



# Sales of timber from public forests

Essential provisions  
and regulations

These documents were originally published in French. In the event of a discrepancy between a version in another language and the French version, the French version shall be considered as authoritative.

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## T I M B E R   S A L E S

### Regulations for sales by adjudication

#### Title 1

#### General rules applicable to sales by adjudication carried out by ONF

##### 1- General principles

##### 1-1 Purpose of the sales regulations

These regulations set out how sales by adjudication carried out by ONF shall be conducted, including advertisement and competitive bidding, and exclude all other sale procedures to which specific arrangements apply separately. Therefore, these regulations do not apply to sales by competitive tendering or to sales by private agreement. In addition, sales carried out in pursuance of these regulations are not open to private individuals acting in their capacity as private consumers.

Whatever the delivery arrangements for the goods (standing timber or converted timber), the sales carried out in accordance with these regulations by ONF concern all felling coupes and products of such coupes likely to be offered for sale and originating from state-owned forest estates or forests owned by territorial communities and legal entities and administered under the public forest law system.

These sales regulations enacted as prescribed by Article R. 134-4<sup>1</sup> of the Forestry Act are enforceable against buyers, as well as against the communities and legal entities whose timber is offered for sale by ONF.

##### 1-2 Statutory and regulatory framework for sales by adjudication

The timber, felling coupes and products of such coupes are sold on such conditions as prescribed in Chapter 4, Title 3, Book 1 of the Forestry Act with regard to state-owned forests and lands for afforestation; and in Chapter 4, Title 4, Book 1 of the Forestry Code with regard to community forests and land for afforestation under the public forest law system.

Without prejudice to the provisions specific to forest law, sales carried out by adjudication are subject to terms and conditions pursuant to the Civil Code and the Commercial Code, in particular Article L.320-2 relating to sales by public auction.

In the matter of all sales subject to these regulations:

- French and Community consumer law, which only administer sales made to private consumers, do not apply,
- nor does the law on the international sale of goods pursuant to the Vienna Convention signed on 11 April 1980, which does not administer sales by auction.

In the case of adjudications by tender, which involve written procedures, the bids made by professionals shall be treated as confidential and are protected by business secrecy.

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<sup>1</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

Representatives and members of staff of territorial communities and legal entities owning forest land, as well as ONF staff who have notice of the bids made by professionals, whether in the exercise of their commercial duties or by chance are bound by professional secrecy.

### **1-3 Information of an economic nature**

An economic statement analysing the results of timber sales is presented each year to ONF's Governing Board by the Director General.

## **2- The partners in the commercial relationship**

### **2-1 ONF**

#### **2-1-1 Seller**

In respect of the sales of forest products from forests under the public forest law system, ONF is acting as the seller and authorized agent on behalf of the territorial communities and legal entities owning forest land, in pursuance of Article L. 144-1 of the Forestry Code, except in one case as provided by the following clause.

When grouped lots are to be sold in pursuance of Article L.144-1-1 of the Forestry Code, ONF is contracting in its own name without prejudice to the claim of territorial communities and legal entities to the distribution of the products of sale on the terms prescribed by laws and regulations, and in particular Article L.1311-8 of the Code of Territorial Communities.

#### **2-1-2 Choice of sale procedure**

In pursuance of Article R.134-1<sup>2</sup> of the Forestry Code, ONF is responsible for the choice of sale by adjudication as opposed to other sale procedures, in agreement with the territorial communities and legal entities owning forest land, as set out in Article 2-2 hereinafter. ONF shall depart from this provision only in the case set out in Article R. 144-6 of the Forestry Code.

The decision shall be taken following instruction by the Director General of ONF.

#### **2-1-3 Information on the offer made by ONF**

The offer made by ONF constitutes information disclosed by ONF.

The offer of sale is communicated to buyers and periodically updated so that all relevant information on supply is made available to buyers.

This information is accessible in ONF offices as required by Article 3-1-2 hereinafter and also on the ONF webpage restricted to professional use.

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<sup>2</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

## **2-2 Communities and legal entities owning forest land**

### **2-2-1 Opinion of a community or legal entity owning forest land on the choice of sale procedure by adjudication**

In the case of sales of communal forest products, the Mayor of the relevant Commune gives his opinion on the choice of sale procedure by adjudication; in the case of other territorial communities or legal entities owning forest land, this opinion is given in the manner prescribed by Article R. 141-7 of the Forestry Code.

If there is a disagreement between the executive authority of the community or legal entity owning forest land and ONF, the community or legal entity shall express its opinion by means of a reasoned deliberation indicating any reservations expressed by ONF; its opinion shall then be imposed on ONF.

Article R. 144-6 of the Forestry Code requires that for sales of logs from communal forests and public institutions in the French Départements of Bas-Rhin, Haut-Rhin and Moselle, the choice of sale by adjudication departs from the above and is made by the Mayor of the relevant commune or the Administrative Commission Chairman for the public institution.

### **2-2-2 Opinion of a community or legal entity owning forest land on withdrawal prices**

The withdrawal price is a safeguard value under which the sale cannot go ahead without prejudice to the owners' estates; it is established taking into account the known state of the market.

The community or legal entity owning forest land is thus involved in setting withdrawal prices with ONF, except in the case of grouped sales, in pursuance of Article L. 144-1-1 of the Forestry Code.

The community or legal entity owning forest land gives its opinion through its executive authorities, and never through its deliberative assembly, since assembly deliberations are made public; this is in order to maintain the confidentiality of such information of an economic nature and protected by business secrecy.

Withdrawal prices, thus fixed by ONF after consideration of the opinion of communities and legal entities owning forest land, are enforceable against the latter, as well as against other professionals. Once the sale is done, the parties are no longer bound by the withdrawal prices.

When the owner asks for a withdrawal price which does not seem appropriate to the state of the market or to the principles of sustainable forest management, ONF can refuse to offer the lot concerned for sale, provided it states the reasons for its decision.

## **2-3 Buyers**

### **2-3-1 Conditions for participating buyers**

#### **2-3-1-1 Sales are restricted to professionals**

Timber sales carried out by ONF are wholesales and are accessible to any professional who wishes to participate as part of his professional activities and who is registered as carrying on business (in a trade register, a register of professions and occupations or any other



equivalent register in the professional's country). Companies and businesses under establishment, which are qualified as above, also have access to the sales.

Sales carried out in pursuance of these regulations are not open to private individuals acting in their capacity as private consumers.

### **2-3-1-2 Financial guarantees required before the sale**

In pursuance of Article R. 134-5<sup>3</sup> of the Forestry Code, the Adjudication Bureau shall assess the professionals' financial capability on the basis of guarantees submitted before the sale or during the event where appropriate, without possible appeal.

For sales of standing trees as well as for sales of converted timber, whether or not the professionals are intending to use the purchase payment terms defined in the general conditions of contract, they shall:

- either provide an agreement to bond before the sale,
- or sign a commitment to pay cash, in advance or during the event.

The agreement to bond is a commitment by the guarantor to stand surety for the professional in respect of the goods to be purchased by him on such conditions as prescribed by Articles L. 134-3 and 134-6 of the Forestry Code. This document, which defines the maximum amount of the purchases covered by the commitment, shall be drawn up according to the template available for professionals in ONF offices.

The guarantee can only be issued by an organization included in the list of organizations authorized to stand surety to public accountants in France. The list is available at the Banque de France. When the commitment is required by the general conditions of contract, it shall be collected after the adjudication.

The agreements to bond shall be addressed to the accountant in charge of payment in the Département where the adjudication event is held; the accountant shall receive the agreements by close of business on the third business day before the sale date. The agreements to bond can exceptionally be submitted during the event if the tender is also submitted during the event.

Bids exceeding the maximum purchase amount covered by the agreement to bond shall not be considered, except if the interested party signs a commitment to pay in cash for the total lot sale price during the event.

### **2-3-1-3 Buyers' representation**

Representatives of legal entities and their social proxies shall provide proof of their powers or capacity, and they shall be able to do this during the event if requested to do so by the Bureau, otherwise their bid could be refused by the Bureau.

In addition to the provision of the above mentioned documents, foreign professionals shall hold a foreign trader identity card issued by the French administration, otherwise their bids will not be considered. They must prove this by showing their identity card during the adjudication event, or by attaching a copy of the card to their tender in the case of

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<sup>3</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

adjudication sales by tender. The latter provision does not apply to buyers from European Union countries who are subject to the same obligations as French nationals.

For buyers undergoing legal redress or an equivalent procedure in their country of origin, and in the absence of an agreement to bond, the commitment to pay in cash for the total sale price of the goods purchased shall be signed or countersigned by the ad hoc representative, in accordance with the rules applicable to the procedure which the buyer is undergoing.

In addition, the contract shall be deemed to be entered into on the suspensive condition that the buyer is able to provide written proof under the ad hoc representative's signature that he is legally able to pursue his business activities for the time necessary to execute the contract.

## **2-3-2 Penalty for failure to provide financial guarantees**

### **2-3-2-1 Legal forfeiture**

In accordance with Article L. 134-5 of the Forestry Code, a buyer who has not provided the guarantees required by the conditions of sale in the time requested, shall be declared disqualified from the sale.

A buyer thus disqualified from the sale loses his right to be awarded the lot.

Forfeiture is pronounced by the Adjudication Bureau Chairman or his deputy; the defaulting buyer shall be notified in writing of his forfeiture.

### **2-3-2-2 A defaulting buyer's lot is re-offered for sale by false bidding**

In pursuance of Article L. 134-5 of the Forestry Code, the defaulting buyer's lot shall be re-offered for sale by public adjudication, by false bidding of the defaulting buyer. The latter shall owe any price difference between the price at which he was initially awarded the lot and the price at which the lot is eventually successfully awarded, without being able to claim for any excess.

The defaulting buyer is expressly forbidden from buying the same lot again.

## **Title 2**

### **The different types of sale by adjudication**

#### **3- Provisions shared by all sales by adjudication**

##### **3-1 Sale organization and advertisement**

###### **3-1-1 Sale date and location**

The ONF Territorial Director sets the sale date and location, as suggested by the person in charge at management level, taking into consideration forest owners' interests, buyers' needs and customary practices.

###### **3-1-2 Advertisement prior to the sale**

Advertisement prior to the sale includes two compulsory procedures and various actions that the person responsible at management level must undertake, as he is responsible for this.

###### **3-1-2-1 Compulsory procedures**

A sale by adjudication shall be publicly announced at least two weeks in advance through a poster display in the town hall of the sale location and at least two publications in a local newspaper, a professional magazine or on the ONF website restricted to professionals. The two-week period can be reduced to seven days in an emergency.

- **Poster display in the town hall**

A poster is displayed in the town hall of the sale location by the person in charge at management level, who requests a certificate of affixation issued by the Mayor.

The poster provides information on the location, date and time of the sale, the adjudication method used, the type and quantities of products offered for sale and the address of the ONF offices where the sale documents can be consulted or requested.

For adjudication sales by tender, the poster also states the deadline for tender submission.

- **Advertisement in the press**

Advertisement in the press provides the same information as the town hall poster at least, and shall be inserted in a French daily, weekly or fortnightly newspaper with a regional readership at least.

- **Advertisement on the ONF website**

A catalogue of the products offered for sale is published on the ONF website restricted to professionals and can be consulted in the offices of the relevant ONF Agency or Territorial Direction.

###### **3-1-2-2 Other means of advertisement**

The ONF person in charge at management level must ensure that the sale is advertised as widely as possible. He has the freedom to choose the most suitable means, i.e. poster displays, local, national or international press inserts, notices issued to professionals bodies, catalogue, letter or circular mailings...

### **3-1-3 Sale documents**

The sale documents include a copy of these regulations and of the general conditions of contract, as well as the catalogue which includes the supplementary conditions of sale and the conditions specific to each lot.

The documents are available for consultation in the ONF office or offices mentioned on the poster, to anybody who wishes to see them for the time period allowed for the sale advertisement.

Copies of the sale documents are filed with the Prefect who will be chairing the sale and who signs each document.

## **3-2 Legal aspects of adjudication sales**

### **3-2-1 Sales by adjudication are sales by public auction**

Sales by adjudication carried out by ONF in pursuance of Article L. 134-7 of the Forestry Code, are sales by public auction as defined by Articles L. 320-1 and L. 320-2 of the Commercial Code. It follows therefore that the adjudication act is an administrative act separate from the sale contract.

### **3-2-2 Adjudication events are public**

Sales by adjudication are public events.

### **3-2-3 Validity of the auction**

Whether verbal or by written tender, an auction indefeasibly binds the bidders until adjudication is pronounced.

### **3-2-4 Adjudication to the highest bidder**

In pursuance of Article R. 134-7<sup>4</sup> of the Forestry Code, each lot is awarded to the highest bidder, provided that his bid is higher or equal to the set withdrawal price.

### **3-2-5 Pronouncements of adjudication are final**

In accordance with Article R. 134-10<sup>4</sup> of the Forestry Code, a pronouncement of adjudication is final. A pronouncement of adjudication is never reconsidered.

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<sup>4</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*



### 3-3 The Adjudication Bureau

#### 3-3-1 Adjudication Bureau composition and chairmanship

- **Sales of standing trees from public forests and sales of logs from state-owned forests and forests owned by communities and legal entities not pursuant to the next section**

The Adjudication Bureau as defined by Article R. 134-8<sup>5</sup> of the Forestry Code consists of:

- the Prefect of the Département where the event is held or his deputy, who is the Chairman;
- an authorized representative of ONF;
- the accountant in charge of payment or his deputy.

In accordance with Article L. 144-1 of the Forestry Code, adjudications concerning woods and forests administered under the public forest law system and carried out in pursuance of Article L. 141-1 of said Code shall take place in the presence of the Mayor or Deputy-Mayor for communal woods or of one of the administrators for woods belonging to legal entities as defined in said Article L.141-1, without the actions being declared void in the absence of the Mayors or administrators.

- **Sales of logs from Communes, parts of Communes and communal or inter-communal public institutions**

Instead of the Prefect and with assistance from an ONF representative, sale events for converted timber from communities and legal entities pursuant to Article L. 144-4 of the Forestry Code are chaired by:

- the Mayor or his deputy for communal or part-communal forests;
- by the Chairman of the Communes Association Commission or of the public institution as defined in Article L. 5222-5 of the Code of Territorial Communities, or his representative;
- by the Chairman of the Administrative Commission of a communal or inter-communal public institution or his representative.

#### 3-3-2 Sale conduct

The ONF representative of the Adjudication Bureau conducts the sale. As such, he chooses the order in which products are offered for sale; he can group under a single lot two or more lots from the same owner not yet offered for sale; or purely and simply remove lots from sale. In all cases, he announces this at the beginning of the event, at the latest.

He also states the opening price for each lot in the case of adjudication sales by descending and ascending auction, and where appropriate, he announces the withdrawal of the lot if no bids exceed the withdrawal price, whatever the adjudication method adopted.

Unsold lots cannot be re-offered for sale during the same adjudication event. The products from these lots can be re-offered for sale later through any sale or disposal procedure deemed by ONF to be appropriate to the type of product or the state of the market at the time of resale.

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<sup>5</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

### **3-3-3 The pronouncement of adjudication**

The Adjudication Bureau Chairman pronounces the adjudication of each lot stating the adjudication price and identity of the successful bidder.

Representatives of buyers shall state their capacity before any pronouncement of adjudication can be made.

### **3-3-4 Bureau decisions and settlement of incidents at events**

The Adjudication Bureau Chairman sees to the smooth running of the adjudication event.

In accordance with Article R. 134-9<sup>6</sup> of the Forestry Code, the Adjudication Bureau deals immediately with any objections raised during the event concerning the validity of adjudication operations. When a professional's bid is not accepted, the lot is re-offered for sale immediately.

He announces the Adjudication Bureau's decisions which are taken by majority, the Chairman having the casting vote.

### **3-4 Adjudication price**

In the case of sales by adjudication, opening prices, ascending and descending bids as well as the price pronounced by the Bureau Chairman are expressed excluding taxes and expenses.

The amounts are stated exclusively in Euros. The buyer is responsible for exchanging from other currencies at his expense and risk when fulfilling his obligation to pay.

### **3-5 Adjudication minutes**

ONF draws up the minutes of the adjudication event right away. The Bureau members sign the completed minutes at the end of the event.

The minutes specify the names and addresses of the successful bidders and their authorized agents for each lot. In the case of legal entities, they also specify the type of company, its name and head office address. In addition, the minutes specify the names and addresses of the persons who have signed the agreements to bond.

Each successful bidder or representative is asked to sign the minutes right away beside each lot purchased; his refusal to do so or absence will be recorded in said minutes.

Any incident at the event is reported in the adjudication minutes.

The minutes are formally registered by ONF, no later than one month after the adjudication date. ONF pays for the stamp duty.

The minutes thus registered are an authentic act drawn up under the responsibility of the Prefect chairing the Adjudication Bureau and acting in his capacity as an officer of the law; he has operative legal force as prescribed by Article L. 134-6 of the Forestry Code. The minutes

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<sup>6</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

are filed in the Prefecture of the Département where the event was held. The prefect is authorized to issue official copies thereof.

As soon as possible after the event, ONF sends minutes' extracts to each accountant responsible for recovering the payment for sold lots.

#### **4- Adjudication methods**

There are three methods for carrying out a sale by adjudication:

- by tender,
- by descending auction,
- by ascending auction.

The choice between adjudication methods is based on customary practices and is made by ONF's Territorial Director after discussion with the person in charge at management level.

#### **4-1 Adjudication by tender**

##### **4-1-1 Tender submission**

###### **4-1-1-1 Deadline for tender submissions**

Tenders are submitted before the sale within the time frame set by the sale advertisement.

They can be submitted during the event until the time set by the sale conductor.

###### **4-1-1-2 Tender form**

The tenders are written in French and presented on headed paper. They specify the applicant's complete legal identity and provide proof of the capacity of the tendering legal entity's representative. The tenders have to be signed.

Professionals shall send their tenders to ONF through one of the methods authorized in the sale advertisement and deemed to be appropriate for ensuring that the tender remains confidential until it is opened during the event, i.e.:

- by registered mail,
- or via a secure computer communications medium when such a medium is available.

Tenders sent by post or handed in in exchange for an acknowledgment of receipt shall be in a sealed double envelope. The outside envelope shall bear the bidder's name and specify its content (e.g.: "tender for the sale by adjudication held on..."). Inside, one envelope per lot bearing the lot number and bidder's name contains the bid.

Tenders thus received are recorded by ONF when they are received, without being opened, on a list by bidder name stating the dates of receipt.

When the tenders are received during the event, they can be written on loose paper, provided they specify the buyer's complete identity and provide proof of the capacity of the legal entity's representative. The tenders have to be signed.

Tenders can also be made through an instantaneous electronic medium if ONF has made this an option.

#### **4-1-1-3 Tender content**

The outside envelope contains the supporting documents, where appropriate, as prescribed by Article 2-3-1-3 above.

When tenders are submitted during an event, the outside envelope shall also contain the guarantees pursuant to Article 2-3-1-2 above.

One inside envelope per lot contains an offer for that lot.

The price offered by the buyer excludes taxes and reflects the payment terms and conditions prescribed by the general conditions of contract.

The price is stated and executed exclusively in Euros. The buyer is responsible for exchanging from other currencies into Euros at his expense and risk when performing his obligation to pay.

#### **4-1-2 Sale conduct**

If a professional has submitted several tenders, only the highest is taken into account.

Adjudication is pronounced in favour of the highest bid submitted in the period specified, unless the lot is removed owing to the absence of offers deemed high enough.

In the case of equal bids, the lot is drawn by lot.

#### **4-1-3 Disclosure of information on tenders received**

Information on tenders received is disclosed in the following manner:

For each lot sold by adjudication by tender, information concerning the buyer's name and sale amount is available at ONF offices. In addition, if the relevant forest owner's representative has expressly agreed to so do, the two best unsuccessful bids can be disclosed, provided the anonymity of their authors is preserved. This information is disclosed instantaneously, in a manner which is not traceable and on a lot by lot basis.

The anonymity of unsuccessful bidders is preserved in the following manner:

- if only two offers are received in total, no unsuccessful bid shall be disclosed;
- if three or four offers are received in total, only the first unsuccessful bid shall be disclosed;
- if five or more offers are received in total, the two best unsuccessful bids shall be disclosed.

#### **4-2 Adjudication by descending auction**

The opening price stated by the sale conductor is reduced successively according to a tariff specified in the conditions of sale and displayed in the adjudication events room.

