between cordwood and sawtimber is 9.6 inches d.i.b. Sawtimber with 50% or more cull shall be measured as cordwood. The volume shall be measured by _____ (name), an agent of the Seller / the Purchaser / the primary processing facility (the Mill or its agent) to whom the Purchaser delivers the product and to whom the cut product is sold [strike the choices that do not apply].

OR

SCALED PRODUCTS SALE:

GRADED PRODUCT METHOD. The payment as established by the Price per Unit in Par. 17 shall be based on the volume of *graded* products including fuel wood, pulpwood, sawbolts, sawtimber by grade, veneer by grade and piece products (such as posts and utility poles) by grade. **In addition to product dimension, the price paid depends upon the quality or intended use of the cut product or type of processing facility the cut product is destined.**⁴ The volume and grade shall be determined by _____ (name), an agent of the Seller / the Purchaser / the primary processing facility (the Mill or its agent) to whom the Purchaser delivers the product and to whom the cut product is sold [strike the choices that do not apply].

³ **Lump sum and scaled products-flat rate** methods are the most commonly accepted sale types. Landowners may have difficulty in finding purchasers willing to enter into graded product method sales, which are more difficult to administer.

⁴ For example, cordwood delivered to a paper mill would be paid for as pulpwood. Cordwood delivered to a sawmill would be paid for as sawbolts or sawlogs.

UTILIZATION AND OPERATIONS

- 22. **STUMP HEIGHT; TOPS.** Tree stumps shall be cut as close to the ground as practical, otherwise maximum stump height shall not exceed stump diameter; and for stumps ten or more inches in diameter, stumps shall not exceed ten inches in height. For sales including cordwood products, trees shall be utilized to a 4" minimum top diameter. Title to tops shall remain with the Seller and may not be utilized by the Purchaser, or at the Purchaser's direction, unless otherwise specified in this Contract.

- 23. **WASTE.** The Purchaser agrees to complete all operations and performance as described in this Contract without waste or nuisance on the sale area or any other property of the Seller or adjoining land used in conjunction with the harvest and use reasonable care not to damage trees not designated or marked for cutting. Young trees bent or held down by felled trees shall be promptly released.

- 24. **ZONE COMPLETION.** The Purchaser agrees to complete all operations on each portion of the sale area or each zone as designated on the sale area map, or other attachments or in the cutting requirements before beginning cutting in the next portion or zone, unless agreed to otherwise by the Seller.

- 25. **DIGGERS HOTLINE.** The Purchaser is responsible to contact the diggers hotline, or other informational sources performing similar services, prior to digging or conducting other activities on the property which may result in contact with utility or service lines or facilities.

- 26. **ROADS, LANDINGS, MILL SITES, CAMPSITES, EROSION CONTROL, BEST MANAGEMENT PRACTICES (BMPs).**
 - a. When not otherwise designated by the Seller, the location of roads, landings, mill sites and campsites on Seller's property are subject to advance approval and under the conditions established by the Seller. All restoration, cleanup or repair of roads, bridges, fences, gates, landings, mill sites and campsites, or the cost of the cleanup, if not completed by the Purchaser to the reasonable satisfaction of the Seller, is the responsibility of the Purchaser.
 - b. Logging debris accumulated at landing areas shall be scattered within the sale area to the reasonable satisfaction of the Seller.
 - c. Berms constructed on the Seller's property shall be leveled to restore the area to the Seller's satisfaction unless they are constructed at the direction of the Seller under sub d.
 - d. Roads and landings shall be graded or closed upon the request of and to the Seller's satisfaction upon completion or termination of this Contract.
 - e. Other restoration requirements (e.g., seeding, gravel, rutting, culvert removal, etc.):

 - f. The Purchaser agrees to comply with the Best Management Practices (BMP) guidelines as described in "Wisconsin's Forestry Best Management Practices for Water Quality" published by the Wisconsin Department of Natural Resources, publication FR-093. Identify BMPs of particular concern:

 - g. The Purchaser agrees to take precautions to prevent the spread of invasive species as described in Wisconsin Department of Natural Resources' invasive species guidelines. Identify species and actions of particular concern:

- 27. **SOIL DISTURBANCE AND RUTTING**
 - a. The Purchaser agrees to take all steps and precautions to avoid and minimize soil disturbances, such as soil compaction and rutting. If soil disturbances occur, the Purchaser agrees to work cooperatively to mitigate and repair any and all instances of soil disturbance.
 - b. Excessive soil disturbance (as defined in Table 1) shall not be permitted. Purchaser agrees to contact Seller in the event of an excessive soil disturbance.

Table 1. Thresholds for soil disturbances.