Adjudication is pronounced at the price reached when a buyer calls out the words "je prends" (*I'll take it*).

If the Bureau deems that several professionals have made a bid simultaneously, the lot is drawn by lot, unless one of the professionals asks for an ascending auction to be held; they will then compete against one another for the lot.

#### **4-3 Adjudication by ascending auction**

This adjudication method is implemented only exceptionally.

The bids start on the basis of the opening price stated by the auctioneer and are spoken out loud in ascending order according to a tariff specified in the conditions of sale and displayed in the adjudication events room.

Adjudication is pronounced in favour of the highest bidder after three consecutive calls are made without attracting a bid.

If the last price is taken by several professionals at once, the lot is drawn by lot.

If no bids are made, the sale conductor can move straight on to a descending auction, carried out in accordance with Article 4-2 above, starting on the basis of the opening price.

### **Title 3**

#### **Disputes concerning the conduct of an adjudication**

##### **5- Disputes concerning the conduct of an adjudication**

###### **5-1 Responsibility of the administrative jurisdiction**

Any disputes that have not been settled during the event by the Adjudication Bureau as prescribed by Article 3-3-4 above are the responsibility of the administrative jurisdiction for the legality of adjudication operations.

###### **5-2 Territorial jurisdiction assignment**

The judge of competent jurisdiction to deal with disputes concerning the conduct of adjudication operations is the judge of the place where the adjudication event was held.

##### **6- Disputes concerning the execution of sale contracts**

In all cases, disputes concerning the execution of sale contracts are referred to the judicial system jurisdictions when an out-of-court settlement has not been reached.





## TIMBER SALES

### Regulations for sales by competitive tendering

#### Title 1

#### General rules applicable to sales by competitive tendering carried out by ONF

##### 1- General principles

###### 1-1 Purpose of the sales regulations

These regulations set out how sales by competitive tendering carried out by ONF shall be conducted, including advertisement and competitive bidding, and exclude all other sale procedures to which specific arrangements apply separately. Therefore, these regulations do not apply to sales by adjudication or to sales by private agreement. In addition, sales carried out in pursuance of these regulations are not open to private individuals acting in their capacity as private consumers.

Whatever the delivery arrangements for the goods (standing timber or converted timber), the sales carried out in accordance with these regulations by ONF concern all felling coupes and products of such coupes likely to be offered for sale and originating from state-owned forest estates or forests owned by territorial communities and legal entities and administered under the public forest law system.

These sales regulations enacted as prescribed by Article R. 134-4<sup>7</sup> of the Forestry Code are enforceable against buyers, as well as against the communities and legal entities whose timber is offered for sale by ONF.

###### 1-2 Statutory and regulatory framework for sales by competitive tendering

The timber, felling coupes and products of such coupes are sold on such legal conditions as prescribed by Chapter 4, Title 3, Book 1 of the Forestry Code with regard to state-owned forests and land for afforestation; and in Chapter 4, Title 4, Book 1 of the Forestry Code with regard to community forests and land for afforestation under the public forest law system.

Without prejudice to the provisions specific to forest law, sales carried out by competitive tendering are subject to terms and conditions pursuant to the Civil Code and Commercial Code, or incidental to the law on the international sale of goods pursuant to the Vienna Convention signed on 11 April 1980, except when otherwise provided by these regulations or the general conditions of contract.

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<sup>7</sup> New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.

French and Community consumer law which only administer sales made to private consumers do not apply to any of the sales subject to these regulations.

In the case of competitive tendering, which involves written procedures, bids made by professionals shall be treated as confidential and are protected by business secrecy. Representatives and members of staff of territorial communities and legal entities owning forest land, as well as ONF staff who have notice of the bids made by professionals, whether in the exercise of their commercial duties or by chance are bound by professional secrecy.

### **1-3 Information of an economic nature**

An economic statement analysing the results of timber sales is presented each year to ONF's Governing Board by the Director General.

## **2- The partners in the commercial relationship**

### **2-1 ONF**

#### **2-1-1 Seller**

In respect of sales of felling coupes and products of such coupes from forests under the public forest law system, ONF is acting as the seller and authorized agent on behalf of the territorial communities and legal entities owning forest land, in pursuance of Article L. 144-1 of the Forestry Code, except in one case as provided by the following clause. As such, ONF enters into a contract by accepting the selected bid in the manner prescribed by Article 7 hereinafter.

When grouped lots are to be sold in pursuance of Article L.144-1-1 of the Forestry Code, ONF is contracting in its own name without prejudice to the claim of territorial communities and legal entities to the distribution of the products of sale on such terms as prescribed by laws and regulations, and in particular Article L.1311-8 of the Code of Territorial Communities.

#### **2-1-2 Choice of sale procedure**

In pursuance of Article R.134-1<sup>8</sup> of the Forestry Code, ONF is responsible for the choice of sale by competitive tendering as opposed to other sale procedures, in agreement with the territorial communities and legal entities owning forest land, as set out in Article 2-2 hereinafter. ONF shall depart from this provision only in the case set out in Article R. 144-6 of the Forestry Code.

The decision shall be taken following instruction by the Director General of ONF.

#### **2-1-3 Information on the offer made by ONF**

The offer made by ONF constitutes information disclosed by ONF.

The offer of sale is communicated to buyers and periodically updated so that all relevant information on supply is made available to buyers.

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<sup>8</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

This information is available in ONF offices as prescribed by Article 3-1-2 hereinafter and can be consulted on the ONF website restricted to professional use.

## **2-2 Communities and legal entities owning forest land**

### **2-2-1 Opinion of a community or legal entity owning forest land on the choice of sale procedure by competitive tendering**

In the case of sales of communal coupes and products of such coupes, the Mayor of the relevant Commune gives his opinion on the choice of sale procedure by competitive tendering; in the case of other territorial communities or legal entities owning forest land, this opinion is given in the manner prescribed by Article R. 141-7 of the Forestry Code.

If there is a disagreement between the executive authority of the community or legal entity owning forest land and ONF, the community or legal entity shall express its opinion by means of a reasoned deliberation indicating any reservations expressed by ONF; its opinion shall then be imposed on ONF.

Article R. 144-6 of the Forestry Code requires that for sales of logs from communal forests and public institutions in the French Départements of Bas-Rhin, Haut-Rhin and Moselle, the choice of sale by competitive tendering departs from the above and is made by the Mayor of the relevant commune or the Administrative Commission Chairman for the public institution.

### **2-2-2 Opinion of a community or legal entity owning forest land on withdrawal prices**

The withdrawal price is a safeguard value under which the sale cannot go ahead without prejudice to the owners' estates; it is established taking into account the known state of the market.

The community or legal entity owning forest land is thus involved in setting withdrawal prices with ONF, except in the case of grouped sales, in pursuance of Article L. 144-1-1 of the Forestry Code.

The community or legal entity owning forest land gives its opinion through its executive authorities, and never through its deliberative assembly, since assembly deliberations are made public; this is in order to maintain the confidentiality of such information of an economic nature and protected by business secrecy.

Withdrawal prices, thus fixed by ONF after consideration of the opinion of communities and legal entities owning forest land, are enforceable against the latter, as well as against the other professionals. Once the sale is done, the parties are no longer bound by the withdrawal prices.

When the owner asks for a withdrawal price which does not seem appropriate to the state of the market or to the principles of sustainable forest management, ONF can refuse to offer the relevant lot for sale, provided it states the reasons for its decision.

## **2-3 Buyers**

### **2-3-1 Conditions for participating buyers**

#### **2-3-1-1 Sales are restricted to professionals**

Timber sales carried out by ONF are wholesales and are accessible to any professional who wishes to participate as part of his professional activities and who is registered as carrying on business (in a trade register, a register of professions and occupations or any other equivalent register in the professional's country). Companies and businesses under establishment, which are qualified as above, also have access to the sales.

Sales carried out in pursuance of these regulations are not open to private individuals acting in their capacity as private consumers.

#### **2-3-1-2 Financial guarantees required before the sale**

In pursuance of Article R. 134-6<sup>9</sup> of the Forestry Code, the Competitive Tendering Committee shall assess the professionals' financial capability on the basis of guarantees submitted before the sale or during the event where appropriate, without possible appeal.

For sales of standing trees as well as for sales of processed timber, whether or not the professionals are intending to use the purchase payment terms pursuant to the general conditions of contract, they shall:

- either provide an agreement to bond before the sale,
- or sign a commitment to pay cash, in advance or during the event.

The agreement to bond is a commitment by the guarantor to stand surety for the professional in respect of the goods to be purchased by him, on such conditions as prescribed by Articles L. 134-3 and L. 134-6 of the Forestry Code. This document, which defines the maximum amount of the purchases covered by the commitment, shall be drawn up according to the template available for professionals in ONF offices.

The guarantee can only be issued by an organization included in the list of organizations authorized to stand security to public accountants in France. The list is available at the Banque de France. When the commitment is required by the general conditions of contract, it is collected after the tender opening event.

The agreements to bond shall be addressed to the accountant in charge of payment in the Département where the tender opening event is held; the accountant shall receive the agreements by close of business on the third business day before the sale date. The agreements to bond can exceptionally be submitted at the beginning of the event if the tender is also submitted during the event.

#### **2-3-1-3 Representatives of buyers authorized to enter into a contract**

Representatives of legal entities and their social proxies shall provide proof of their powers or capacity, and they shall be able to do this during the event if requested to do so by the Committee, otherwise their bid could be refused by the Committee.

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<sup>9</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

In addition to the provision of the above mentioned documents, foreign professionals shall hold a foreign trader identity card issued by the French administration, otherwise their bids shall not be considered. They must prove this by showing their card during the competitive tendering event, or by attaching a copy of their card to their tender. The latter provision does not apply to buyers from European Union countries who are subject to the same obligations as French nationals.

For buyers undergoing legal redress or an equivalent procedure in their country of origin, and in the absence of an agreement to bond, the commitment to pay in cash for the total sale price of the goods purchased shall be signed or countersigned by the ad hoc representative, in accordance with the rules applicable to the procedure which the buyer is undergoing.

In addition, the contract shall be deemed to be entered into on the suspensive condition that the buyer is able to provide written proof under the ad hoc representative's signature that he is legally able to pursue his business activities for the time necessary to execute the contract.

## **2-3-2 Penalty for failure to provide financial guarantees**

### **2-3-2-1 Legal forfeiture**

In accordance with Article L. 134-5 of the Forestry Code, a buyer who has not provided the guarantees required by the conditions of sale in the time requested, shall be declared disqualified from the sale.

A buyer thus disqualified from the sale loses his right to be awarded the lot.

Forfeiture is pronounced by the Competitive Tendering Committee Chairman or his deputy; the defaulting buyer shall be notified in writing of his forfeiture.

### **2-3-2-2 A defaulting buyer's lot is re-offered for sale by false bidding**

In pursuance of Article L. 134-5 of the Forestry Code, the defaulting buyer's lot shall be re-offered for sale by public adjudication, by false bidding of the defaulting buyer. The latter shall owe any price difference between the price at which he was initially awarded the lot and the price at which the lot is eventually successfully awarded, without being able to claim for any excess.

The defaulting buyer is expressly forbidden from buying the same lot again.

## **Title 2**

### **Implementation of sales by competitive tendering**

#### **3- General provisions relating to sales by competitive tendering**

##### **3-1 Sale organization and advertisement**

###### **3-1-1 Sale date and location**

The ONF Territorial Director sets the sale date and location as suggested by the person in charge at management level, taking into consideration forest owners' interests, buyers' needs and customary practices.

###### **3-1-2 Advertisement prior to the sale**

Advertisement prior to the sale includes two compulsory procedures and various actions that the person responsible at management level chooses to undertake, as he is responsible for all advertising prior to the sale.

###### **3-1-2-1 Compulsory procedures**

A sale by competitive tendering shall be publicly announced at least two weeks in advance through a poster display in the town hall of the sale location and at least two publications in a local newspaper, a professional magazine or on the ONF website restricted to professionals. The two-week period can be reduced to seven days in an emergency.

- **Poster display in the town hall**

A poster is displayed in the town hall of the sale location by the person in charge at management level, who requests a certificate of affixation issued by the Mayor.

The poster provides information on the location, date and time of the sale, on the type and quantities of products offered for sale and the address of the ONF offices where the sale documents can be consulted or requested.

When the sale advertisement expressly forbids the submission of tenders during the event, the deadline for the submission of tenders is indicated.

- **Advertisement in the press**

Advertisement in the press provides at least the same information as the town hall poster, and shall be inserted in a French daily, weekly or fortnightly newspaper with a regional readership at least.

- **Advertisements on the ONF website**

A catalogue of the products offered for sale is published on the ONF website restricted to professionals and can be consulted in the offices of the relevant ONF Agency or Territorial Direction.

###### **3-1-2-2 Other means of advertisement**

The ONF person in charge at management level must ensure that the sale is advertised as widely as possible. He has the freedom to choose the most suitable means, i.e. poster



displays, local, national or international press inserts, notices issued to professionals bodies, catalogue, letter or circular mailings...

### **3-1-3 Sale documents**

The sale documents include a copy of these regulations and of the general conditions of contract, as well as the catalogue which includes the supplementary conditions of sale and the conditions specific to each lot.

The documents are available for consultation in the ONF office or offices mentioned on the poster to anybody who wishes to see them for the time period allowed for the sale advertisement.

## **3-2 Legal aspects of sales by competitive tendering**

### **3-2-1 Sales by competitive tendering are public sales**

Sales by competitive tendering carried out by ONF in pursuance of Article L. 134-7 of the Forestry Code, are sales with advertisement and competitive bidding; they are not sales by public auction, as defined by Articles L. 320-1 and L 320-2 of the Commercial Code.

### **3-2-2 Tender opening events are public**

In accordance with Article R. 134-14<sup>10</sup> of the Forestry Code, tender reviewing events are public unless the Committee Chairman decides to only admit bidders to such events.

### **3-2-3 Validity of tenders**

Bids made by written tender bind the bidders indefeasibly.

The sale documents set the period of time during which the bidders remain bound by their bids.

### **3-2-4 Award to the highest bidder**

In pursuance of Article R. 134-7<sup>4</sup> of the Forestry Code, each lot is awarded to the highest bidder, provided that his bid is higher or equal to the set withdrawal price.

## **4- The Competitive Tendering Committee**

In accordance with Articles R. 134-12<sup>4</sup> and R. 144-2 of the Forestry Code, tenders are opened by a Committee consisting of:

- the ONF Territorial Director or his representative,
- the accountant in charge of payment or his representative,
- for state-owned forests, another ONF representative or, for other forests administered under the public forest law system, a representative of the community or legal entity owning forest land.

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<sup>10</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

The Committee Chairman is respectively:

- the Territorial Director or his representative, for lots from state-owned forests and grouped lots,
- the representative of the community or legal entity owning forest land for lots from other forests under the public forest law system. In the absence of the latter, duly summoned, the Territorial Director or his representative will act as Chairman, a second ONF representative being then summoned to the Competitive Tendering Committee.

The Chairman announces the Committee's decisions which are taken by majority, the Chairman having the casting vote.

## **5- Tender submission**

The tenders can be submitted either before the sale, or during the tender opening event, provided the advertisement has not expressly forbidden the latter option. They are presented in the manner prescribed by Article 5-3 hereinafter.

### **5-1 Submission of tenders before the sale**

The advertisement sets the address, deadline date and time for the submission of tenders.

Buyers send their tenders to ONF by any means appropriate to preserving their confidentiality, i.e.:

- by regular or registered mail,
- by handing tenders in at the ONF office carrying out the sale in exchange for an acknowledgement of receipt,
- or via a secure computer communications medium when such a medium is available.

The confidentiality of any bids sent by fax to ONF cannot be guaranteed.

Buyers are fully responsible for ensuring that tenders reach ONF in the time specified on the sale advertisement and as such, they are solely responsible for the means they choose to use to achieve this, whatever the circumstances.

If a tender is sent by mail, the postmark will be used as evidence.

### **5-2 Submission of tenders during the event**

Tenders submitted during the event are submitted in writing only; they are valid only before the opening of tenders received for the lot they concern. Tenders received after the opening are deemed late and returned to their authors without being opened.

### **5-3 Tender form**

#### **5-3-1 Tenders submitted before the sale**

The tenders are written in French and presented on headed paper.

They specify the buyer's complete legal identity and provide proof of the capacity of the tendering legal entity's representative. The tenders have to be signed.

Tenders sent by an electronic medium or by fax are valid only if they include the same buyer identification details.

Tenders sent by post or handed in in exchange for an acknowledgement of receipt shall be contained in a sealed double envelope. The outside envelope shall bear the bidder's name and specify its content (e.g.: "tender for the sale by competitive tendering held on..."). Inside, one envelope per lot bearing the lot number and bidder's name contains the bid for that lot.

Tenders thus received are recorded by ONF when they are received, without being opened, on a list by bidder name stating the dates of receipt.

### **5-3-2 Tenders submitted during the sale**

When tenders are received during the event, they can be written on loose paper, provided they specify the buyer's complete identity and provide proof of the capacity of the legal entity's representative. The tenders have to be signed.

Tenders can also be made through an instantaneous electronic medium if ONF has made this an option.

### **5-4 Tender content**

The outside envelope contains, where appropriate, the supporting documents as required by Article 2-3-1-3 above.

When tenders are received during the event, the outside envelope shall also contain the guarantees pursuant to Article 2-3-1-2 above.

One inside envelope per lot contains an offer for that lot.

The price offered by the buyer excludes taxes and reflects the payment terms and conditions prescribed by the general conditions of contract.

The price is stated and executed exclusively in Euros. The buyer is responsible for exchanging from other currencies into Euros at his expense and risk when fulfilling his obligation to pay.

## **6- Conduct of the tender opening event**

### **6-1 Opening of tenders**

Before the start of an event, the Committee examines the list of professionals by name who have submitted a tender before the sale. Once the outside envelopes have been opened, their contents are checked to make sure all required supporting documents have been provided; if this is not the case, the applicant is asked to provide the missing documents later. The inside documents are sorted by lot without being opened.

The event is then opened. Each lot is called in the order specified in the advertisement and the following operations are carried out:

- the professionals in the room submit any remaining tenders;
- bidders having submitted a tender before the sale can submit a new tender without removing the first. Only the highest will be taken into account;
- the ONF representative then deposits the lot withdrawal price in a sealed envelope.

The envelopes containing the bids are then opened and the Committee Chairman states for each lot the name of the bidder having made the highest bid and what the bid is, provided that it is equal or higher than the set withdrawal price for the relevant lot. However:

- if there are no bids, the lot is withdrawn;
- if the bid amounts submitted are lower than the withdrawal price, the relevant lot is withdrawn and the withdrawal price is brought to the notice of the bidders.

When the calculation of the bidding price requires lengthy verification, the Chairman sets a date when the final result will be announced. Until the final award is made, the bidders remain bound by their bids.

When several bidders have made equal bids, the lot is drawn by lot between them.

## **6-2 Bidders can limit their commitment**

In order for their purchases not to exceed their needs, bidders can indicate the maximum amount they do not want their total purchases to exceed, on a separate sheet to be inserted in the outside envelope.

Until the maximum amount is reached, tenders are opened in the order specified in the advertisement and are only taken into account if they do not lead to the maximum commitment being exceeded. When this is reached, any bids that would have been made for the following lots are not considered and the envelopes are returned to their bidders without being opened.

## **6-3 Disclosure of information on tenders received**

Information on tenders received is disclosed in the following manner:

For each lot sold by competitive tendering, information concerning the buyer's name and sale amount is available at the ONF office. In addition, if the relevant forest owner's representative has expressly agreed to so do, the two best unsuccessful bids can be disclosed, provided the anonymity of their authors is preserved. This information is disclosed instantaneously, in a manner which is not traceable and on a lot by lot basis.

The anonymity of unsuccessful bidders is preserved in the following manner:

- if only two offers are received in total, no unsuccessful bid shall be disclosed;
- if three or four offers are received in total, only the first unsuccessful bid shall be disclosed;
- if five or more offers are received in total, the two best unsuccessful bids shall be disclosed.

## **7- Notification of the competitive tendering award**

Before the end of the bid validity period indicated in Article 3-2-3 above, ONF notifies the buyer that his bid has been accepted and ONF does this in its name in the case of state-owned forests or on behalf of the community or legal entity owning forest land for other forests under the public forest law system: ONF also informs the other bidders that their bids have been rejected.

## **8- Sale minutes**

The ONF office draws up the minutes of the tender opening event.