<u>Timber Sale Infrastructure</u>	<u>Soil disturbances are excessive if:</u>
<u>Roads, Landings, Skid Trails, and General Harvest Area</u>	<ul style="list-style-type: none"> ▪ <u>A gully or rut is 6 inches deep or more and is resulting in channelized flow to a wetland, stream, or lake.</u>
<u>Roads, Landings, and Primary Skid Trails</u>	<ul style="list-style-type: none"> ▪ <u>In a riparian management zone (RMZ) or wetland, a gully or rut is 6 inches deep or more and 100 feet long or more.</u> ▪ <u>In an upland area (outside of RMZ), a gully or rut is 10 inches deep or more and 66 feet long or more.</u>
<u>Secondary Skid Trails and General Harvest Area</u>	<ul style="list-style-type: none"> ▪ <u>A gully or rut is 6 inches deep or more and 100 feet long or more.</u>

Note: The depth is to be measured from the original soil surface to the bottom of the depression. If individual lug depressions are visible, the depth would be measured to the lesser of the two depths (the "top" of the lug). The length is measured from the start of the "too deep" section to the end of the "too deep" section. Measurements are not cumulative.

- c. Prior to sale completion the Purchaser shall mitigate and repair soil disturbances to the Seller's satisfaction.
- d. Other restoration requirements (e.g. repair of soil disturbance or rutting on recreational trails used for skidding):

- (1) _____
- (2) _____

- 28. **OTHER APPROVALS.** Logging roads that intersect town, county or state roads or highways must have the intersections approved by the proper authorities prior to construction and cleared of all unsightly debris at the time of construction. The Purchaser agrees to apply for and obtain all approvals. The Purchaser also agrees to fully comply with all terms and conditions of intersection approvals.
- 29. **SURVEY MONUMENTS.** The Purchaser agrees to comply with s. 59.635, Wis. Stats., regarding perpetuation of landmarks and pay for the cost of repair or replacement of property or land survey monuments or accessories which are removed, destroyed or made inaccessible.
- 30. **FOREST FIRE PREVENTION.** The Purchaser agrees to take reasonable precautions to prevent the starting and spreading of fires. Those precautions include, but are not limited to:
 - a. A minimum of one fully charged 5 pound or larger ABC fire extinguisher with a flexible spout shall be carried on each off-road logging vehicle.
 - b. All chainsaws and all non-turbocharged off-road logging equipment used in the operation shall be equipped with spark arrestors that have been approved by the U.S. Forest Service. Such arrestors may not be altered in any manner or removed and shall be properly maintained.
 - c. If a fire occurs, the Purchaser agrees to promptly report the fire and cooperate in the control and suppression of the fire.
 - d. The Purchaser shall comply with requests regarding forest fire prevention and suppression made by the Seller and take all reasonable precautions to prevent, suppress and report forest fires. Those requests may include ceasing or modifying operations.
 - e. The Purchaser shall be responsible for damage and forest fire suppression costs, including that provided in ss. 26.14 and 26.21, Wis. Stats., caused by their operation under this Contract.
 - f. Other: _____
- 31. **SLASH REMOVAL.** Slash as defined in s. 26.12, Wis. Stats., shall be disposed of as follows:
 - a. Slash falling in any lake or stream, in a right-of-way or on land of an adjoining landowner shall be immediately removed from the waters, right-of-way or adjoining land. Tops from felled trees may not be left hanging in standing trees. All trees shall be completely felled and not left leaning or hanging in other trees.
 - b. Other: _____
- 32. **CLEANUP AND USE OF SALE AREA.**
 - a. The Purchaser shall remove equipment, tools, solid waste and trash remaining on the sale area or Seller's property or adjoining land used in conjunction with the harvest upon completion of performance under this Contract, termination of this Contract due to breach by the Purchaser or when requested by the Seller.
 - b. No residence, dwelling, permanent structure, or improvement may be established or constructed on the sale area or other property of the Seller.
- 33. **HAZARDOUS MATERIALS.** The Purchaser agrees to properly use and dispose of all petroleum and hazardous products, including but not limited to oil, oil filters, grease cartridges, hydraulic fuel and diesel fuel. Any on-site spillage must be properly reported, removed and cleaned up by the Purchaser in accordance with applicable statutes and rules of the State of Wisconsin.