The minutes include the name of the successful bidders for each lot and the price at which each lot was awarded. They indicate, where appropriate, the withdrawal price for unsold lots, provided that they attracted at least one bid. They indicate any incident relating to sale operations which happened during the event or during the period before the buyers were notified of the acceptance of their bids. Where appropriate, an official statement of such incidents can be drawn up as evidence of these.

The minutes are not made public and are not registered formally.

### **Title 3**

## **Disputes concerning the conduct of a sale by competitive tendering**

### **9- Disputes concerning the conduct of a sale**

#### **9-1 Responsibility of the administrative jurisdiction**

Any disputes relating to the legality of sale by competitive tendering operations are the responsibility of the administrative jurisdiction.

#### **9-2 Territorial jurisdiction assignment**

The judge of competent jurisdiction to deal with disputes concerning the conduct of sale operations is the judge of the place where the sale was held.

### **10- Disputes concerning the execution of sale contracts**

In all cases, disputes concerning the execution of sale contracts are referred to the judicial system jurisdictions when an out-of-court settlement has not been reached.





## T I M B E R   S A L E S

### Regulations for sales by private agreement

#### Title 1

#### General rules applicable to sales by private agreement carried out by ONF

##### 1- General principles

###### 1-1 Purpose of the sales regulations

These regulations set out how sales by private agreement carried out by ONF shall be conducted and exclude all other sale procedures to which specific arrangements apply separately. Therefore, these regulations do not apply to sales by adjudication or to sales by competitive tendering. In addition, sales carried out in pursuance of these regulations are not open to private individuals acting in their capacity as private consumers.

Whatever the delivery arrangements for the goods (converted timber, standing timber, supply contracts), the sales carried out by ONF in accordance with these regulations concern all timber likely to be offered for sale and originating from state-owned forest estates or forests owned by territorial communities and legal entities and administered under the public forest law system.

On the basis of the owners' wishes and the needs expressed by buyers, sales carried out in pursuance of the regulations give rise to:

- either supply contracts with successive executions or deliveries, which satisfy part of the supply requirements of buyers and provide owners with a regular market for the products extracted from their forests,
- or sales of instantaneous execution or delivery.

These sales regulations enacted as prescribed by Article R. 134-4<sup>11</sup> of the Forestry Code are enforceable against buyers, as well as against the communities and legal entities whose timber is offered for sale by ONF.

###### 1-2 Statutory and regulatory framework for sales by private agreement

The timber, felling coupes and products of such coupes are sold on such conditions as prescribed by Chapter 4, Title 3, Book 1 of the Forestry Code with regard to state-owned forests and lands for afforestation; and in Chapter 4, Title 4, Book 1 of the Forestry Code with regard to community forests and land for afforestation under the public forest law system.

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<sup>11</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

Supply contracts are entered into in pursuance of the second clause of Article L. 134-7 of the Forestry Code.

Without prejudice to the provisions specific to forest law, sales carried out by private agreement are subject to terms and conditions pursuant to the Civil Code and Commercial Code, or incidental to the law on the international sale of goods pursuant to the Vienna Convention signed on 11 April 1980, except as otherwise provided by these regulations or the general conditions of contract.

French and Community consumer law, which only administer sales made to private consumers, do not apply to any sales subject to these regulations.

In the case of sales by private agreement, the terms and conditions proposed by buyers as well as by ONF in the manner and on such conditions as prescribed by Titles 2 and 3 of the regulations are treated as confidential and protected by business secrecy. Representatives and members of staff of territorial communities and legal entities owning forest land, as well as ONF staff who have notice of the proposals made by buyers, whether in the exercise of their commercial duties or by chance are bound by professional secrecy.

### **1-3 Information of an economic nature**

An economic statement analysing the results of timber sales is presented each year to ONF's Governing Board by the Director General.

## **2- The partners in the commercial relationship**

### **2-1 ONF**

#### **2-1-1 Seller**

In respect of sales of timber from forests under the public forest law system, ONF is acting as the seller and authorized agent on behalf of the territorial communities and legal entities owning forest land, in pursuance of Article L. 144-1 of the Forestry Code, except in one case, as provided by the following clause. As such, ONF conducts a negotiation and enters into a contract of sale by private agreement in accordance with the requirements of Article 2-2 of these regulations.

When grouped lots are to be sold in pursuance of Article L.144-1-1 of the Forestry Code, ONF is contracting in its own name without prejudice to the claim of territorial communities and legal entities to the distribution of the products of sale on such terms as prescribed by laws and regulations, and in particular Article L.1311-8 of the Code of Territorial Communities.

#### **2-1-2 Choice of sale procedure**

In pursuance of Article R.134-1<sup>12</sup> of the Forestry Code, ONF is responsible for the choice of sale by private agreement as opposed to other sale procedures, in agreement with the territorial communities and legal entities owning forest land, as set out in Article 2-2 hereinafter. ONF shall depart from this provision only in the cases set out in Article R. 144-6 of the Forestry Code.

The decision shall be taken following instruction by the Director General of ONF.

<sup>12</sup> *New numbering system resulting from regulatory changes required by Order no. 2005-1445 of 23 November 2005 relating to sales of coupes and products of such coupes and modifying the public forest law system.*

## **2-2 Communities and legal entities owning forest land**

### **2-2-1 Approval by the community or legal entity owning forest land of the sale procedure by private agreement**

In the case of sales of timber from communal and part-communal forests, the Municipal Council deliberates in order to approve the choice of sale procedure by private agreement; in the case of other communities or legal entities owning forest land, this approval is given as provided by Article R.141-7 of the Forestry Code.

When the ONF proposal concerns a supply contract, the Municipal Council, in the case of communal or part-communal woods, and the authorities defined in Article R. 141-7 of the Forestry Code, in the case of other woods under the public forest law system, give their opinion on this choice. The relevant community or communities commit to engage in the due performance of the contract on the basis of the products extracted from their forest estates.

If there is a disagreement between the community or legal entity owning forest land and ONF, the community or legal entity must give a reasoned opinion including the reservations expressed by ONF; its opinion shall then be imposed on ONF.

### **2-2-2 Assent of the community or legal entity owning forest land prior to entry into a sale contract**

Before ONF enters into a sale contract, the community or legal entity owning forest land has to give its assent to the proposal presented by ONF following negotiation.

The community or legal entity owning forest land can only reject the proposal if it does so by means of a reasoned opinion.

The community or legal entity owning forest land gives its prerequisite assent, in the time specified by the validity of the proposal, through its executive authorities, and never through its deliberative assembly, since assembly deliberations are made public; this is in order to maintain the confidentiality of such information of an economic nature and protected by business secrecy.

For sales subject to Title 3 of the regulations and in the absence of a reply in the time specified by the validity of the proposal, the community is deemed to have given its assent to ONF's proposal.

## **2-3 Buyers**

### **2-3-1 Sales are restricted to professionals**

Timber sales carried out by ONF are wholesales and are accessible to any professional who wishes to participate as part of his professional activities and who is registered as carrying on business (in a trade register, a register of professions and occupations or any other equivalent register in the professional's country). Companies and businesses under establishment, which are qualified as above, also have access to the sales.

### **2-3-2 Financial guarantees required for the agreement of a sale**

Financial guarantees are not required for the agreement of a sale.

### **2-3-3 Special procedures for certain types of buyers**

In addition to the provision of the above mentioned documents, foreign buyers shall hold a foreign trader identity card issued by the French administration, otherwise their proposals shall not be considered. They must prove this by showing their card or by attaching a copy of the card to their proposal. The latter provision does not apply to buyers from European Union countries who are subject to the same obligations as French nationals.

## **3- Terms and conditions for sales by private agreement**

### **3-1 Sales are made on the best terms**

If there are several proposals concerning the same resource offered for sale, sales by private agreement are agreed with the buyer offering the best technical and financial terms, provided that the price offered is consistent with the state of the market. ONF can also split the offer between all or several professionals who have expressed a need for supplies.

### **3-2 Sale prices**

Prices exclude taxes and reflect the payment terms and conditions prescribed by the general conditions of contract.

The amounts are stated and executed exclusively in Euros. The buyer is responsible for exchanging from other currencies into Euros at his expense and risk when fulfilling his obligation to pay.

### **3-3 Sales are made subject to condition subsequent in general law**

Without prejudice to the supplementary clauses of sale, sales by private agreement are made subject to condition subsequent in general law that the object sold is fully paid for, in pursuance of Articles 1183, 1184, 1238 and 1650 of the Civil Code.

In the case of supply contracts, the condition subsequent can apply distinctly to each successive delivery subject to the contract, without prejudice to the right of the seller to apply the condition subsequent to all deliveries, should the buyer repeatedly fail to pay.

### **3-4 Unsuccessful commercial proposals**

Buyers whose proposals have not been selected are informed of this by ONF.

## **Title 2**

### **Supply contracts**

#### **4- General provisions for supply contracts**

Supply contracts can be entered into by private agreement on such conditions as prescribed hereinafter, subject to the availability for sale of the required resource volume and quality during the period considered.

In pursuance of Article L. 134-7 of the Forestry Code, supply contracts can be entered into for a period spanning several years or less than one year.

#### **5- Expression of buyers' needs**

Supply contracts are entered into after buyers advise ONF of their needs in the manner and on such conditions as defined hereinafter.

##### **5-1 Request form**

Buyers' requests are written in French and presented on headed paper. They specify the buyer's complete legal identity and provide proof of the capacity of the legal entity's representative. They can also be transmitted via an electronic medium if such a medium is available and only if they include the same buyer identification details.

Requests are made according to a master established by ONF. The master includes:

- The buyers' full identity details, as specified above,
- Type of product(s) requested,
- Volume of such product(s) and time phasing if required,
- Length of requested contract,
- Detailed technical specifications for the product(s),
- Desired arrangements by which goods are to be provided,
- Suggested terms and conditions,
- Geographical origin, where appropriate.

Requests thus presented will only be considered if they are dated and signed by an identified person with the legal capacity to bind the buyer.

Buyers send their requests to ONF by any means appropriate to preserving their confidentiality, i.e.:

- by regular postmarked mail or registered mail,
- by handing requests in at the ONF office making the sale, in exchange for an acknowledgement of receipt,
- or via a secure computer communications medium when such a medium is available.

When requests are transmitted to ONF by fax, the confidentiality of the commercial terms and conditions offered by buyers cannot be guaranteed.

##### **5-2 Frequency of submission of buyers' requests**

ONF offices can receive requests at any time.

## **6- Submission of a commercial proposal by ONF**

### **6-1 Submission time scale and subject matter of an ONF commercial proposal**

Within one month of receipt of a request, ONF informs the applicant whether it will be able to implement the request, in which case ONF informs the applicant of the time period by which a commercial proposal will be forwarded; this will include:

- a detailed description of the products for sale complying with requirements, or of similar products, if no such products are available,
- availability time frame for the products offered,
- delivery method for the products offered,
- price requested for the products offered,
- general conditions of contract for the sale,
- proposal validity period.

Following discussion with the applicant as required, the ONF's proposal shall establish the technical and financial conditions of execution of the contract.

### **6-2 Validity period of an ONF commercial proposal**

An ONF commercial proposal is officially notified to the buyer and has a maximum validity period of a month from receipt by the latter. The proposal will be deemed lapsed if the contract is not entered into before expiry of the validity period.

### **6-3 Reservation of products for the applicant**

Products subject to an ONF commercial proposal are reserved for the applicant during the proposal validity period.

Once the validity period has expired, ONF cannot guarantee that the products of the commercial proposal are available for sale or that the terms and conditions are still offered.

## **7- Entry into a sale contract**

Consent of the parties is made unreservedly on the object of the sale and on the price following negotiation, conducted before expiry of the validity period of an ONF proposal.

The contract is then deemed to be entered into on the terms and conditions pursuant to the general conditions referenced in the commercial proposal and on such supplementary conditions as have been negotiated between the parties.

The buyer's consent can be given by whatever means is suitable to provide confirmation of a certain date, be it by way of a faxed commitment, letter of confirmation or electronic signature exchange when such a device is available.

The contract is deemed to be entered into only if it is signed by a person having the legal capacity to bind the buyer.



## **Title 3**

### **Other sales by private agreement**

#### **8- Information on the offer made by ONF**

An offer of timber by ONF constitutes information provided by ONF and made accessible to timber industry professionals who may be interested by all or part of that offer. The offer specifies the types of products and provides a description of the felling coupes, associated harvesting conditions and where appropriate, product removal conditions.

Details of timber available for sale are communicated to buyers and periodically updated by the addition of new timber offers, as well as the removal of sold lots, so that the buyers can access useful information on supply.

Details of timber available for sale for a limited period are thus published by ONF, including on its website. Buyers interested by all or part of an offer can freely access the information.

This service is available in the offices of the relevant ONF Agency or Territorial Direction.

#### **9- ONF sales by private agreement of products available for sale for a limited period**

##### **9-1 Submission of buyers' proposals**

###### **9-1-1 Receipt of proposals**

Buyers' proposals relating to products, lots and felling coupes thus referred to by ONF are addressed to the relevant ONF office, which can receive them at any time.

###### **9-1-2 Proposal form**

Buyers send their requests to ONF by any means appropriate to preserving their confidentiality, i.e.:

- by regular postmarked mail or registered mail,
- by handing requests in at the ONF office making the sale, in exchange for an acknowledgement of receipt,
- or via a secure computer communications medium when such a medium will be available.

When requests are transmitted to ONF by fax, the confidentiality of the commercial terms and conditions offered by buyers cannot be guaranteed.

Buyers are notified of the receipt or registration of their proposals.

###### **9-1-3 Content of proposals**

The proposals include:

- a price offer for each of the lots requested,
- a proposed time frame for the removal of lots of products delivered or to be delivered as logs and a proposed time frame for the harvesting of timber sold standing or to be sold standing (by product unit).

## **9-2 Validity period of proposals**

Buyers are bound by the proposals they have submitted for a period of one month except as provided in the conditions specific to the lot.

The validity period starts on the first business day following receipt of an ONF proposal.

## **9-3 Proposal acceptance and entry into a contract of sale**

Any proposal acceptance shall be made at the buyer's earliest convenience and before expiry of the validity period indicated in Section 9-2 above.

The contract of sale on the terms and conditions of the general conditions of contract and conditions specific to the lot is entered into upon acceptance of a proposal.

## **Title 4**

### **Disputes concerning the entry into a contract by private agreement**

#### **10- Responsibility of judicial system jurisdictions**

All disputes concerning the entry into a contract of sale by private agreement are the responsibility of judicial system jurisdictions, as the judges of the contract.

#### **11- Territorial jurisdiction assignment**

The judge having territorial jurisdiction to deal with any dispute relating to the entry into a contract of sale by private agreement is the judge of the location where the contract was entered into.

# General conditions of contract for sales of standing timber by lump sum

## Chapter 1 – LEGAL FRAMEWORK

### Article 1: Law of the contract

This contract is subject to French law.

Without prejudice to the provisions specific to forest law, sales carried out by ONF are subject to legal terms and conditions pursuant to the Civil Code and Commercial Code or incidental to the law on the international sale of goods pursuant to the Vienna Convention signed on 11 April 1980 for contracts by private agreement or competitive tendering.

### Article 2: Framework specific to timber sales carried out by ONF

#### Article 2-1: General rules of forest law

In respect of woods and forests administered under the public forest law system (Articles L. 111-1 and L. 114-1 of the Forestry Code), felling coupes and products of such coupes are sold by ONF on such legal conditions as provided by Articles L. 134-1 to L. 134-7 of the Forestry Code in particular, in the case of timber from state-owned forests and land for afforestation, and L. 144-1 to L. 144-4 of the Forestry Code in particular, in the case of timber from community forests and land for afforestation administered under the public forest law system.

#### Article 2-2: Scope of the general conditions of contract

The general conditions of contract, approved by the Governing Board of ONF in pursuance of Article R. 134-2 of the Forestry Code, are applicable to any contract of sale of standing timber by lump sum entered into by ONF.

#### Article 2-3: Enforceability and composition of contract documents

The general conditions of contract and the supplementary conditions of contract make up the sale contract. They are binding on the buyer, his guarantor as well as on any person working on his behalf.

Where applicable, the buyer is bound by the territorial procedures to which the general conditions of contract refer. The procedures are forwarded to the buyer at his request and are published at the front of the public sales catalogue and on the ONF website.

#### Article 2-4: Enforceability of the National Forestry Regulations

The National Forestry Regulations are enforceable against any buyer of a timber lot, in as much as he enters into the forest to carry out the harvesting and removal of sold products, or only their removal.

The buyer is personally responsible by law for ensuring that his agents or any persons acting on his behalf or through him fully adhere to the provisions of the regulations, in pursuance of Articles L. 135-10 and L. 135-11 of the Forestry Code.

### **Article 3: Exemptions from the general conditions of contract**

The supplementary conditions of contract associated with a particular sale cannot override the general conditions of contract except in the cases and within the limits explicitly provided for in the general conditions of contract.

Any clauses opposing or contrary to the above are deemed invalid, ONF not having consented to them in the manner prescribed by Article 2-2.

There can be no exemption from the general conditions except as a consequence of general temporary measures taken in an emergency and ordered by the Director General for a particular geographical zone. As the circumstances require, such an exemption may be applied to outstanding contracts.

## **Chapter 2 – FORMATION, CHARACTER AND DURATION OF THE CONTRACT**

### **Article 4: Formation of the contract**

The contract is formed between ONF and the buyer on such conditions as set out in Article L. 134-7 of the Forestry Code and in accordance with the sales regulations applicable to the sale at issue in particular. As applicable, the sales regulations may be:

- the regulations for sales by competitive tendering,
- the regulations for sales by adjudication,
- or the regulations for sales by private agreement.

### **Article 5: Subject-matter**

The contract of sale concerns trees sold standing by lump sum, pre-marked or pre-designated, located in an area of forest whose boundaries have been marked out; the buyer is responsible for paying their price, harvesting all marked or designated trees in accordance with the provisions of the supplementary conditions of contract, removing the timber and restoring the site to its former state within the agreed timeframe.

The sale is a sale of goods by lump sum as per Article 1583 of the Civil Code.

### **Article 6: Contracting parties**

#### **Article 6-1: The seller**

The sale concerns products from forest estates administered under the public forest law system, whether they are owned by the state or a community or another legal entity. Except in the first case, ONF shall have received the owner's prior consent before engaging in the sale of the products.

When the contract of sale concerns timber from several forest estates, the sale is a grouped sale as per Article L. 144-1-1 of the Forestry Code.

In all cases, the contract is agreed and entered into with ONF, who is solely able to take responsibility for the decisions arising from contract supervision and execution.

In relation to all aspects of contract execution, ONF is represented by an agent, whose function is to act as a point of contact between ONF, the seller, and the buyer and to provide for due execution of the contract. His name and contact details are forwarded to the buyer, who will address any queries he has to him.

The ONF agent or if not applicable, the department responsible for timber sales in the relevant Agency, shall respond to queries within 2 working days of being prompted to respond to a query.

#### **Article 6-2: The buyer**

##### **Article 6-2-1: General**

A buyer is a professional meeting the criteria set out in the sales regulations and who has bought one or more lots of timber offered for sale by ONF.

In respect of contract execution, the buyer shall appoint one or more French-speaking representatives. The representative(s) is(are) not obliged to be present on the harvesting site all the time but is(are) required to be contactable by the ONF agent at all times and come to the harvesting site within 2 working days at the most when requested to do so by ONF.

#### **Article 6-2-2: Professional liability insurance**

The buyer is obliged to provide proof to ONF within 20 days of the sale that he has contracted a professional liability insurance covering risks of damage associated with the harvesting, extraction and removal of timber, for which he may be held responsible, as provided by Article L. 135-11 of the Forestry Code and the National Forestry Regulations.

#### **Article 7: Character of the sale contract**

Contracts entered into are single sale contracts.

##### **Article 7-1: Single sale contract**

Only one timber lot is sold as part of a single sale contract. It is available all at once when a felling licence is issued to the buyer on such conditions as set out in Article 16-2-1.

##### **Article 7-2: Supply contract (*Not applicable*)**

#### **Article 8: Duration and end of the contract**

##### **Article 8-1: Single sale contract**

The contract ends when the buyer has performed all the technical and financial obligations associated with the contract.

Harvesting time frames are specified in Chapter 5 of the general conditions of contract and in the supplementary conditions of contract.

##### **Article 8-2: Supply contract (*Not applicable*)**

#### **Article 9: Assignment of the sale contract**

##### **Article 9-1: Single sale contract**

Without prejudice to the provisions of Article 46-2 of the general conditions, single sale contracts entered into by ONF and the buyer cannot be assigned in total or in part by the buyer, be this in return for payment or not.