34. **ADDITIONAL UTILIZATION AND OPERATION REQUIREMENTS AND INSTRUCTIONS:**
- a. Between April 15 and August 15 all pine products must be removed from the site within two weeks, regardless of when they were harvested.
 - b. Oak wilt prevention: where oak trees are present, no cutting is allowed between _____ and _____.
 - c. No trees or products over 16 feet in length may be skidded within the cutting area without written permission of the Seller.
 - d. Other (If none, state None.)
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NOTICE OF INTENT TO CUT AND COMPLIANCE WITH LAWS

35. **SECTION 77 NOTICE AND REPORT.** The Seller / Purchaser [select one] shall file required cutting notices and cutting reports to the responsible DNR forester for lands that are under the Forest Crop Law and Managed Forest Law programs.
36. **SECTION 26 NOTICE.** The Seller / Purchaser [select one] shall file a declaration annually⁹ with the county clerk in any manner acceptable to the county of his or her intentions to cut forest products pursuant to section 26.03, Statutes, and comply with all other notice requirements, laws and ordinances with respect to work under this Contract.
37. **OTHER PERMITS.** The Seller and Purchaser shall work together on acquiring other necessary permits (such as wetland or stream crossing permits).
38. **APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Wisconsin. The Purchaser shall at all times comply with all federal, state, and local laws, ordinances and regulations in effect during the Contract period.

TITLE, BOUNDARY LINES AND ACCESS

39. **TITLE.** The Seller warrants that the Seller has clear and unencumbered title to the stumpage subject to this Contract.
40. **BOUNDARY LINES.** The Seller guarantees to have the boundaries marked with paint or other suitable means before any timber is harvested.
41. **ACCESS.** The Seller agrees to secure entry and right-of-way to the Purchaser on and across the area covered by this Contract, including access via land owned by a third-party if necessary.

LIABILITY AND INSURANCE

42. The Purchaser agrees to protect, indemnify and save harmless the Seller and the Seller's employees and agents from and against all causes of action, claims, demands, suits, liability or expense by reason of loss or damage to any property or bodily injury to any person, including death, as a direct or indirect result of timbering operations under this Contract or in connection with any action or omission of the Purchaser, who shall defend the Seller in any cause of action or claim.
43. Unless the Purchaser is exempted by the Seller from this coverage requirement as an independent contractor, as defined in s. 102.07(8)(b), Stats., and as determined by the Seller based on an affidavit submitted to it, the Purchaser agrees to elect to maintain worker's compensation insurance coverage for the cutting operation under this Contract and any and all employees engaged in cutting on the Seller's land during the period of this Contract regardless of any exemptions from coverage under chapter 102, Wis. Stats. The Purchaser must provide an original certificate of insurance naming the Seller as a certificate holder so the insurance carrier can notify the Seller should the insurance expire.
44. The Purchaser agrees to furnish the Seller with a certificate of public liability insurance covering the period of logging operations on the Seller's property for:
- a. \$1,000,000 single limit liability for personal injury or \$1,000,000 bodily injury per person and \$1,000,000 per occurrence;
 - and
 - b. \$100,000 property damage.
45. The Purchaser shall notify the Seller in writing, immediately upon any change in or cancellation of insurance coverage required by this Contract.
46. The Purchaser is an independent contractor for all purposes including Worker's Compensation and is not an employee or agent of the Seller. The Seller agrees that the undersigned Purchaser, except as otherwise specifically provided herein, shall have the sole control of the method, hours worked, time and manner of any timber cutting to be performed hereunder. The Seller reserves the right only to inspect the job site for the sole purpose of insuring that the cutting is progressing in compliance with the cutting practices established under this Contract. The Seller takes no responsibility for supervision or direction of the performance of any of the harvesting to be performed by the undersigned Purchaser or it's employees. The Seller further agrees to exercise no control over the selection and dismissal of the Purchaser's employees.

⁹ County cutting notices expire by law on December 31 and so must be renewed annually.

47. **OSHA COMPLIANCE, DANGER TREES.** The Purchaser is responsible to comply with, and assure compliance by all employees or subcontractors with, all Occupational Safety and Health Act (OSHA) requirements for the health and safety of Purchaser's employees, including provisions relating to danger trees. In addition, the Purchaser agrees to notify, and obtain agreement from, the Seller if the Purchaser intends to modify performance required under this Contract for the purpose of compliance with OSHA requirements. Notwithstanding OSHA regulations, the Purchaser agrees to apply appropriate safety precautions.
48. **ACTS OF GOD.** Neither party shall be liable for defaults or delays due to acts of god or the public enemy, acts or demands of any government or governmental agency, strikes, fires, flood, accidents or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five days after the beginning thereof. If such uncontrollable circumstances continue for 30 days and prevent either party from complying with the terms of this agreement, either party shall have the option of terminating upon ten days notice to the other.

TRAINING (Recommended)

49. **TRAINING REQUIREMENT.** The Purchaser is responsible for ensuring that the actual logging contractor engaged in performance of this Contract holds a current logging safety training certificate issued by the Forest Industry Safety & Training Alliance (FISTA) or equivalent safety training acceptable to the seller. Purchaser agrees to provide documentation to Seller that training has been attained prior to initiating sale.