In the event of an assignment of the products before their removal, the buyer remains responsible for complying with all the terms of the contract until harvesting discharge, and in particular with the provisions of Chapter 5 of the general conditions of contract.

##### **Article 9-2: Supply contract (*Not applicable*)**



### Article 10: Type and description of sold products

The products subject to the sale are standing trees, poles or maidens, which have been pre-marked or pre-designated by the seller and are located in an area of forest whose boundaries have been marked out and in which the buyer undertakes to carry out timber harvesting.

Generally the sale concerns the tree stem and crown, i.e. the wood included between the stump and the top diameter limit (7 cm diameter). The sale may also include products of a diameter smaller than 7 cm, in which case this will be clearly specified in the supplementary conditions. If not clearly specified in the supplementary conditions, smaller products are not included in the sale and can be removed only with the explicit authorization of ONF and, where applicable, with the owner's agreement.

The sale may concern only the stem or only the crown. In the case of a sale of stems only, stems will be crosscut at a diameter no smaller than 25 cm for hardwood species and 14 cm for softwood species, except when the supplementary conditions of contract specify different arrangements.

Forest seeds and fruit are excluded from the sale. The seller reserves the right at any time to harvest or have harvested the forest cones and fruit from the trees included in the felling coupe. Information on such harvests is provided in the supplementary conditions of contract.

The types of products and the marking or designation method of stems to be felled or retained, as well as the harvesting boundaries are specified in the supplementary conditions. If they are not, the model procedures for each regional or territorial direction in effect on the date of sale are used.

In all ONF documents, stems for harvesting are specified by diameter class at breast height (i.e. 1.3 m above the ground). "Tree", "pole" and "maiden" classes obtained by grouping together various diameter classes are defined in the glossary attached to these clauses.

Except where otherwise expressly provided by the supplementary conditions of contract, the sale of products does not include the transfer to the buyer of any incorporeal rights associated with the forest or products extracted from the forest.

### Article 11: Product origin

#### Article 11-1: Origin of sold products

The origin of sold products is specified in the supplementary conditions of contract for the sale, together with the owner's or owners' details (and PEFC certificate if applicable).

#### Article 11-2: Product allotment

A lot may concern part of a felling coupe, or one or several coupes. When the sale concerns part of a felling coupe, the supplementary conditions specify the products for sale.

### Article 12: Product quality

#### Article 12-1: Quality assurance

The timber is sold without quality assurance.

**Article 12-2: Reference to standards (*Not applicable*)**

**Article 12-3: Quality assurance limits (*Not applicable*)**

**Article 13: Quantities**

**Article 13-1: Principle**

The timber is sold by lump sum; therefore, there is no assurance of quantity, given that the information provided in the supplementary conditions of contract in respect of presumed stem volume, number, age and species in a lot are given strictly for guidance only, to help the buyer make an appraisal of the felling coupe before the sale.

The procedures by which ONF determines this information can be forwarded to the buyer at his request.

**Article 13-2: Obvious discrepancy on the number of stems**

However, if there is an obvious discrepancy between the number of stems stated in the conditions of sale and the actual number at the location of felling, the buyer may request compensation to make up for any harm caused by the insufficiency in numbers, without him being able to claim for the exact compensation in monies for the missing volume.

For felling coupes where marking concerns the trees to be felled, it is essential that complaints concerning the total number of trees (stems other than poles or maidens) marked in the sold lot are made in writing within a period of nine months following the sale, and at the latest two months after completion of felling operations. By making this request, the buyer undertakes to pay the ONF accountant for the verification costs determined on the basis of an ONF estimate, should an obvious error not be recognized to the disadvantage of the buyer on the total number of trees.

Should an obvious error be recognized, ONF compensates the buyer for the commercial loss suffered and informs the buyer in writing of his decision to compensate. Acceptance by the buyer of the compensation puts an end to any objection raised or which may be raised in the future because of the error.

For felling coupes in softwood high forest, where marking concerns the trees to be felled, an error is deemed obvious if it is higher than 4% of the total number of trees specified in the document describing the lot. For other felling coupes where marking concerns the trees to be felled, the obvious nature of the error is left to the appreciation of ONF on a case by case basis, depending on the type of coupe.

For felling coupes where marking concerns the trees to be retained, the buyer may ask, before the felling licence is issued, for any discrepancy with the number of retained stems specified in the supplementary conditions, to be verified and recognized. By making this request, the buyer undertakes to pay the ONF accountant for the verification costs determined on the basis of an ONF estimate, should it be recognized that there were not in fact fewer trees.

**Article 14: Delivery of non-conforming products (*Not applicable*)**

**Article 15: Transfer of product and risk ownership****Article 15-1: On the day of the sale**

The contract of sale is such that timber ownership and associated risks (especially depreciation, destruction and theft risks) are transferred to the buyer upon contract formation, that is to say as soon as adjudication is pronounced, acceptance of an offer is notified or consents are exchanged in the case of a sale by private agreement, as provided by Article 1583 of the Civil Code.

However, felling execution may start only once a felling licence as defined in Article 16-2-1 is issued, since, upon being issued a felling licence, the buyer takes ownership of the timber as per Article 1604 of the Civil Code and his responsibility as defined in Articles L. 135-10 and L.135-11 of the Forestry Code is acknowledged.

The cutover, as well as designated landings in the forest are not deemed to be part of the buyer's store.

**Article 15-2: On the day of enumeration (*Not applicable*)**

### Article 16: Organization of timber harvesting

#### Article 16-1: General

Execution of the contract of sale of standing timber includes:

- the felling of all stems, maidens and coppice shoots pursuant to the sale,
- the removal of all sold products as defined in Article 10,
- the execution of all supplies or works prescribed,
- the restoration of the site to its former state, and in particular the management of slash.

During these operations, the National Forestry Regulations and the general and supplementary conditions of contract shall apply and shall be adhered to by the buyer, who is also responsible for ensuring that all the persons who engage in felling activities on his behalf also comply with these regulations and conditions.

#### Article 16-2: Formal procedures to be completed prior to harvesting

##### Article 16-2-1: Felling licence

Notwithstanding the provisions of Article 15 of the general conditions of contract, the buyer cannot commence harvesting without first obtaining a written felling licence for the relevant coupe, in accordance with the provisions of the Forestry Code.

A felling licence is issued by ONF:

- after verification of the insurance certificate mentioned in Article 6-2,
- after submission and verification of the guarantee, where applicable,
- and, for contracts concerning an amount less than 1,000 Euros excluding taxes, upon receipt of the means of payment, or, for contracts concerning an amount higher or equal to 1,000 Euros excluding taxes, on the basis of the payment certificate delivered by the accountant in accordance with Article 30.

The notification or issuance of the licence acknowledges the start of the buyer's liability in respect of the Forestry Code and the general conditions of contract. As such, he becomes the custodian of the trees as defined in Article 1384 of the Civil Code.

##### Article 16-2-2: Site inventory in the presence of both parties

Before the felling licence is issued, an inventory of the proposed felling coupe and area may be conducted in the presence of both parties at the instance of ONF or the buyer, in order to find any offences that might have been committed on the site and note any degradations affecting the compartment, forest roads serving the compartment or landings, and generally any equipment in place thereon.

If the verification is requested by the buyer, it shall be conducted by the authorized ONF representative defined in Article 6-1 within ten days of receipt of the buyer's request.

### **Article 16-2-3: Preliminary meeting**

Before the start of harvesting a preliminary meeting between the buyer or his representative and the ONF agent shall take place on such conditions as provided by Section 3.2.1 of the National Forestry Regulations.

If this has not already been done, the buyer has the opportunity to introduce his representative to the ONF agent during the meeting, or alternatively, he may give him the representative's name and address and information on how to get in touch with him. During the meeting the buyer must present his felling licence to the agent responsible for overseeing the harvesting. He advises him of when the harvesting is planned to start and how the works will be organized.

As for the agent responsible for overseeing the harvesting, he provides all the information specific to the felling coupe and required for harvesting.

If harvesting has to stop for a prolonged period, the buyer shall notify the agent responsible for overseeing the harvesting of the date when harvesting shall resume.

The signing of the felling licence by the agent responsible for overseeing the harvesting constitutes proof that the above formal procedures have been performed by the buyer.

### **Article 16-3: Harvesting time frames**

#### **Article 16-3-1: Definitions and rules**

A time frame for felling execution is defined in each contract. Except where otherwise prescribed by the supplementary conditions, the time frame for felling execution is set according to the following rule:

<b>Month of contract signature for Year n</b>	<b>Deadline for felling execution</b>
December n-1, January and February	31/01/n+1
March, April and May	30/04/n+1
June, July and August	31/07/n+1
September, October and November	31/10/n+1

The supplementary conditions may prescribe a different time frame, which may be longer or shorter than the reference time frame defined above.

The supplementary conditions may also prescribe, as applicable:

- a restriction on harvesting duration between the first intervention and site restoration,
- a specific deadline for timber felling and conversion.

#### **Article 16-3-2: Time extensions**

If harvesting is not executed by the deadline prescribed by Article 16-3-1 above, one or more time extensions may be granted by ONF provided they do not exceed 18 months in total. The buyer shall apply for time extensions in writing to ONF.

If harvesting is suspended on ONF's request, in accordance with Article 22-1 of the general conditions of contract or if weather conditions preclude harvesting for a period longer than

would be normal, the buyer may be granted a free time extension for which he applies on such conditions as prescribed by Article 22-1.

### **Article 16-3-3: Priority felling coupes**

Priority felling coupes for which there can be no time extension are expressly identified in the supplementary conditions. For such coupes, should harvesting fail to be executed totally or partly by the set deadline, the provisions of Article 16-3-5, and, where applicable, Article 39 shall apply of right.

### **Article 16-3-4: Compensation for time extensions**

Harvesting time extensions granted in pursuance of Article 16-3-2 give rise to compensation paid to the owner and calculated as follows:

- either on the basis of the percentages shown hereinafter, known as basic rates, which are applicable when the supplementary conditions do not specify otherwise,
- or on the basis of a multiple of the basic rates, specified in the supplementary conditions.

The basic rates are as follows:

Time extension period	Percentage to be applied to the sale price to calculate compensation
6 months or less	0 %
7 to 9 months	1 %
10 to 12 months	3 %
13 to 15 months	5 %
16 to 18 months	10 %

Compensation shall be calculated to include any quarter started, which is owed in full. In all cases, the minimum amount for collection is 200 Euros and it may be re-assessed by decision of the ONF Governing Board.

The time extension period to take into account when calculating compensation ends on the date of issuance of the harvesting discharge, except when the buyer, considering the felling to be completed, applies for felling acceptance on such conditions as provided by Article 19-2. If during acceptance, felling execution is proven to be completed, the time extension period ends on the date of the acceptance application submitted by the buyer.

### **Article 16-3-5: Late felling completion and formal notice to perform**

If upon expiry of the harvesting deadline, with or without a time extension, the buyer has not fully executed all harvesting operations (felling and site restoration), ONF notifies the buyer of a list of obligations remaining to be fulfilled, grants him a supplementary time extension of 60 days maximum, and gives him a formal notice to complete the works by the new deadline. The basic rate for this 60-day time extension is 3% of the sale amount (the basic rate may be multiplied by a multiplier specified in the supplementary conditions).

If, by the end of the 60-day notice period, the buyer has failed to complete the remaining works, ONF is entitled to initiate termination of the contract, in accordance with the provisions of Article 39-2 of these clauses.

#### **Article 16-4: Procedure for timber harvesting**

The buyer undertakes to harvest the timber in compliance with the provisions set out in the National Forestry Regulations and supplementary conditions of contract, in respect of, in particular, preservation of the natural forest environment, due regard for people and property, planning of works, conduct of operations (felling, conversion, skidding, forwarding...), product stacking on landings, product extraction, treatment and disposal of site waste, equipment maintenance and restoration of the site to its former state.

Parties agree that:

- the planning of works and choice of techniques and equipment are the responsibility of the buyer in accordance with Part 3 of the National Forestry Regulations;
- the National Forestry Regulations and the supplementary conditions of contract may prohibit harvesting in total or in part during certain periods of the year, as well as prohibit or limit the use of certain types of equipment in the forest;
- timber extraction and removal is carried out via the network of existing forest roads, except if particular provisions are given in the supplementary conditions of contract; upon written application to the seller, the buyer may be allocated other skidding roads or be granted permission by the seller to open new ones; by making this application, the buyer undertakes to carry out the works at his expense or to pay the relevant expenses thereof; time restrictions for timber removal are specified in Section 3.1.2 of the National Forestry Regulations; ONF may impose restrictions on tonnes on certain forest roads; these are specified in the supplementary conditions of contract; removal may be prohibited during thaw or heavy rain periods, in accordance with the provisions of Section 3.5 of the National Forestry Regulations;
- in the event of an unexpected pest infestation posing a threat to the future of the stand, ONF may request during the course of harvesting that certain steps not set out in the conditions of contract are implemented, such as: treatment of stumps, timber removal by shorter deadlines, debarking of softwoods during felling or immediate burning of contaminated bark and branches ; the buyer, who is obliged to execute these works, is compensated for the extra expenses incurred provided they are justified.

#### **Article 16-5: Obligation to execute the felling in its entirety**

The buyer is required to fell all stems, crowns and coppice shoots designated for harvesting, as well as extract and remove all sold products.

When the buyer wishes to give up part of the products sold:

- for branches of a diameter less or equal to 7 cm, the buyer may do so informally,
- for other products, the buyer may be authorized to do so exceptionally by explicit decision of ONF, and he shall apply for authorization before expiry of the felling execution deadline.

In all cases, he processes and arranges the products he has given up as instructed by ONF.

Should the buyer fail to carry out all these operations within the time frame defined in Article 16-3, harvesting is deemed incomplete and the penalties provided by Article 34 of these clauses shall apply. The sale may then be terminated as a matter of right in favour of the owner in accordance with Article 39 of these clauses.



**Article 17: Enumeration** (*Not applicable*)

**Article 18: Product removal**

**Article 18-1: Removal permit** (*Not applicable*)

**Article 18-2: Obligation to remove the timber**

See Article 16-5 of these clauses

**Article 18-3: Contract execution time frame**

See Article 16-3 of these clauses

**Article 18-4: Procedure for timber removal**

See Article 16-4 of these clauses

**Article 18-5: Road network damage**

Forest road network: In accordance with Section 3.5 of the National Forestry Regulations, should the buyer, or any person working on his behalf, cause damage to the forest roads due to misuse, he is obliged to carry out the necessary works to repair the damage, or have the works carried out by others, at his expense, before expiry of the deadline for contract execution.

Public road network: Special contributions for damage due to improper use of public and country roads which may be owed to Communes and Départements in pursuance of Articles L. 131-8 of "Voirie départementale" (Departmental Road Network) and L. 141-9 of "Voirie communale" (Communal Road Network) and L. 161-8 of the Country Code are at the buyer's expense.

**Article 19: Procedure for completion of contract execution**

**Article 19-1: Restoration of sites to their former state**

Before expiry of the harvesting deadline, the buyer shall carry out works to restore the sites to their former state or repair them in accordance with the provisions of Sections 3.6 ("Slash management"), 3.7 ("Waste disposal") and 3.9 ("Restoration of sites to their former state") of the National Forestry Regulations.

If the buyer has carried out these works and they have been accepted by ONF or if the buyer has paid compensation for restoration as provided by Article 19-3-1 of these clauses, the felling coupe shall be deemed to have been executed and the harvesting discharge shall be given. If this is not the case, the felling coupe shall be deemed incomplete as per Article 16-5.

**Article 19-2: Felling acceptance**

**Article 19-2-1: Definition**

Felling acceptance takes place when the buyer considers that harvesting is completed and that the sites have been restored to their former state. Acceptance aims to provide assurance that the land has been restored to its natural state on such conditions as defined in Sections 3.6, 3.7 and 3.9 of the National Forestry Regulations and in accordance with the supplementary conditions of contract.

If the buyer considers that felling has been executed as described above, he applies in writing for felling acceptance by ONF, who shall proceed with acceptance within 30 days of receipt of this application, except if the compartment is inaccessible or impassable, because of snow cover in particular.

If the buyer does not apply for acceptance, ONF may proceed with acceptance of its own initiative, as soon as ONF ascertains that felling has been executed.

#### **Article 19-2-2: Procedure**

Acceptance may be by way of a simple acknowledgment by ONF or a general verification in the presence of both parties.

In the case of an acknowledgement by ONF, a detailed felling coupe and site inventory is drawn up. Any observations by the buyer are noted. In the absence of the buyer, the acknowledgement is made by ONF and if all duties have not been discharged, the buyer is notified. If all duties have been discharged, ONF may proceed directly to notification of the harvesting discharge, in accordance with Article 19-3-1 below.

In the case of a verification in the presence of both parties, ONF sets a date for the operations on site and informs the buyer at least 15 days in advance by registered letter with acknowledgement of receipt. Either the buyer or his agent is required to attend. If they do not, the verification is deemed to have been accepted by the absent party. At the request of ONF, the buyer shall have any obstructions removed to the stumps of felled trees and all hammer marks, and make such stumps and marks visible before the verification date. A verification report is drafted immediately and two copies are made, on which the buyer may record his observations. The report is signed by both parties (except if the buyer is absent).

Felling is then deemed completed, even if some products remain on a landing subject to a lease agreement in pursuance of Article 20 of the general conditions of contract.

#### **Article 19-3: Harvesting discharge**

##### **Article 19-3-1: Principle**

If during felling acceptance, it is established that all obligations specified in the general conditions of contract, the supplementary conditions of contract and the National Forestry Regulations have been discharged, the seller draws up the harvesting discharge and notifies it to the buyer.

However, if during said acceptance, ONF ascertains that some obligations have not been discharged, the seller demands in writing that these be performed by a specified date. However, in some cases, ONF may accept that the buyer is released from this obligation by the payment of compensation for restoration, the amount of which is determined by ONF.

If the buyer wishes to store his timber on a landing, the harvesting discharge will take place only after the contract defined in Article 20 of these clauses is signed.

##### **Article 19-3-2: Special case**

The buyer's duties in respect of site restoration may be considered discharged if, within 40 days of receipt of the buyer's acceptance request, the seller has not notified the list of unfulfilled obligations, or informed the buyer that acceptance has been rendered materially impossible because of the inaccessibility of the compartment. Harvesting acceptance is then implicit and the harvesting discharge shall be forwarded to the buyer within the same 40-day period.

### **Article 19-3-3: Effect**

A harvesting discharge usually sets an effective date but if it does not, the discharge comes into effect on the date it is signed, unless Articles 39-1 and 39-2 of these causes apply.

It explicitly releases the buyer from his responsibility for the deeds and offenses discovered after the effective date, in particular with respect to the Forestry Code.

It is without effect for deeds and offences detected prior to this date. It does not release the buyer from his obligation to pay any monies still owing to the seller and forest owner. It cannot be held as a release of guarantee.

### **Article 20: Timber storage on landings**

Unless otherwise specified in the supplementary conditions of contract, the contract of sale provides the buyer with the option of using a landing.

The supplementary conditions specify whether the landing is surfaced or not. If it is not, the landing is designated by the agent responsible for the felling coupe.

Use of the landing is free and is made at the buyer's own risk until issuance of the harvesting discharge by ONF.

A buyer who has executed his felling coupe may exceptionally ask ONF for permission to extend use of the landing beyond the harvesting discharge date. If permission to do so is granted by ONF, use of the landing is provided through a landing lease agreement which defines the technical and financial terms of lease.

The buyer shall apply for permission one month prior to the start of the lease agreement, which shall be signed before the harvesting discharge is issued.

### **Article 21: Incidental assignments during a felling coupe**

#### **Article 21-1: Principle**

When accidental products (such as windfalls, dry timber, burnt trees, insect or fungus infested trees...) are found during the harvesting of the compartments, ONF may include them in the sale provided the forest owner does not harvest them himself.

In addition, in accordance with Section 3.2.2 of the National Forestry Regulations, the felling of certain stems not marked or designated at the time of the sale may be considered necessary by ONF, who reserves the right to include them in the sale.

#### **Article 21-2: Obligation to buy**

The buyer is required to buy the products defined in Article 21-1 when they are offered to him provided the following conditions are met:

- the products are offered before completion of extraction operations,
- their total value does not exceed 20% of the total coupe sale price.

The price is set by ONF after negotiation with the buyer.

If the conditions set above are not met, the buyer may refuse to buy the products, but he cannot then oppose their sale to a third party or their harvesting by others.

In all cases, if the total value of incidental assignments is higher than 20% of the initial felling coupe price, a new sale contract shall be drawn up for the additional timber.

### **Article 21-3: Governance**

Whatever the average price per m<sup>3</sup> reached, incidental assignments are part of the main sale and are governed by the same contract. Terms of payment are defined in Article 27 of these clauses.

An incidental assignment comes into effect on the day of notification. The notification is held as a felling licence.

Except in the case of an explicit exemption, incidental assignments do not lead to a change of the initial harvesting time frame.

### **Article 22: Surveillance and suspension of timber harvesting or removal**

#### **Article 22-1: Suspension of timber harvesting or removal in the event of bad weather**

In the event of bad weather, ONF may suspend timber harvesting or removal if it deems that its continuation would damage the cutover, stands or network of forest roads. In such a case, the buyer is informed of the suspension of all or part of the harvesting. The suspension comes into effect immediately and ends either by decision of ONF or after expiry of a period of five working days following receipt by the buyer of the suspension decision.

A free time extension may then be granted to the buyer, but he must apply for the time extension in writing.

#### **Article 22-2: Suspension in the event of damage to stands and equipment**

If ONF notices that the contract is executed in such a manner that it is causing damage to the stands or equipment, it summons the buyer or his representative to take the required action.

In the case of exceptional damage posing a threat to the future of the stand and the viability of equipment, ONF shall order the suspension of all or part of the harvesting. The suspension comes into effect immediately and ends, either by decision of ONF, or after expiry of a period of five working days following receipt by the buyer of the suspension decision.

The authorized ONF representative specifies the terms under which the harvesting may resume or continue. In particular, he may prohibit or limit the use of a machine that has caused exceptional damage. The buyer must abide by this decision.

#### **Article 22-3: Suspension in default of professional liability insurance**

If, in the course of contract execution it is revealed that the professional liability insurance certificate submitted in pursuance of Article 6-2 of these clauses:

- refers to an insurance policy that does not cover one or more risks normally associated with the execution of the sale contract,
- or is no longer valid,

ONF suspends the execution of the contract and has reason to impose the penalty prescribed by Article 33 of these clauses.

The buyer then has a 30 day period to regularize his situation and provide ONF with a valid certificate. If regularization is confirmed, ONF will give a written agreement to resume harvesting.

If it is not, ONF may initiate termination of the contract in accordance with Article 38-2.

**Article 23: Sale price**

The sale price set upon entry into the contract excludes taxes, i.e. it excludes VAT.

The price is stated exclusively in Euros.

VAT is applied as provided by Articles 24 and 28 of these clauses.

Depending on the ways and means of contract execution, supplementary invoices for time extensions, incidental assignments, restoration costs or penalties may be added to the sale price.

**Article 24: Sale price payment terms for single sale contracts****Article 24-1: Contracts of an amount less or equal to 3,000 Euros excluding taxes**

When the sale price excluding taxes is less or equal to 3,000 Euros, the buyer shall pay cash within 20 days of contract formation for the full value of the sale price including taxes.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or cheque.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.

**Article 24-2: Contracts of an amount higher than 3,000 Euros excluding taxes**

The buyer may choose between several payment procedures.

When contract formation follows a sale by adjudication or by competitive tendering, the contract is drawn up on the basis of the choice stated by the buyer during the sale. Any change of payment procedure after the sale may only be exceptional and shall be charged an administration fee amounting to 0.5% of each contract value, payable to ONF. If the administrative fee for any given public sale is less than 200 Euros, it will be increased to this lump sum. The administrative fee may be changed by decision of the Governing Board of ONF.

**Article 24-2-1: Cash payment**

When the buyer wishes to pay cash for the monies owed, he shall do so within 20 days of contract formation for the total value of the sale price including taxes.

In the case of a sale by adjudication or competitive tendering, the buyer then enjoys a 2% discount on the sale price, unless otherwise provided by the supplementary conditions. This rate may be adjusted to reflect any changes in financial markets by decision of the Governing Board of ONF.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or cheque. A bank cheque may be required.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.

## **Article 24-2-2: Deferred payment**

- For felling coupes in state forests or in a forest whose owner is liable for paying VAT on debits:
  - the buyer pays cash, within 20 days of the sale date, for 20% of the sale price excluding VAT, plus the VAT owed on the full value of the sale price excluding VAT.
  - to settle the balance, he delivers to the accountant in charge of payment, within 20 days of the sale, 4 promissory notes each amounting to 20% of the sale price excluding taxes, payable at the end of the 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> months following the sale.
- For felling coupes in a forest whose owner is not liable for VAT, or is liable for VAT on credits:
  - the buyer pays cash, within 20 days of the sale date, for 20% of the sale price excluding VAT, plus the VAT owed on 20% of the sale price excluding VAT.
  - to settle the balance, he delivers to the accountant in charge of payment, within 20 days of the sale, 4 promissory notes each amounting to 20% of the sale price excluding taxes, plus the associated VAT, payable at the end of the 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> months following the sale.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or cheque. A bank cheque may be required.

By exemption, for public sales in September, October and November included in the “*Grandes Ventes d’Automne*” campaign (“Big Autumn Sales”) in Year n, the dates of deferred payment (for the part not owed in cash) are set at the end of the months of February, April, June and August of Year n+1.

## **Article 24-2-3: Special case**

The supplementary conditions may override the provisions of this Article. This override cannot result in an extension of the total period of credit enjoyed by the buyer, except by authorization of the General Director of ONF.

## **Article 25: Financial guarantees for single sale contracts**

### **Article 25-1: Guarantee obligation**

In the case of a sale with deferred payment, the buyer is required to guarantee his commitments through a joint surety or an autonomous first demand guarantee, which may be an annual combined guarantee, on such conditions as provided hereinafter.

The buyer is exempted from the guarantee if he pays by guaranteed promissory notes delivered within the same time frame as that prescribed for the guarantee, which they replace.



The guarantee beneficiary, ONF, the seller, or the owner, is specified in the supplementary conditions of contract.

The guarantee is provided by an institution authorized to stand surety to a public accountant in France, on the list of lending institutions and investment services providers accredited by CECEI, the Comité des Etablissements de Crédit et des Entreprises d'Investissement (Committee for Lending Institutions and Investment Firms), or on the list of accredited insurance companies under Sector 15, "guarantee".

A guarantee provided by a mutual guarantee scheme may also be accepted.

#### **Article 25-2: Joint surety and release of guarantee**

The guarantor is held jointly and severally liable for payment of the full share of the sale price including VAT which is not paid in cash.

This amount is a limit of guarantee, up to which the guarantor may be called once or more times until the release of his commitment. The release of guarantee is pronounced after payment of the sale price in full.

The guarantor gives the surety bond within a period of 20 days following contract formation using a form available at ONF offices. If he does not, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-3: Autonomous first demand guarantee**

The buyer may propose to provide a first demand guarantee.

The guarantee is provided under the terms and conditions prescribed by the general conditions of contract and covers ONF or the communities owning forest land against the risk of non payment by the client for the share of the price not paid in cash.

The bank gives the surety bond as an autonomous first demand guarantor and as such is bound by a personal commitment in favour of the guarantee beneficiary, which is separate from the buyer's contractual commitments to the seller.

It is essential for the guarantee provided by the buyer to cover a period of 6 months beyond the date set for the last main price payment. Failing this, the guarantee cannot be accepted.

The guarantor gives the surety bond within a period of 20 days following entry into the contract of sale. If he does not, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-4: Annual combined guarantee**

ONF may suggest that the buyer provides an annual combined guarantee: an annual combined joint surety bond or combined first demand guarantee.

The guarantor undertakes to guarantee all outstandings of the buyer up to a limit scaled to the total value of the contracts for timber purchases entered into between ONF and the buyer during the year preceding the commitment. The scaled amount cannot be lower than a minimum threshold defined by the Governing Board of ONF. This amount is a limit of guarantee, up to which the guarantor may be called once or more times until the release of his commitment. The release of the annual combined guarantee is pronounced after the settlement in full of monies owing under the contracts.

The limit and validity period of the surety bond are provided by the deed of guarantee.

**Article 25-5: Special case (*Not applicable*)**

**Article 26: Sale price payment terms and financial guarantees for supply contracts (*Not applicable*)**

**Article 27: Payment terms for supplementary invoices associated with contract execution**

Supplementary invoices associated with the execution of the contract (incidental assignments, time extensions, penalties, compensation for damage) are payable in cash within 20 days of invoice issuance, by cheque or bank transfer ("swift" transfer for funds issued by foreign banking institutions).

**Article 28: Formal procedures in respect of value added tax**

For purchases of timber from state forests or forests belonging to communities subject to VAT, the buyer pays the VAT owed, as prescribed by Articles 23, 24 and 27 above, and receives from the seller an invoice showing the VAT amount.

For owners registered under the flat rate repayment scheme, the buyer shall, in pursuance of Articles 265 and 266 of Appendix 2 of the General Taxation Code, (i) attach to each payment, including each promissory note instalment, a purchase form or a delivery slip, and (ii) provide the owner, at the beginning of each calendar year, with an annual certificate summarising all payments made during the previous year.

Purchase forms, delivery slips and annual certificates shall conform to the templates provided by the taxation authorities in Appendixes 1 and 2 of their essential documentation 3 I-2151 dated 30 March 2001.

In all cases, the supplementary conditions specify whether the owner is registered under the flat rate repayment scheme or general VAT scheme (with the option of VAT on debits or on credits) and in the latter case, they provide the applicable rate and payment terms.

**Article 29: Accountant in charge of payment**

The sale price is owed to the ONF accountant when the sale concerns products from state-owned forests or is part of a grouped sale in accordance with Article L. 144-1-1 of the Forestry Code.

The sale price is owed directly to the forest owner's accountant, when the sale concerns products from forests owned by a single owner other than the state.

The accountant to receive the payments is specified in the supplementary conditions of contract.

**Article 30: Issuance of a payment certificate**

For sales of an amount higher than 1,000 Euros excluding taxes, once the buyer has paid the sale price in full within the agreed time frame, in cash or by remittance of promissory notes, the

public accountant issues a payment certificate which is required by ONF offices before they can issue the felling licence prescribed by Article 16-2-1 above.

Unless payment is by bank cheque, amounts paid in cash are deemed to be paid only once they are actually credited to the recipient's account.

**Article 31: General principle**

A lump-sum contractual penalty of 200 Euros applies for any non-compliance with or lack of awareness of the general and supplementary conditions of contract and the National Forestry Regulations, for which no penalty is provided by the Forestry Code or by Articles 32 to 35; this is owed to ONF, the seller. In addition, the buyer is required to make reparation for any harm resulting from an act of non-compliance, especially in the event of damage to the forest.

**Article 32: Penalties for failure to pay**

For all monies owing under the contract and not paid on time, as well as for any delay in providing the promissory notes within 20 days of the sale, the buyer is liable to the forest owner as a matter of right:

- for interest on overdue payments per day of default, at the rate of three times the statutory rate of interest in effect on the due date,
- a fixed financial penalty amounting to 200 Euros to cover follow-up costs.

**Article 33: Penalties for failure to possess professional liability insurance**

If it is discovered during the execution of a contract that the professional liability insurance certificate provided in pursuance of Article 6-2 of these clauses refers to an insurance policy which does not cover one or more of the risks normally associated with the execution of the sale contract, the buyer is deemed to have misled ONF, the seller, by submitting a non-valid certificate in order to obtain issuance of a felling licence.

Accordingly, and without prejudice to any compensation owed to the victim(s) of losses caused by the harvesting, extraction or removal of products and not covered by valid professional liability insurance, the buyer is liable to ONF, the seller, for a lump-sum contractual penalty of 5,000 Euros for failure to possess insurance. The penalty is owed only once for all contracts outstanding at the time when the absence of insurance is discovered.

**Article 34: Penalties associated with timber harvesting and removal****Article 34-1: Compensation for lack of care to plants, seedlings and young trees**

The buyer is liable for any damage he causes to seedlings, plants and young trees smaller than the 10 cm diameter class at breast height, when this damage is caused by non-compliance with the provisions of the National Forestry Regulations (in particular Sections 1.2.2 and 3.6) and the supplementary conditions.

The damage is recorded in a report addressed to the buyer, who has 15 days to request a visit in the presence of both parties.

In the event of the destruction of seedlings, plants and young trees as defined above perpetrated on a continuous regeneration surface area greater than 500 square meters, the buyer is liable to the forest owner for a lump-sum indemnity defined as follows:

- if the destroyed regeneration growth is younger than 10 years, compensation amounts to 50 Euros / 100 sq.m. destroyed,

- if the destroyed regeneration growth is older or equal to 10 years, compensation amounts to 50 Euros / sq.m. destroyed, multiplied by one tenth of the natural or planted seedling age.

The supplementary conditions specify the age of the plantation or seedlings.

#### **Article 34-2: Compensation for lack of care to retained stems**

The buyer is required to take due care with and avoid damage to all retained or non-marked stems in accordance with Section 1.2.1 of the National Forestry Regulations.

When retained stems larger than the 10 cm diameter class are knocked down, damaged or injured in consequence of harvesting, the buyer is liable to the forest owner for compensation for the damage sustained, without prejudice to the application of the provisions of the Forestry Code relating to stem mutilation, where relevant.

For stems that have been knocked down, damaged or injured, the buyer is liable for a lump-sum indemnity which is calculated as specified in Appendix 1 of these clauses. In addition, ONF may demand that the buyer purchase the stems damaged in consequence of harvesting, in accordance with Article 21.

The assignment is negotiated between ONF and the buyer on the basis of stem value before the stems were knocked down or damaged. A retained stem is deemed damaged when ONF considers that it can no longer thrive if it is left standing.

ONF assesses the damage caused to retained stems and forwards the count of knocked-down, damaged or injured stems and associated compensation amount to the buyer. The buyer may request that a visit is made in the presence of both parties within 15 days of receipt of this count.

The compensation amounts owing under the provisions of this Article will not be collected by ONF if they amount to less than 100 Euros.

#### **Article 34-3: Penalty for non-completion of the felling coupe in the time specified**

If upon expiry of the harvesting deadline, which may or may not have been extended, ONF discovers that the buyer has carried out only part of the timber harvesting, extraction or removal, the buyer is liable to the forest owner for damages amounting to the value of the timber remaining standing, lying on the cutover or on landings.

The buyer is released from paying this sum by making the payment in kind which is to yield possession of the timber still standing, lying on the cutover or on landings.

The transfer of property and possession takes place on the date of termination, in accordance with Article 39-2.

In addition, where execution of the felling coupe has already started, the buyer is liable to the forest owner for the value of the remaining works, assessed by ONF and marked up by the addition of a penalty equal to twice this amount. If the penalty owing under such provisions is lower than 1,000 Euros, it is increased to this fixed lump sum.

#### **Article 34-4: Penalties associated with product removal and site restoration**

##### **Article 34-4-1: Absence of removal permit** *(Not applicable)*

##### **Article 34-4-2: Penalty for non-completion of product removal and/or site restoration**

See Article 34-3 of these clauses

##### **Article 34-4-3: Non-compliance with timber conversion, enumeration, measuring or weighing procedures** *(Not applicable)*

#### **Article 35: Penalties associated with product delivery** *(Not applicable)*

#### **Article 36: Settlement and collection of penalties**

The total amount of contractual penalties arising from these Articles is settled after harvesting acceptance by ONF and gives rise to a final payment invoice, which shall be paid in accordance with the provisions of Article 27 of these clauses. In accordance with Article 19-3-3, issuance of the harvesting discharge does not release the buyer from paying the penalties.

The beneficiary of contractual penalties, i.e. ONF, the seller, or the forest owner, and the accountant responsible for collection are specified on the invoice.

## **Chapter 8 – SUSPENSION, FORFEITURE AND EXPIRY OF THE CONTRACT**

### **Article 37: Forfeiture and rescission for non-compliance with financial clauses**

#### **Article 37-1: Forfeiture in default of surety bond, first demand guarantee or annual combined guarantee**

If the buyer does not provide the guarantees required by Articles 25 or 26 of the general conditions of contract within the period specified, his forfeiture is pronounced in pursuance of Article L. 134-5 of the Forestry Code in particular.

Without prejudice to the penalties owing under the provisions of Article 31, the lot can then be re-offered for sale in which case the defaulting buyer is liable to pay the difference between his price and the resale price, on account of damages, without him being able to claim for any excess.

#### **Article 37-2: Rescission for failure to pay**

When the buyer does not remit his means of payment within 20 days of the sale in accordance with the provisions of Articles 24 or 26 of these clauses, ONF may pronounce the rescission of the sale, with provision for a lump-sum contractual penalty for damages amounting to 20% of the sale price excluding taxes, payable to the forest owner, notwithstanding any penalties prescribed by Article 32 of these clauses.

### **Article 38: Rescission and termination for failure to possess professional liability insurance**

#### **Article 38-1: Rescission for failure to possess professional liability insurance**

Upon entry into the contract if the buyer does not provide the professional liability insurance certificate required by Article 6-2-2 within the period specified, the seller pronounces the rescission of the sale, with provision for a lump-sum contractual penalty for damages amounting to 20% of the sale price excluding taxes, payable to the forest owner.

The buyer is also liable to ONF for a contractual penalty of 200 Euros for non-compliance with the general conditions of contract and the National Forestry Regulations.

#### **Article 38-2: Termination for failure to possess professional liability insurance**

If it is discovered, during execution of the contract, that the insurance policy certificate is not valid and that the buyer is not able to regularize his situation on such conditions as provided by Article 22-3, the sale is terminated within a period of 30 days following the date of discovery of the absence of insurance.

The termination procedure complies with Article 39-3 of these clauses.

The buyer is also liable for the penalty defined in Article 33 of these clauses.



## **Article 39: Termination for non-execution of harvesting**

### **Article 39-1: Termination for failure to start the harvesting**

Upon expiry of the harvesting deadline, which may or may not have been extended, the contract may be terminated as a matter of right should ONF discover that felling has not started.

The termination comes into effect on the date of deadline expiry as defined above, and is performed as prescribed by Article 39-3.

When the buyer is not able to start timber harvesting, even though he has given his means of payment and guarantee, ONF may pronounce the termination of the sale contract, on the buyer's request, before expiry of the harvesting deadline.

### **Article 39-2: Termination for non-completion of the felling coupe in the time specified**

The contract may also be terminated as a matter of right if the works are not finished upon expiry of the 60 day period following the formal notice to perform referred to in Article 16-3-5 of these clauses.

The termination comes into effect on the date of expiry of the above period, and is performed as prescribed by Article 39-3.

### **Article 39-3: Termination procedure**

The harvesting discharge which comes into effect on the date of termination is delivered to the buyer, together with the detail of the monies owing.

In all cases, the buyer is liable for the penalties or compensation owing under the provisions of Articles 16, 31, 32, 33 and 34.

The transfer of ownership and possession of the buyer's timber to the forest owner takes place on the date of termination.

## **Article 40: Termination for non-removal of products and/or site restoration**

See Article 39

## **Article 41: Rescission and termination of supply contracts *(Not applicable)***

## **Article 42: Change or termination of the contract in connection with the withdrawal of one or more owners in the case of a grouped sale *(Not applicable)***

## **Article 43: Discontinuance of business**

In the event of the permanent discontinuance of business for a reason other than a safeguard or redress procedure or winding-up proceedings or the buyer's death, the rights and obligations of the defaulting buyer may be transferred to a third party by the buyer, subject to ONF's prior consent.

In the event of a transfer, the assign shall forward to ONF, within a period of 20 days following the transfer, the means of payment and guarantees required by ONF under Articles 24 to 26, as well as the professional liability insurance, in accordance with Article 6-2-2. Failing this, the transfer is deemed lapsed.

#### **Article 44: Death of the buyer**

In the event of the death of the buyer as a natural person, the contract shall expire by lapse as a matter of right.

ONF agrees with the heirs during succession on the ways and means available to close out the situation.

#### **Article 45: Force majeure**

When execution of the contract by one or the other party is rendered impossible by an event of force majeure, rescission of the contract shall be pronounced at the request of the first party to so do.

The rescission of the contract entails the rescission of the sale as a matter of right and puts the parties back in the position where they were before entry into the contract.

If contract execution is temporarily impossible but able to resume at a predictable date without the financial terms of the contract being affected, the contract may be suspended for a period agreed between the parties, provided it does not exceed 6 months.

Force majeure does not lead to any compensation for damages, in accordance with Article 1148 of the Civil Code, in consequence either of contract suspension or contract rescission.