FOREST CERTIFICATION (if applicable)

50. **CERTIFICATION STANDARD AND CERTIFICATE .** The land management area encompassed by this timber sale is certified to the following forest certification standards (mark as applicable and provide valid certificate numbers):

- | | | |
|-----|---------------------------------------|---------------------|
| ___ | American Tree Farm System (ATFS) | Certificate # _____ |
| ___ | Forest Stewardship Council (FSC) | Certificate # _____ |
| ___ | Sustainable Forestry Initiative (SFI) | Certificate # _____ |
| ___ | _____ (Other Standard) | Certificate # _____ |

51. **CHAIN OF CUSTODY.** Forest certification chain of custody provided by the Seller under the preceding certificates ends at the stump, log landing or roadside.
52. **APPROVED CUTTING NOTICE.** In the event that land management area encompassed by this timber sale participates in the Wisconsin Managed Forest Law Certified Group, the Seller agrees to provide the Purchaser with a copy of the Wisconsin DNR approved Cutting Notice (DNR Form 2450-32).

CONTACT INFORMATION

53. **CONTACT INFORMATION:**

(Note: Separate from this form, the Seller and Purchaser are encouraged to provide one another with their Social Security Number or Federal Employer ID Number, needed to file tax returns or other financial documents.)

Seller:	Purchaser:
Name _____	Name _____
Address: _____	Address: _____
_____	_____
Phone: _____	Phone: _____
Cellular Phone: _____	Cellular Phone: _____

We have read and understand the entire Contract comprised of _____ pages.

SELLER

Date _____ by _____

PURCHASER

Date _____ by _____

Wisconsin has Best Management Practices (BMPs) to protect water quality and reduce the spread of invasive species. The State has also developed guidelines for the harvesting of woody biomass. If there are critical BMP needs or you want the Purchasers to comply with the biomass guidelines, you should list those, being as precise as possible.

Include consideration for archeological sites or endangered and threatened species (e.g., Natural Heritage Index listed species) where appropriate or required by law. Be aware that some requirements may affect the price that the Purchaser can afford to offer for the timber.

35-38. Notice of intent to cut and compliance with laws

Specify the party responsible for filing cutting notices and reports with the county clerk and the DNR. County cutting notices must be filed 14 days before cutting starts and renewed on January 1 of each year.

If the land is enrolled in the Managed Forest Law (MFL) or Forest Crop Law (FCL) the DNR notice must be filed at least 30 days before cutting begins and a report of volumes cut must be filed within 1 year or when cutting is completed depending on the program. The landowner will be responsible for paying a MFL yield tax or FCL severance tax on the timber cut. Regardless of contract provisions, state statutes hold landowners liable for penalties related to non-compliance with MFL and FCL cutting notice and reporting requirements.

39-41. Title, boundary lines, and access

These clauses outline three important duties of you as the Seller.

1. You assure that you have the authority to sell the timber and will defend that right in court if necessary. A mortgage or land contract may require that the seller seek permission of creditors before selling. Where there are multiple owners, all should consent. Tax program participants should ensure that the harvest is consistent with the approved forest management plan and that all required notices are submitted.
2. You will mark the boundary of the timber sale prior to harvest.
3. You will acquire written permission to cross a neighbor's land, if necessary.

42-48. Liability and insurance

These provisions protect the Seller from liability arising from the Purchaser's harvesting operation.

The Purchaser is required to show proof of workers' compensation and public liability insurance. Be aware that a logger's liability insurance does not normally include damages caused by fire or timber trespass unless purchased as an option.

49. Training

Loggers can access training opportunities related to safety, forest management, and various BMPs and guidelines. If you expect them to have certain training, check and document that the Purchaser and the timber operators working on the site have completed the pertinent training programs.

50-52. Forest certification

If the land is certified (e.g., American Tree Farm Program, Forest Stewardship Council, etc.), additional contract language will be necessary. Sellers should provide Purchasers with certificate number(s), which you can find either on your certification documents or from the organization that certified your land. Timber from certified and non-certified land should be divided into separate timber sale contracts or otherwise clearly delineated to avoid mixing.

53. Contact information

This exchange of information between the Purchaser and Seller will ensure that both parties can contact each other easily. If you are using a Seller's agent (e.g., consulting forester), you'll want to provide his or her contact information, too.

Forestry Facts are available from the Department of Forest and Wildlife Ecology, University of Wisconsin-Madison, 1630 Linden Drive, Madison, WI 53706; phone: 608-262-9975 or at <http://fwe.wisc.edu/>.

Contact the Department of Natural Resources at 608-267-7494 or <http://www.dnr.state.wi.us/>; or the Wisconsin Woodland Owners Association at 715-346-4798 or <http://www.wisconsinwoodlands.org> for publications they offer or check the Internet.

This *Forestry Fact* is on-line at:
<http://forest.wisc.edu/extension/publications/94.pdf>