## Chapter 9 – COLLECTIVE PROCEEDINGS

### Article 46: Compulsory safeguard, redress and liquidation of companies

#### Article 46-1: Timber detention

In accordance with the provisions of Article 15-1 of these clauses, the cutover, as well as the designated landings in the forest, are not deemed to be part of the buyer's store.

Therefore, if safeguard, redress or winding-up proceedings are called for, the seller is entitled to perform the detention of timber standing or felled, still on the cutover or designated landings in accordance with Article L. 624-14 of the Commercial Code.

This is a right he exercises by virtue of the unpaid seller's lien (Art. 1612 of the Civil Code), which is as much in his own interest as in the interest of the guarantor, in consequence of the monies that the guarantor may already or may be required to pay on account of the sale price, notwithstanding any promissory notes which may become due.

The detention is notified by the seller by registered letter addressed to the administrator (or liquidator) and the buyer. The detention comes into effect upon receipt of this letter, which may be held as a suspension of felling licence.

The detention prohibits any timber harvesting or removal.

If order to lift the detention right, the buyer and administrator (or liquidator) have to reach an agreement with the guarantor to pay any monies owing on account of the sale price, or find another solution between them, if the guarantor has already replaced the buyer in so doing.

In all cases, the seller lifts the detention right only on the basis of a written statement by the guarantor authorizing the end of timber detention.

The lifting of a detention right is evidenced by a decision of the seller in writing, by which the felling licence becomes effective once again.

#### Article 46-2: Election to continue, assign or terminate the contract under execution

If collective proceedings are called for, and notwithstanding the use of the detention right mentioned in Article 46-1 above, only the administrator (or liquidator) has the authority to decide on the fate of the outstanding contract (Art. L. 622-13 and L. 641-10 of the Commercial Code). If the court has not appointed an administrator, the buyer decides on the fate of the contract in agreement with the judicial agent (Art. 627-2 of the Commercial Code). The buyer must submit this agreement to the seller.

The administrator or buyer (when an administrator has not been appointed), or liquidator, has one month to announce his decision from being notified by the seller by registered mail that he has been called upon to decide on the fate of the outstanding contract.

In the absence of an explicit decision within the legal period, the seller determines the termination of the contract by right in pursuance of Article L. 622-13 of the Commercial Code, in accordance with Article 46-2-3.

### **Article 46-2-1: Continuation of the outstanding contract**

When continuation of the contract has been decided and the sale price has been fully settled by the buyer prior to the opening judgment, the contract is continued in a normal manner.

However, when the decision to continue with the contract conflicts with the detention of timber exercised in accordance with Article 46-1 above, new means of payment need to be provided by the buyer on the basis of the agreements reached with the guarantor and the administrator (or liquidator) and endorsed by the master in chambers, since the payment of a debt previous to the opening judgment requires authorization (Art. 622-7 Paragraph 3 of the Commercial Code). The seller will lift the detention right on the basis of the payment certificate issued by the relevant accountant, thus enabling contract execution to actively resume.

### **Article 46-2-2: Transfer of the outstanding contract**

In the event of contract continuation, the buyer's rights and obligations may be assigned to a third party provided the prior consents in writing of both ONF and the guarantor of the buyer in his capacity as the assignor have been given.

The transfer comes into effect and the assign receives his felling licence only once he has submitted his insurance certificate to ONF as provided by Article 6-2 of these clauses, and deposited with the relevant accountant the means of payment for the remainder of the sale price owing under the assigned contract, together with the required guarantee, where applicable.

### **Article 46-2-3: Termination of the outstanding contract**

When total or partial termination of the outstanding contract has been decided through an explicit decision or silence maintained for more than one month from notification of the formal notice to decide on the fate of the outstanding contract, such total or partial termination is pronounced in accordance with Article L. 622-13 of the Commercial Code.

## Chapter 10 – MISCELLANEOUS PROVISIONS

### Article 47: Settlement of disputes

For any disputes which may arise during execution of the sale contract, only the French courts of jurisdiction are competent. The court having territorial jurisdiction is that of the location of entry into the contract.

### Article 48: Access to timber sales

ONF is entitled to deny access to timber sales to buyers who, on account of previous timber purchase contracts:

- have not paid for overdue invoices in full,
- have been penalized repeatedly in pursuance of Chapters 7 and 8 of these clauses.

## APPENDIX: CALCULATION OF COMPENSATION FOR LACK OF CARE TO RETAINED STEMS

### a) Calculation of basic compensation: (*amended 01/01/2012*)

The basic compensation  $I_b$  is proportional to the diameter class **D** at breast height (i.e. measured at 1.3 m above the ground) expressed in centimetres. It is calculated per stem by applying the following formula:  **$I_b = 0.2 * C [D * (1 + D/50)]$** . In the formula, C is the discounting coefficient of one euro of 2010 to one euro of the year before compensation calculation (n-1).

### b) Upward adjustment of compensation $I_b$ to take into account the importance of damaged stems:

In order to take into account the importance of a stem in the overall stand, a multiplier **V** is applied with the following values:

- **25**, for selected top stems: stems highlighted in the supplementary conditions and identified in the forest,
- **10**, for retained stems in a seed stand and for identified pre-selected trees; the class of the stand and presence of pre-selected trees are specified in the supplementary conditions.
- **5**, for stems retained by selection or regeneration felling: the class of felling coupe is specified in the supplementary conditions.
- **1**, in other cases.

### c) Upward adjustment of compensation **I** to take into account the quantitative extent of damage:

In order to take into account the number of knocked-down or damaged stems, a multiplier **N** is applied with the following values:

- **2** when the number of destroyed or damaged stems is higher than 15 per hectare for the whole lot,
- **1.5** when the number of destroyed or damaged stems is included between 11 and 15 per hectare for the whole lot,
- **1** when the number of destroyed or damaged stems is lower than 11 per hectare for the whole lot.

Final compensation equals to:

$$I = I_b * V * N \text{ Euros}$$

# General conditions of contract for sales of standing timber by measurement

## Chapter 1 – LEGAL FRAMEWORK

### Article 1: Law of the contract

This contract is subject to French law.

Without prejudice to the provisions specific to forest law, sales carried out by ONF are subject to legal terms and conditions pursuant to the Civil Code and Commercial Code or incidental to the law on the international sale of goods pursuant to the Vienna Convention signed on 11 April 1980 for contracts by private agreement or competitive tendering.

### Article 2: Framework specific to timber sales carried out by ONF

#### Article 2-1: General rules of forest law

In respect of woods and forests administered under the public forest law system (Articles L. 111-1 and L. 114-1 of the Forestry Code), felling coupes and products of such coupes are sold by ONF on such legal conditions as provided by Articles L. 134-1 to L. 134-7 of the Forestry Code in particular, in the case of timber from state-owned forests and land for afforestation, and L. 144-1 to L. 144-4 of the Forestry Code in particular, in the case of timber from community forests and land for afforestation administered under the public forest law system.

#### Article 2-2: Scope of the general conditions of contract

The general conditions of contract approved by the Governing Board of ONF in pursuance of Article R. 134-2 of the Forestry Code are applicable to any contract of sale of standing timber by measurement entered into by ONF.

#### Article 2-3: Enforceability and composition of contract documents

The general conditions of contract and the supplementary conditions of contract make up the sale contract. They are binding on the buyer, his guarantor as well as on any person working on his behalf.

Where applicable, the buyer is bound by the territorial procedures to which the general conditions of contract refer. The procedures are forwarded to the buyer at his request and are published at the front of the public sales catalogue and on the ONF website.

#### Article 2-4: Enforceability of the National Forestry Regulations

The National Forestry Regulations are enforceable against any buyer of a timber lot, in as much as he enters into the forest to carry out the harvesting and removal of sold products, or only their removal.



The buyer is personally responsible by law for ensuring that his agents or any persons acting on his behalf or through him fully adhere to the provisions of the regulations, in pursuance of Articles L. 135-10 and L. 135-11 of the Forestry Code.

### **Article 3: Exemptions from the general conditions of contract**

The supplementary conditions of contract associated with a particular sale cannot override the general conditions of contract except in the cases and within the limits explicitly provided for in the general conditions of contract.

Any clauses opposing or contrary to the above are deemed invalid, ONF not having consented to them in the manner prescribed by Article 2-2.

There can be no exemption from the general conditions except as a consequence of general temporary measures taken in an emergency and ordered by the Director General for a particular geographical zone. As the circumstances require, such an exemption may be applied to outstanding contracts.

## **Chapter 2 – FORMATION, CHARACTER AND DURATION OF THE CONTRACT**

### **Article 4: Formation of the contract**

The contract is formed between ONF and the buyer on such conditions as set out in Article L. 134-7 of the Forestry Code and in accordance with the sales regulations applicable to the sale at issue in particular. As applicable, the sales regulations may be:

- the regulations for sales by competitive tendering,
- the regulations for sales by adjudication,
- or the regulations for sales by private agreement.

### **Article 5: Subject-matter**

The contract of sale concerns timber sold standing, pre-marked or pre-designated, located in an area of forest whose boundaries have been marked out; the buyer is responsible for harvesting and converting the timber in accordance with the provisions of the supplementary conditions of contract, paying its price after enumeration, removing the timber and restoring the site to its former state within the agreed time frame.

The sale is a sale of goods by measurement as per Article 1585 of the Civil Code.

### **Article 6: Contracting parties**

#### **Article 6-1: The seller**

The sale concerns products from forest estates administered under the public forest law system, whether they are owned by the state or a community or another legal entity. Except in the first case, ONF shall have received the owner's prior consent before engaging in the sale of the products.

When the contract of sale concerns timber from several forest estates, the sale is a grouped sale as per Article L. 144-1-1 of the Forestry Code.

In all cases, the sale contract is agreed and entered into with ONF, who is solely able to take responsibility for the decisions arising from contract supervision and execution.

In relation to all aspects of contract execution, ONF is represented by an agent, whose function is to act as a point of contact between ONF, the seller, and the buyer and to provide for due execution of the contract. His name and contact details are forwarded to the buyer, who will address any queries he has to him.

The ONF agent or if not applicable, the department responsible for timber sales in the relevant Agency, shall respond to queries within 2 working days of being prompted to respond to a query.

## **Article 6-2: The buyer**

### **Article 6-2-1: General**

A buyer is a professional meeting the criteria set out in the sales regulations and who has bought one or more lots of timber offered for sale by ONF.

In respect of contract execution, the buyer shall appoint one or more French-speaking representatives. The representative(s) is(are) not obliged to be present on the harvesting site all the time but is(are) required to be contactable by the ONF agent at all times and come to the harvesting site within 2 working days at the most when requested to do so by ONF.

### **Article 6-2-2: Professional liability insurance**

The buyer is obliged to provide proof to ONF within 20 days of the sale that he has contracted professional liability insurance covering risks of damage associated with the harvesting, extraction and removal of timber, for which he may be held responsible on such conditions as provided by Article L.135-11 of the Forestry Code and the National Forestry Regulations.

## **Article 7: Character of the sale contract**

Single sale contracts or supply contracts may be entered into.

### **Article 7-1: Single sale contract**

Only one timber lot is sold as part of a single sale contract. It is available all at once when a felling licence is issued to the buyer on such conditions as set out in Article 16-2-1.

### **Article 7-2: Supply contract**

A timber sale contract entered into between ONF and the buyer may be a supply contract as per Articles L. 134-7 and R. 134-15 of the Forestry Code.

A supply contract may be envisaged as being part of a durable commercial relationship aiming to secure supply for an industrial processing unit.

A sale contract is a supply contract if it has the following attributes:

- it is entered into by private agreement,
- timber delivery is spread over a period of time of at least 6 months,
- timber volumes amount to 1,000 m<sup>3</sup> at least if contract duration is less than one year.

However, in some cases timber sale contracts without one of these attributes may be referred to as supply contracts. The supplementary conditions shall expressly specify this possibility.

A supply contract may span one or several years. It may consist of several successive tranches, each tranche consisting of one or more lots of timber.

In the case of contracts by multiple tranches, the parties agree distinctly to each tranche in the manner and time frame specified by the contract. The parties' agreement upon entry into the contract concerns only the first tranche. The subsequent tranches shall be reserved for the buyer from the beginning of the contract and in exchange, the buyer undertakes to complete the successive sales contemplated for each subsequent tranche defined in the contract.

During the entire period prescribed by the contract, the parties are obliged by their mutual commitment to complete the subsequent tranches, without prejudice to the provisions set out in Article 41 of the general conditions of contract.

The successive sales arising from each of the tranches are subject to the provisions of the general conditions of contract as a whole.

## **Article 8: Duration and end of the contract**

### **Article 8-1: Single sale contract**

The contract ends when the buyer has performed all the technical and financial obligations associated with the contract.

Felling execution time frames are specified in Chapter 5 of the general conditions of contract and in the supplementary conditions of contract.

### **Article 8-2: Supply contract**

For supply contracts the duration of each tranche is set by the supplementary conditions. The duration of a tranche means the period during which the various lots are made available. Duration of each tranche is usually 6 months, except if the parties agree on a different duration; it cannot be longer than one year. Contracts associated with the tranches to be completed are required to be signed within five years of the main contract signature, in accordance with Article R. 134-5 of the Forestry Code.

## **Article 9: Assignment of the sale contract**

### **Article 9-1: Single sale contract**

Without prejudice to the provisions of Article 46-2 of the general conditions, single sale contracts entered into by ONF and the buyer cannot be assigned in total or in part by the buyer, be this in return for payment or not.

In the event of an assignment of the products before their removal, the buyer remains responsible for complying with all the terms of the contract until harvesting discharge, and in particular with the provisions of Chapter 5 of the general conditions of contract.

### **Article 9-2: Supply contract**

Supply contracts may be assigned by the buyer subject to the prior and explicit consent of ONF. In the event of a transfer, the assign is required to provide all of the means of payment, guarantees and insurance required for due performance of contract execution on such conditions as defined by the general conditions of contract within the time frame agreed between the parties.

### Article 10: Type and description of sold products

The products subject to the sale are standing trees, poles or maidens, which have been pre-marked or pre-designated by the seller and are located in an area of forest whose boundaries have been marked out and in which the buyer undertakes to carry out timber harvesting.

Generally the sale concerns the tree stem and crown, i.e. the wood included between the stump and the top diameter limit (7 cm diameter). It can also include products of a diameter smaller than 7 cm. In such a case, this shall be expressly specified in the supplementary conditions. If not clearly specified in the supplementary conditions, smaller products are not included in the sale and can be removed only with the explicit authorization of ONF and, where applicable, with the owner's agreement.

The sale may concern only the stem or only the crown. In the case of a sale of stems only, the stems will be crosscut at a diameter no smaller than 25 cm for hardwood species and 14 cm for softwood species, except when the supplementary conditions of contract specify different arrangements.

The supplementary conditions define:

- the type and technical characteristics of the product(s) for sale,
- the enumeration procedure and timing.

The supplementary conditions may also specify any dry and substandard products and whether these have been suitably designated on the site.

Forest seeds and fruit are excluded from the sale. The seller reserves the right at any time to harvest or have harvested the forest cones and fruit from the trees to be felled. Information on such harvests is provided in the supplementary conditions of contract.

The types of products and the marking or designation method of stems to be felled or retained, as well as the harvesting boundaries are specified in the supplementary conditions. If they are not, the model procedures for each regional or territorial direction in effect on the date of sale are used.

In all ONF documents, stems for harvesting are specified by diameter class at breast height (i.e. 1.3 m above the ground). "Tree", "pole" and "maiden" classes obtained by grouping together various diameter classes are defined in the glossary attached to these clauses (Appendix 1).

Except where otherwise expressly provided by the supplementary conditions of contract, the sale of products does not include the transfer to the buyer of any incorporeal rights associated with the forest or products extracted from the forest.

### Article 11: Product origin

#### Article 11-1: Origin of sold products

The origin of sold products is specified in the supplementary conditions of contract for the sale, together with the owner's or owners' details (and PEFC certificate if applicable) for single sale contracts.

For supply contracts, the origin of sold products is given on a tentative basis upon entry into each tranche. If the products originate from one or more forests certified under PEFC, the supplementary conditions make reference to this.

## **Article 11-2: Product allotment**

A lot may concern part of a felling coupe, or one or several coupes. When the sale concerns part of a felling coupe, the supplementary conditions specify the products for sale.

## **Article 12: Product quality**

### **Article 12-1: Quality assurance**

The timber is sold without quality assurance, since the buyer is required to remove all designated products.

When quality classes are specified in the supplementary conditions of contract, they are binding on the seller only in respect of product allocation into the various classes in anticipation of enumeration and sale price determination.

Likewise, the seller cannot be held accountable for any quality change in the period from entry into the contract until enumeration.

### **Article 12-2: Reference to standards**

The supplementary conditions may refer to product grading standards in view of enumeration. The Parties may modify the standard references by express agreement in order to exclude any part of a standard deemed irrelevant to the sale at issue.

### **Article 12-3: Quality assurance limits** *(Not applicable)*

## **Article 13: Quantities**

### **Article 13-1: Principle**

The buyer is obliged to harvest, remove and pay for all the products designated as being included in the sale. Stem volumes and numbers by species which may be specified in the supplementary conditions are provided for guidance only and do not have a contractual effect.

The procedures by which ONF determines this information concerning quantities and volumes may be forwarded to the buyer on his request.

In the case of supply contracts the seller undertakes to deliver 70% of the total quantity of timber entered in the supplementary conditions, unless the supplementary conditions of contract specify otherwise. If he does not, the buyer may demand that the seller supplies the missing quantities to reach this minimum. If the seller is unable to supply the missing products, he is liable for the penalties defined by Article 35-1.

### **Article 13-2: Obvious discrepancy on the number of stems** *(Not applicable)*

### **Article 14: Delivery of non-conforming products** *(Not applicable)*

**Article 15: Transfer of product and risk ownership**

**Article 15-1: On the day of the sale** *(Not applicable)*

**Article 15-2: On the day of enumeration**

Timber enumeration in the presence of both parties entails the transfer of product ownership to the buyer in accordance with Article 1585 of the Civil Code. An enumeration report is produced and signed by ONF on the one hand and by the buyer or his representative on the other hand.

In the absence of the buyer or in the event of his refusal to be involved in the enumeration, notification of the enumeration report leads automatically to the transfer of product ownership.

Once ownership of the goods has been fully transferred to the buyer, the goods are entirely at his own risk (depreciation, destruction and theft risks in particular), even though they may be delivered roadside in the forest, without prejudice to any detention right exercised in the event of collective proceedings.

Transport of goods to the buyer's workshop is carried out on his responsibility and at his own risk, unless otherwise expressly specified by the supplementary conditions for factory-delivered goods.

Any goods item processed by the buyer is deemed to have been accepted without reservation and its ownership is deemed to have been transferred, if acceptance could not take place before processing (in the presence of both parties or not).

The cutover, as well as designated landings in the forest are not deemed to be part of the buyer's store.



### Article 16: Organization of timber harvesting

#### Article 16-1: General

Execution of the contract of sale of standing timber by measurement includes:

- the felling of all stems, maidens and coppice shoots pursuant to the sale,
- the conversion and storage of products in accordance with the provisions of the supplementary conditions,
- the preparation of products in view of enumeration, in accordance with the provisions of the supplementary conditions,
- the removal of all sold products as defined in Article 10,
- the execution of all supplies or works prescribed,
- the restoration of the site to its former state, and in particular the management of slash.

During these operations, the National Forestry Regulations and the general and supplementary conditions of contract shall apply and shall be adhered to by the buyer, who is also responsible for ensuring that all the persons who engage in felling activities on his behalf also comply with these regulations and conditions.

#### Article 16-2: Formal procedures to be completed prior to harvesting

##### Article 16-2-1: Felling licence

Notwithstanding the provisions of Article 15 of the general conditions of contract, the buyer cannot commence harvesting without first obtaining a written felling licence for the relevant coupe, in accordance with the provisions of the Forestry Code. In the case of supply contracts, a separate felling licence shall be issued for each lot.

A felling licence is issued by ONF:

- after verification of the insurance certificate mentioned in Article 6-2,
- after submission and verification of the guarantee, where applicable,
- and, in the case of a lump-sum deposit, on the basis of the payment certificate delivered by the accountant in accordance with Article 30.

The notification or issuance of the licence acknowledges the start of the buyer's liability in respect of the Forestry Code and the general conditions of contract. As such, he becomes the custodian of the trees as defined in Article 1384 of the Civil Code.

##### Article 16-2-2: Site inventory in the presence of both parties

Before the felling licence is issued, an inventory of the proposed felling coupe and area may be conducted in the presence of both parties at the instance of ONF or the buyer, in order to find any offences that might have been committed on the site and note any degradations affecting the compartment, forest roads serving the compartment, or landings, and generally any equipment in place thereon.

If the verification is requested by the buyer, it shall be conducted by the authorized ONF representative defined in Article 6-1 within ten days of receipt of the buyer's request.

### **Article 16-2-3: Preliminary meeting**

Before the start of harvesting, a preliminary meeting between the buyer or his representative and the ONF agent shall take place on such conditions as provided by Section 3.2.1 of the National Forestry Regulations.

If this has not already been done, the buyer has the opportunity to introduce his representative to the ONF agent during the meeting, or alternatively, he may give him the representative's name and address and information on how to get in touch with him. During the meeting the buyer must present his felling licence to the agent responsible for overseeing the harvesting. He advises him of when the harvesting is planned to start and how the works will be organized.

As for the agent responsible for overseeing the harvesting, he provides all the information specific to the felling coupe and required for harvesting.

If harvesting has to stop for a prolonged period, the buyer shall notify the agent responsible for overseeing the harvesting of the date when harvesting shall resume.

The signing of the felling licence by the agent responsible for overseeing the harvesting constitutes proof that the above formal procedures have been performed by the buyer.

### **Article 16-3: Harvesting time frame**

#### **Article 16-3-1: Definitions and rules**

A time frame for felling execution is defined in each contract. Except where otherwise prescribed by the supplementary conditions, the time frame for felling execution is set according to the following rule:

<b>Month of contract signature for Year n</b>	<b>Deadline for felling execution</b>
December n-1, January and February	31/01/n+1
March, April and May	30/04/n+1
June, July and August	31/07/n+1
September, October and November	31/10/n+1

The supplementary conditions may prescribe a different time frame, which may be longer or shorter than the reference time frame defined above.

The supplementary conditions may also prescribe, as applicable:

- a restriction on harvesting duration between the first intervention and site restoration,
- a specific deadline for timber felling and processing,
- a deadline for downgrading beyond which, only timber downgraded and recognized as such during marking is considered for downgrading during acceptance. This deadline is peremptory and cannot be extended (it is not affected by Articles 16-3-2 and 16-3-5).

#### **Article 16-3-2: Time extensions**

If harvesting is not executed by the deadline prescribed by Article 16-3-1 above, one or more time extensions may be granted by ONF, provided they do not exceed 18 months in total. The buyer shall apply for time extensions in writing to ONF. If felling and conversion deadlines have been set, the buyer's application shall be made one month before expiry of such deadlines.

If harvesting is suspended on ONF's request, in accordance with Article 22-1 of the general conditions of contract or if weather conditions preclude harvesting for a period longer than would be normal, the buyer may be granted a free time extension which he applies for on such conditions as prescribed by Article 22-1.

### **Article 16-3-3: Priority felling coupes**

Priority felling coupes for which there can be no time extension are expressly identified in the supplementary conditions. For such coupes, should harvesting fail to be executed totally or partly by the set deadline, the provisions of Article 16-3-5 and, where applicable, Article 39 shall apply of right.

### **Article 16-3-4: Compensation for time extensions**

Harvesting time extensions granted in pursuance of Article 16-3-2 give rise to compensation paid to the owner and calculated as follows:

- either on the basis of the percentages shown hereinafter, known as basic rates, which are applicable when the supplementary conditions do not specify otherwise,
- or on the basis of a multiple of the basic rates, specified in the supplementary conditions.

The basic rates are as follows:

Time extension period	Percentage to be applied to the sale price to calculate compensation
6 months or less	0 %
7 to 9 months	1 %
10 to 12 months	3 %
13 to 15 months	5 %
16 to 18 months	10 %

Compensation shall be calculated to include any quarter started, which is owed in full. In all cases, the minimum amount for collection is 100 Euros and it may be re-assessed by decision of the ONF Governing Board.

The time extension period to take into account when calculating compensation ends on the date of issuance of the harvesting discharge, except when the buyer, considering the felling to be completed, applies for felling acceptance on such conditions as provided by Article 19-2. If during acceptance, felling execution is proven to be completed, the time extension period ends on the date of the acceptance application submitted by the buyer.

### **Article 16-3-5: Late felling completion and formal notice to perform**

If upon expiry of the harvesting deadline, with or without a time extension, the buyer has not fully executed all harvesting operations (felling and site restoration), ONF notifies the buyer of a list of obligations remaining to be fulfilled, grants him a supplementary time extension of 60 days maximum, and gives him a formal notice to complete the works by the new deadline. The basic rate for this 60-day time extension is 3% of the sale amount (the basic rate may be multiplied by a multiplier specified in the supplementary conditions).

If, by the end of the 60-day notice period, the buyer has failed to complete the remaining works, ONF is entitled to initiate termination of the contract, in accordance with the provisions of Article 39-2 of these clauses.

#### **Article 16-4: Procedure for timber harvesting**

The buyer undertakes to harvest the timber in compliance with the provisions set out in the National Forestry Regulations and supplementary conditions of contract, in respect of, in particular, preservation of the natural forest environment, due regard for people and property, planning of works, conduct of operations (felling, conversion, skidding, forwarding...), product stacking on landings, product extraction, treatment and disposal of site waste, equipment maintenance and restoration of the site to its former state.

Parties agree that:

- the planning of works and choice of techniques and equipment are the responsibility of the buyer in accordance with Part 3 of the National Forestry Regulations;
- the National Forestry Regulations and the supplementary conditions of contract may prohibit harvesting in total or in part during certain periods of the year, as well as prohibit or limit the use of certain types of equipment in the forest;
- timber extraction is carried out via the network of existing forest roads, except if particular provisions are given in the supplementary conditions of contract; upon written application to the seller, the buyer may be allocated different skidding roads or be granted permission by the seller to open new ones; by making this application, the buyer undertakes to carry out the works at his expense or to pay the relevant expenses thereof; ONF may impose restrictions on tonnes on certain forest roads; these are specified in the supplementary conditions of contract;
- in the event of an unexpected pest infestation posing a threat to the future of the stand, ONF may request during the course of harvesting that certain steps not set out in the conditions of contract are implemented, such as: treatment of stumps, timber removal by shorter deadlines, debarking of softwoods during felling or immediate burning of contaminated bark and branches ; the buyer, who is obliged to execute these works, is compensated for the extra expenses incurred provided they are justified.

#### **Article 16-5: Obligation to execute the felling in its entirety**

The buyer is required to fell all stems, crowns and coppice shoots designated for harvesting, as well as extract and remove all sold products.

When the buyer wishes to give up part of the products sold:

- for branches of a diameter less or equal to 7 cm, the buyer may do so informally,
- for other products, the buyer may be authorized to do so exceptionally by explicit decision of ONF, and he shall apply for authorization before expiry of the felling execution deadline.

In all cases, he processes and arranges the products he has given up as instructed by ONF. Should the buyer fail to carry out all these operations within the time frame defined in Article 16-3, harvesting is deemed incomplete and the penalties provided by Article 34 of these clauses shall apply. The sale may then be terminated as a matter of right in favour of the owner in

accordance with Article 39 of these clauses.

## **Article 17: Acceptance and enumeration**

### **Article 17-1: Principle**

An enumeration of the goods in the presence of both parties is carried out in order to measure the quantity of goods sold to the buyer.

In order to carry out the enumeration and scaling of products, the supplementary conditions define:

- the appropriate units of measurement to determine the number, measure or weight of the products, as well as the sale price owed by the buyer;
- the goods enumeration, measurement or weighing procedures.

In the absence of further information in the supplementary conditions of contract, acceptance and enumeration operations are conducted in accordance with the model procedure put together by each territorial direction and forwarded to the buyer. If a territorial model procedure is not available, such operations are conducted according to the national model procedure available on ONF's website.

A report of enumeration is drawn up by ONF and signed by the buyer or his representative. This report constitutes evidence that the transfer of ownership has taken place in accordance with the provisions of Article 15-2.

In the absence of the buyer or in the event of his refusal to take part in the enumeration, this is carried out by ONF and notification of the enumeration report leads automatically to the transfer of goods' ownership in accordance with Article 15-2. Any absence or refusal by the buyer to sign the enumeration report is noted by ONF on said report.

Partial enumerations may be carried at the request of the buyer with ONF's agreement.

### **Article 17-2: Preparation of acceptance and enumeration operations by the buyer**

During harvesting and in any case upon harvesting completion, the buyer or ONF may suggest to carry out one or more partial acceptances and well as a final acceptance, which are each recorded in a separate enumeration report.

During conversion, the timber is grouped and presented in such a manner as to facilitate enumeration.

In particular:

- the products shall be processed in accordance with the contractual cutting requirements defined in the supplementary conditions;
- where applicable, the products shall be identified in the manner prescribed by the supplementary conditions;
- products to be counted in cubic metres shall be extracted and stored without stacking and shall be counted individually;
- products to be counted in steres (a stack of cordwood of  $1 \times 1 \times 1$  metres) shall be stacked accordingly.

At any time during harvesting, ONF may verify, on the felling or storage areas, that the provisions concerning product cutting, scaling, grading and chipping are implemented correctly. To this effect the buyer may be asked to undo some stacks.

Any apparent irregularity may warrant an immediate suspension of harvesting, without prejudice to the payment of penalties in accordance with the provisions of Article 34-4-3 of these clauses.

When an acceptance date has been set, the buyer forwards to ONF a statement describing the products for enumeration as per the procedure set out in Article 17-1.

### **Article 17-3: Scaling or weighing in the mill**

Timber scaling or weighing may be carried out separately from enumeration.

In particular, when timber is sold roadside, the supplementary conditions may specify that scaling or weighing is carried out on the buyer's premises and with his own resources.

In such a case, an enumeration of the products is carried out in the forest on such conditions as defined in Article 17-1. The enumeration thus conducted entails the transfer of product ownership to the buyer in accordance with Article 15-2 and transport is carried out at the buyer's expense and at his own risk.

Product scaling or weighing is carried out on arrival at the mill using the buyer's own resources as provided by the supplementary conditions or by the procedure set out in Article 17-1, especially in respect of time frames, the measuring equipment used and control procedures. This shall enable ONF to verify the consistency between the forest enumeration results and the scaled amounts obtained by the buyer.

The buyer delivers to ONF a bordereau detailing the acceptance-tested timber quantities and quality grades. Except when there is a discrepancy with the forest enumeration results, the bordereau is authoritative for calculating lot value.

When the timber is acceptance-tested and scaled on the buyer's premises (timber sold "factory-delivered"), the supplementary conditions may prescribe that timber scaling or weighing by the buyer is held as enumeration.

### **Article 18: Product removal**

Timber removal by the buyer shall be carried out in compliance with the provisions of the National Forestry Regulations and may be subject to restrictions which are then provided by the supplementary conditions.

#### **Article 18-1: Removal permit**

Product removal by the buyer can only take place once a removal permit has been obtained.

The removal permit is issued to the buyer by ONF:

- after delivery and verification of the guarantee, where applicable, and,
- for contracts concerning an amount less than 1,000 Euros, upon receipt of the means of payment,
- for contracts concerning an amount higher or equal to 1,000 Euros, on the basis of the payment certificate delivered by the public accountant in accordance with Article 30.

Unless otherwise provided by the supplementary conditions of contract, the enumeration report may be held as a removal permit when the contract is guaranteed by a joint surety, a combined annual guarantee or a first demand guarantee as provided by Article 25.

It is essential that the buyer does not proceed with product removal until he has obtained a removal permit. If he does, he shall be liable for a contractual civil penalty as per Article 34-4-1 of these clauses. In addition, notwithstanding payment of the penalty by the buyer, ONF reserves the right to prosecute the buyer criminally should such requirements as defined by Article L. 311-1 of the Penal Code be met.

The buyer or his haulage contractors shall be in a position to present the removal permit at any time during timber removal.

#### **Article 18-2: Obligation to remove the timber**

See Article 16-5 of these clauses.

The buyer is required to remove all products extracted and placed on storage areas.

Exceptionally, he may be exempted from doing so with ONF's explicit authorization, in which case the buyer shall apply for exemption before expiry of the contract execution deadline and he shall arrange any products he has given up as instructed by ONF.

#### **Article 18-3: Contract execution time frame**

See Article 16-3 of these clauses.

Upon expiry of the contract execution deadline, should all the timber not be removed, the penalties provided by Article 34-3 shall apply and rescission of the sale may take place as a matter of right in favour of the owner in accordance with Article 39.

#### **Article 18-4: Procedures for timber removal**

See Article 16-4 of these clauses.

Timber removal is carried out via the network of existing forest roads, except if particular provisions are given in the supplementary conditions of contract. ONF may impose restrictions on tonnes on certain forest roads; these are specified in the supplementary conditions of contract. Removal may be prohibited during thaw or heavy rain periods, in accordance with the provisions of Section 3.5 of the National Forestry Regulations.

Time restrictions for timber removal are specified in Section 3.1.2 of the National Forestry Regulations.

#### **Article 18-5: Road network damage**

Forest road network: In accordance with Section 3.5 of the National Forestry Regulations, should the buyer, or any person working on his behalf, cause damage to the forest roads due to misuse, he is obliged to carry out the necessary works to repair the damage, or have the works carried out by others, at his expense, before expiry of the deadline for contract execution.

Public road network: Special contributions for damage due to improper use of public and country roads, which may be owed to Communes and Départements in pursuance of Articles L. 131-8 of "Voirie départementale" (Departmental Road Network) and L. 141-9 of "Voirie



communale" (Communal Road Network) and L. 161-8 of the Country Code, are at the buyer's expense.

## **Article 19: Procedure for completion of contract execution**

### **Article 19-1: Restoration of sites to their former state**

Before expiry of the harvesting deadline, the buyer shall carry out works to restore the sites to their former state or repair them in accordance with the provisions of Sections 3.6 ("Slash management"), 3.7 ("Waste disposal") and 3.9 ("Restoration of sites to their former state") of the National Forestry Regulations.

If the buyer has carried out these works and they have been accepted by ONF or if the buyer has paid compensation for restoration as provided by Article 19-3-1 of these clauses, the felling coupe shall be deemed executed and the harvesting discharge shall be given. If not, the felling coupe shall be deemed incomplete as per Article 16-5.

### **Article 19-2: Felling acceptance**

#### **Article 19-2-1: Definition**

Felling acceptance takes place when the buyer considers that harvesting is completed and that the sites have been restored to their former state. Acceptance aims to provide assurance that the land has been restored to its natural state on such conditions as defined in Sections 3.6, 3.7 and 3.9 of the National Forestry Regulations and in accordance with the supplementary conditions of contract.

If the buyer considers that felling has been executed as described above, he applies in writing for its acceptance by ONF, who shall proceed with acceptance within 30 days of receipt of the application, except if the compartment is inaccessible or impassable, because of snow cover in particular.

If the buyer does not apply for acceptance, ONF may proceed with acceptance of its own initiative, as soon as ONF ascertains that felling has been executed.

#### **Article 19-2-2: Procedure**

Acceptance may be by way of a simple acknowledgment by ONF or a general verification in the presence of both parties.

In the case of an acknowledgement by ONF, a detailed felling coupe and site inventory is drawn up. Any observations by the buyer are noted. In the absence of the buyer, the acknowledgement is made by ONF and if all duties have not been discharged, the buyer is notified. If all duties have been discharged, ONF may proceed directly to notification of the harvesting discharge, in accordance with Article 19-3-1 below.

In the case of a verification in the presence of both parties, ONF sets a date for the operations on site and informs the buyer at least 15 days in advance by registered letter with acknowledgement of receipt. Either the buyer or his agent is required to attend. If they do not, the verification is deemed to have been accepted by the absent party. At the request of ONF, the buyer shall have any obstructions removed to the stumps of felled trees and all hammer marks, and make such stumps and marks visible before the verification date. A verification report is drafted immediately and two copies are made, on which the buyer may record his observations; it is signed by both parties (except in the absence of the buyer).

Felling is then deemed completed, even if some products remain on a landing subject to a lease agreement in pursuance of Article 20 of the general conditions of contract.

### **Article 19-3: Harvesting discharge**

#### **Article 19-3-1: Principle**

If during felling acceptance, it is established that all obligations specified in the general conditions of contract, the supplementary conditions of contract and the National Forestry Regulations have been discharged, the seller draws up the harvesting discharge and notifies it to the buyer.

However, if during said acceptance, ONF ascertains that some obligations have not been discharged, the seller demands in writing that these be performed by a specified date. However, in some cases, ONF may accept that the buyer is released from this obligation by the payment of compensation for restoration, the amount of which is determined by ONF.

If the buyer wishes to store his timber on a landing, the harvesting discharge will take place only after the contract defined in Article 20 of these clauses is signed.

#### **Article 19-3-2: Special case**

The buyer's duties in respect of site restoration may be considered discharged if, within 40 days of receipt of the buyer's acceptance application, the seller has not notified the list of unfulfilled obligations, or informed the buyer that acceptance has been rendered materially impossible because of the inaccessibility of the compartment. Harvesting acceptance is then implicit and the harvesting discharge shall be forwarded to the buyer, within the same 40-day period.

#### **Article 19-3-3: Effect**

A harvesting discharge usually sets an effective date, but if it does not, the discharge comes into effect on the date it is signed, unless Articles 39-1 and 39-2 of these clauses apply.

It explicitly releases the buyer from his responsibility for the deeds and offenses discovered after the effective date, in particular with respect to the Forestry Code.

It is without effect for deeds and offences detected prior to this date. It does not release the buyer from his obligation to pay any monies still owing to the seller and forest owner. It cannot be held as a release of guarantee.

### **Article 20: Timber storage on landings**

Unless otherwise specified in the supplementary conditions of contract, the contract of sale provides the buyer with the option of using a landing.

The supplementary conditions specify whether the landing is surfaced or not. If it is not, the landing is designated by the agent responsible for the felling coupe.

Use of the landing is free and is made at the buyer's own risk until issuance of the harvesting discharge by ONF.

A buyer who has executed his felling coupe may exceptionally ask ONF for permission to extend use of the landing beyond the harvesting discharge date. If permission to do so is

granted by ONF, use of the landing is provided through a landing lease agreement which defines the technical and financial terms of lease.

The buyer shall apply for permission one month prior to the start of the lease agreement, which shall be signed before the harvesting discharge is issued.

## **Article 21: Incidental assignments during a felling coupe**

### **Article 21-1: Principle**

When accidental products (such as windfalls, dry timber, burnt trees, insect or fungus infested trees...) are found during the harvesting of the compartments, ONF may include them in the sale provided the forest owner does not harvest them himself.

In addition, in accordance with Section 3.2.2 of the National Forestry Regulations, the felling of certain stems not marked or designated at the time of the sale may be considered necessary by ONF, who reserves the right to include them in the sale.

### **Article 21-2: Obligation to buy**

The buyer is required to buy the products defined in Article 21-1 when they are offered to him provided the following conditions are met:

- the products are offered before completion of extraction operations,
- their total value does not exceed 20% of the total coupe sale price.

The price is set by ONF after negotiation with the buyer.

If the conditions set above are not met, the buyer may refuse to buy the products, but he cannot then oppose their sale to a third party or their harvesting by others.

In all cases, if the total value of incidental assignments is higher than 20% of the initial felling coupe price, a new sale contract shall be drawn up for the additional timber.

### **Article 21-3: Governance**

Whatever the average price per m<sup>3</sup> reached, incidental assignments are part of the main sale and are governed by the same contract. Terms of payment are defined in Article 27 of these clauses.

An incidental assignment comes into effect on the day of notification. The notification is held as a felling licence.

Except in the case of an explicit exemption, incidental assignments do not lead to a change of the initial harvesting time frame.

## **Article 22: Surveillance and suspension of timber harvesting or removal**

### **Article 22-1: Suspension of timber harvesting or removal in the event of bad weather**

In the event of bad weather, ONF may suspend timber harvesting or removal if it deems that its continuation would damage the cutover, stands or network of forest roads. Therefore, removal may be prohibited during thaw or heavy rain periods in accordance with the provisions of Section 3.5 of the National Forestry Regulations. In such a case, the buyer is informed of the

suspension of all or part of the harvesting. The suspension comes into effect immediately and ends, either by decision of ONF, or after expiry of a period of five working days following receipt by the buyer of the suspension decision.

A free time extension may then be granted to the buyer but he must apply for the time extension in writing.

#### **Article 22-2: Suspension in the event of damage to stands and equipment**

If ONF notices that the contract is executed in such a manner that it is causing damage to the stands or equipment, it summons the buyer or his representative to take the required action.

In the case of exceptional damage posing a threat to the future of the stand and the viability of equipment, ONF shall order the suspension of all or part of the harvesting. The suspension comes into effect immediately and ends, either by decision of ONF, or after expiry of a period of five working days following receipt by the buyer of the suspension decision.

The authorized ONF representative specifies the terms under which harvesting may resume or continue. In particular, he may prohibit or limit the use of a machine that has caused exceptional damage. The buyer must abide by this decision.

#### **Article 22-3: Suspension in default of professional liability insurance**

If, in the course of contract execution it is revealed that the professional liability insurance certificate submitted in pursuance of Article 6-2 of these clauses:

- refers to an insurance policy that does not cover one or more risks normally associated with the execution of the sale contract,
- or is no longer valid,

ONF suspends the execution of the contract and has reason to impose the penalty prescribed by Article 33 of these clauses.

The buyer then has a 30 day period to regularize his situation and provide ONF with a valid certificate. If regularization is confirmed, ONF will give a written agreement to resume harvesting.

If it is not, ONF may initiate termination of the contract in accordance with Article 38-2.

## Chapter 6 – FINANCIAL CONDITIONS

### Article 23: Sale price

The sale price is the product of the unit price(s) set upon entry into the contract by the quantities counted during enumeration. The price is expressed excluding taxes, i.e. excluding VAT.

The price is stated exclusively in Euros.

VAT is applied as provided by Articles 24 and 28 of these clauses.

Depending on the ways and means of contract execution, supplementary invoices for time extensions, incidental assignments, restoration costs or penalties may be added to the sale price.

### Article 24: Sale price payment terms for single sale contracts

#### Article 24-1: Contracts of an amount less or equal to 3,000 Euros excluding taxes

When the estimated sale price excluding taxes is less or equal to 3,000 Euros, the buyer shall pay cash within 20 days of the enumeration report for the full value of the sale price including taxes.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or cheque.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.

#### Article 24-2: Contracts of an amount higher than 3,000 Euros excluding taxes

The buyer may choose between several payment procedures.

When contract formation follows a sale by adjudication or by competitive tendering, the contract is drawn up on the basis of the choice stated by the buyer during the sale. Any change of payment procedure after the sale may only be exceptional and shall be charged an administration fee amounting to 0.5% of each contract value, payable to ONF. If the administrative fee for any given public sale is less than 200 Euros, it will be increased to this lump sum.

The administrative fee may be changed by decision of the Governing Board of ONF.

#### Article 24-2-1: Cash payment

When the buyer wishes to pay cash for the monies owed, he shall do so within 20 days of the enumeration report for the total value of the sale price including taxes.

In the case of a sale by adjudication or competitive tendering, the buyer enjoys a 1% discount on the sale price, unless otherwise provided by the supplementary conditions. This rate may be adjusted to reflect any changes in financial markets by decision of the Governing Board of ONF.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or cheque. A bank cheque may be required.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.

#### **Article 24-2-2 (amended 01/01/2012): Deferred payment**

##### **1- Forest scaling**

When the sale contract is guaranteed through a joint surety or a combined annual guarantee or a first demand guarantee on such conditions as provided by Articles 25 and 26, monies owed are settled within a period of 45 days end of the month from the date of issue of the invoice. Within a period of 20 days from the enumeration report date, the buyer delivers a promissory note to the accountant in charge of payment collection or, if invited to do so by ONF, the buyer provides an automatic payment authorization for the amount determined in accordance with Article 23 above (the amount excluding taxes plus the required VAT amount) and payable by the predetermined date.

When the sale contract is not guaranteed on such conditions as provided by Articles 25 and 26, monies owed are settled within a period of 45 days end of the month from the date of issue of the invoice. This period does not include the 15 day-period in which to lodge the guarantee. Within a period of 20 days from the enumeration report date, the buyer delivers a promissory note to the accountant in charge of payment collection or, if invited to do so by ONF, the buyer provides an automatic payment authorization for the amount determined in accordance with Article 23 above (the amount excluding taxes plus the required VAT amount) and payable by the predetermined date.

##### **2- Factory scaling**

Monies owed are paid in cash with no discount.

#### **Article 24-2-3: Special case**

The supplementary conditions may override the provisions of this Article. This override cannot result in an extension of the total period of credit enjoyed by the buyer, except by authorization of the General Director of ONF. In particular, the supplementary conditions may provide for the payment of a lump-sum deposit.

#### **Article 25: Financial guarantees for single sale contracts**

##### **Article 25-1: Guarantee obligation**

In the case of a sale with deferred payment, the buyer is required to guarantee his commitments through a joint surety or an autonomous first demand guarantee, which may be an annual combined guarantee, on such conditions as provided hereinafter.

The buyer is exempted from the guarantee if he pays by guaranteed promissory note delivered before timber removal.

The guarantee beneficiary, ONF, the seller, or the owner, is specified in the supplementary conditions of contract.

The guarantee is provided by an institution authorized to stand surety to a public accountant in France, on the list of lending institutions and investment services providers accredited by

CECEI, the *Comité des Etablissements de Crédit et des Entreprises d'Investissement* (Committee for Lending Institutions and Investment Firms), or on the list of accredited insurance companies under Sector 15, “guarantee”.

A guarantee provided by a mutual guarantee scheme may also be accepted.

#### **Article 25-2: Joint surety and release of guarantee**

The guarantor is held jointly and severally liable for payment of the sale price including taxes up to an amount contractually determined by the supplementary conditions of contract and consistent with the estimated sale value, minus any deposit paid in cash or by remittance of a guaranteed promissory note or notes within 20 days of contract signature.

This amount is a limit of guarantee, up to which the guarantor may be called once or more times until the release of his commitment. The release of guarantee is pronounced after payment of the sale price in full.

The guarantor gives the surety bond within a period of 20 days following contract formation using a form available at ONF offices. If he does not, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-3: Autonomous first demand guarantee**

The buyer may propose to provide a first demand guarantee.

The guarantee is provided under the terms and conditions prescribed by the general conditions of contract and covers ONF or the communities owning forest land against the risk of non payment by the client for the share of the sale price not paid in cash.

The bank gives the surety bond as an autonomous first demand guarantor and as such is bound by a personal commitment in favour of the guarantee beneficiary, which is separate from the buyer's contractual commitments to the seller.

It is essential that the guarantee provided by the buyer covers a period of 24 months after the date planned for issuance of the felling licence. Failing this, the guarantee cannot be accepted.

Any applications for time extensions extending after this date cannot be accepted unless the buyer provides another autonomous first demand guarantee.

The guarantor gives the surety bond within a period of 20 days following entry into the contract of sale. If he does not, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-4: Annual combined guarantee**

ONF may suggest that the buyer provides an annual combined guarantee: an annual combined joint surety or combined first demand guarantee.

The guarantor undertakes to cover all outstandings of the buyer up to a limit scaled to the total value of the contracts for timber purchases entered into between ONF and the buyer during the year preceding the commitment. The scaled amount cannot be lower than a minimum threshold defined by the Governing Board of ONF. This amount is a limit of guarantee, up to which the guarantor may be called once or more times until the release of his commitment. The release of



the annual combined guarantee is pronounced after the settlement in full of monies owing under the contracts.

The limit and validity period of the surety bond are provided by the deed of guarantee.

**Article 25-5: Special case** (*Not applicable*)

**Article 26: Sale price payment terms and financial guarantees for supply contracts**

Sale price payment terms for supply contracts are the same as for single sale contracts subject to the following specifics:

- they apply separately to each tranche;
- payment may be by bank transfer ("swift" transfer for funds issued by foreign banking institutions).

Financial guarantees are provided upon contract signature under the same provisions as set out in Article 25, but with the following specifics:

- they apply separately to each tranche;
- the institution providing the guarantee is specified in the supplementary conditions of contract;
- the guarantor is held jointly and severally liable for the sale price including taxes up to an amount contractually determined by the supplementary conditions of contract and representing between 3 and 6 times the estimated value of an average monthly delivery;
- when payment is by a guaranteed promissory note, the buyer is exempted from providing a joint surety bond except if he wishes the enumeration report to be held as a removal permit in accordance with the provisions of Article 18-1. The amount committed by the joint surety may then be limited to between 2 and 3 times the estimated value of an average monthly delivery and this shall be determined by the supplementary conditions of contract.

If the means of payment and financial guarantee for one of the subsequent tranches are not provided, rescission of the tranche and termination of the contract may be pronounced as provided by Articles 37-1 and 37-2.

**Article 27: Payment terms for supplementary invoices associated with contract execution**

Supplementary invoices associated with the execution of the contract (incidental assignments, time extensions, penalties, compensation for damage) are payable in cash within 20 days of invoice issuance, by cheque or bank transfer ("swift" transfer for funds issued by foreign banking institutions).

**Article 28: Formal procedures in respect of value added tax**

For purchases of timber from state forests or forests belonging to communities subject to VAT, the buyer pays the VAT owed, as prescribed by Articles 23, 24 and 27 above, and receives from the seller an invoice showing the VAT amount.

For owners registered under the flat rate repayment scheme, the buyer shall, in pursuance of Articles 265 and 266 of Appendix 2 of the General Taxation Code, (i) attach to each payment, including each promissory note instalment, a purchase form or a delivery slip, and (ii) provide the owner, at the beginning of each calendar year, with an annual certificate summarising all

payments made during the previous year.

Purchase forms, delivery slips and annual certificates shall conform to the templates provided by the taxation authorities in Appendixes 1 and 2 of their essential documentation 3 I-2151 dated 30 March 2001.

In all cases, the supplementary conditions specify whether the owner is registered under the flat rate repayment scheme or general VAT scheme (with the option of VAT on debits or on credits) and in the latter case, they provide the applicable rate and payment terms.

#### **Article 29: Accountant in charge of payment**

The sale price is owed to the ONF accountant when the sale concerns products from state-owned forests or is part of a grouped sale in accordance with Article L. 144-1-1 of the Forestry Code.

The sale price is owed directly to the forest owner's accountant, when the sale concerns products from forests owned by a single owner other than the state.

The accountant to receive the payments is specified in the supplementary conditions of contract.

#### **Article 30: Issuance of a payment certificate**

For sales of an amount higher than 1,000 Euros excluding taxes, once the buyer has paid the sale price in full within the agreed time frame, in cash or by remittance of promissory notes, the public accountant issues a payment certificate, which is required by ONF offices before they can issue the removal permit prescribed by Article 18-1 above.

Unless payment is by bank cheque, amounts paid in cash are deemed to be paid only once they are actually credited to the recipient's account.

**Article 31: General principle**

A lump-sum contractual penalty of 200 Euros applies for any non-compliance with or lack of awareness of the general and supplementary conditions of contract and the National Forestry Regulations, for which no penalty is provided by the Forestry Code or by Articles 32 to 35; this is owed to ONF, the seller. In addition, the buyer is required to make reparation for any harm resulting from an act of non-compliance, especially in the event of damage to the forest.

**Article 32: Penalties for failure to pay**

For all monies owing under the contract and not paid on time, as well as for any delay in providing the promissory notes within 20 days of the enumeration report, the buyer is liable to the forest owner as a matter of right:

- for interest on overdue payments per day of default, at the rate of three times the statutory rate of interest in effect on the due date,
- a fixed financial penalty amounting to 200 Euros to cover follow-up costs.

In the event of late payment and for as long as the monies are not paid, the seller is entitled to detain the timber of the next deliveries.

**Article 33: Penalties for failure to possess professional liability insurance**

If it is discovered during the execution of a contract that the professional liability insurance certificate provided in pursuance of Article 6-2 of these clauses refers to an insurance policy which does not cover one or more of the risks normally associated with the execution of the sale contract, the buyer is deemed to have misled ONF, the seller, by submitting a non-valid certificate in order to obtain issuance of a felling licence.

Accordingly, and without prejudice to any compensation owed to the victim(s) of losses caused by the harvesting, extraction or removal of products and not covered by valid professional liability insurance, the buyer is liable to ONF, the seller, for a lump-sum contractual penalty of 5,000 Euros for failure to possess insurance. The penalty is owed only once for all contracts outstanding at the time when the absence of insurance is discovered.

**Article 34: Penalties associated with timber harvesting and removal****Article 34-1: Compensation for lack of care to plants, seedlings and young trees**

The buyer is liable for any damage he causes to seedlings, plants and young trees smaller than the 10 cm diameter class at breast height, when this damage is caused by non-compliance with the provisions of the National Forestry Regulations (in particular Sections 1.2.2 and 3.6) and the supplementary conditions.

The damage is recorded in a report addressed to the buyer, who has 15 days to request a visit in the presence of both parties.

In the event of the destruction of seedlings, plants and young trees as defined above perpetrated on a continuous regeneration surface area greater than 500 square meters, the buyer is liable to the forest owner for a lump-sum indemnity defined as follows:

- if the destroyed regeneration growth is younger than 10 years, compensation amounts to 50 Euros / 100 sq.m. destroyed,
- if the destroyed regeneration growth is older or equal to 10 years, compensation amounts to 50 Euros / sq.m. destroyed, multiplied by one tenth of the natural or planted seedling age.

The supplementary conditions specify the age of the plantation or seedlings.

**Article 34-2: Compensation for lack of care to retained stems** *(amended 01/01/2012)*

The buyer is required to take due care with and avoid damage to all retained or non-marked stems in accordance with Section 1.2.1 of the National Forestry Regulations.

When retained stems larger than the 10 cm diameter class are knocked down, damaged or injured in consequence of harvesting, the buyer is liable to the forest owner for compensation for the damage sustained, without prejudice to the application of the provisions of the Forestry Code relating to stem mutilation, where relevant.

For stems that have been knocked down, damaged or injured, the buyer is liable for a lump-sum indemnity which is calculated as specified in Appendix 1 of these clauses. In addition, ONF may demand that the buyer purchase the stems damaged in consequence of harvesting, in accordance with Article 21.

The assignment is negotiated between ONF and the buyer on the basis of stem value before the stems were knocked down or damaged. A retained stem is deemed damaged when ONF considers that it can no longer thrive if it is left standing.

ONF assesses the damage caused to retained stems and forwards the count of knocked-down, damaged or injured stems and associated compensation amount to the buyer. The buyer may request that a visit is made in the presence of both parties within 15 days of receipt of this count.

The compensation amounts owing under the provisions of this Article will not be collected by ONF if they amount to less than 100 Euros.

**Article 34-3: Penalty for non-completion of the felling coupe in the time specified**

If upon expiry of the harvesting deadline, which may or may not have been extended, ONF discovers that the buyer has carried out only part of the timber harvesting, extraction or removal, the buyer is liable to the forest owner for damages amounting to the value of the timber remaining standing, lying on the cutover or landing.

The buyer is released from paying this sum by making the payment in kind which is to yield possession of the timber still standing, lying on the cutover or landing.

The transfer of property and possession takes place on the date of termination, in accordance with Article 39-2.

In addition, where execution of the felling coupe has already started, the buyer is liable to the forest owner for the value of the remaining works, assessed by ONF and marked up by the addition of a penalty equal to twice this amount. If the penalty owing under such provisions is lower than 1,000 Euros, it is increased to this fixed lump sum.

## **Article 34-4: Penalties associated with product removal and site restoration**

### **Article 34-4-1: Failure to possess a removal permit**

Should the removal of products be carried out without the buyer having first obtained a removal permit as defined in Article 18-1, the buyer is liable to the forest owner for damages amounting to twice the value of removed timber on the basis of the prices set by the sale contract.

If product quantity and quality could not be established according to the rules, the value of the products is set by ONF.

### **Article 34-4-2: Penalty for non-completion of product removal and/or site restoration**

See Article 34-3 of these clauses.

### **Article 34-4-3: Non-compliance with timber conversion, enumeration, measuring or weighing procedures**

Any non-compliance by the buyer with the provisions concerning the conversion, enumeration, measuring or weighing of goods prescribed by the supplementary conditions of contract gives rise to a lump-sum penalty of 500 Euros, payable to ONF, without prejudice to any damages owing to the forest owner, where applicable.

If product quantity and quality could not be established according to the rules, the value of the products is set by ONF.

## **Article 35: Penalties associated with product delivery**

### **Article 35-1: Non-compliant quantity**

In the case of supply contracts and in accordance with Article 13-1, if ONF is unable to supply the missing timber quantity, ONF is required to pay the buyer compensation amounting to 40% of the total price of products remaining to be supplied to reach the 70% required.

### **Article 35-2: Product late delivery (*Not applicable*)**

## **Article 36: Settlement and collection of penalties**

The total amount of contractual penalties arising from these Articles is settled after harvesting acceptance by ONF and gives rise to a final payment invoice, which shall be paid in accordance with the provisions of Article 27 of these clauses. In accordance with Article 19-3-3, issuance of the harvesting discharge does not release the buyer from paying the penalties.

The penalty beneficiary, i.e. ONF, the seller, or the forest owner, and the accountant responsible for collection are specified on the invoice.

## **Chapter 8 – SUSPENSION, FORFEITURE AND EXPIRY OF THE CONTRACT**

### **Article 37: Forfeiture and rescission for non-compliance with financial clauses**

#### **Article 37-1: Forfeiture in default of surety bond, first demand guarantee or annual combined guarantee**

If the buyer does not provide the guarantees required by Articles 25 or 26 of the general conditions of contract within the period specified, his forfeiture is pronounced in pursuance of Article L. 134-5 of the Forestry Code in particular.

Without prejudice to the penalties owing under the provisions of Article 31, the lot can then be re-offered for sale in which case the defaulting buyer is liable to pay the difference between his price and the resale price, on account of damages, without him being able to claim for any excess.

#### **Article 37-2: Rescission for failure to pay**

If the buyer does not remit his means of payment within 20 days of the enumeration report in accordance with the provisions of Articles 24 or 26 of these clauses, ONF may pronounce the rescission of the sale, with provision for a lump-sum contractual penalty for damages amounting to 20% of the sale price excluding taxes, payable to the forest owner, notwithstanding any penalties prescribed by Article 32 of these clauses.

### **Article 38: Rescission and termination for failure to possess professional liability insurance**

#### **Article 38-1: Rescission for failure to possess professional liability insurance**

Upon entry into the contract if the buyer does not provide the professional liability insurance certificate required by Article 6-2-2 within the period specified, the seller pronounces the rescission of the sale, with provision for a lump-sum contractual penalty for damages amounting to 20% of the sale price excluding taxes, payable to the forest owner.

The buyer is also liable to ONF for a contractual penalty of 200 Euros for non-compliance with the general conditions of contract and the National Forestry Regulations.

#### **Article 38-2: Termination for failure to possess professional liability insurance**

If it is discovered, during execution of the contract, that the insurance policy certificate is not valid and that the buyer is not able to regularize his situation on such conditions as provided by Article 22-3, the sale is terminated within a period of 30 days following the date of discovery of the absence of insurance.

The termination procedure complies with Article 39-3 of these clauses.

The buyer is also liable for the penalty defined in Article 33 of these clauses.

## **Article 39: Termination for non-execution of harvesting**

### **Article 39-1: Termination for failure to start the harvesting**

Upon expiry of the harvesting deadline, which may or may not have been extended, the contract may be terminated as a matter of right should ONF discover that felling has not started.

Termination comes into effect on the date of expiry of the period above, and is performed as prescribed by Article 39-3.

When the buyer is not able to start timber harvesting, even though he has given his means of payment and guarantee, ONF may pronounce the termination of the sale contract, on the buyer's request, before expiry of the harvesting deadline.

### **Article 39-2: Termination for non-completion of the felling coupe in the time specified**

A contract may also be terminated as a matter of right if the works are not finished upon expiry of the 60 day period following the formal notice to perform referred to in Article 16-3-5 of these clauses.

Termination comes into effect on the date of expiry of the period above, and is performed as prescribed by Article 39-3.

### **Article 39-3: Termination procedure**

The harvesting discharge which comes into effect on the date of termination is delivered to the buyer, together with the detail of the monies owing.

In all cases, the buyer is liable for the penalties or compensation owing under the provisions of Articles 16, 31, 32, 33 and 34.

The transfer of ownership and possession of the buyer's timber to the forest owner takes place on the date of termination.

## **Article 40: Termination for non-removal of products and/or site restoration**

See Article 39

## **Article 41: Rescission and termination of supply contracts**

### **Article 41-1: General**

The termination or rescission of a supply contract in consequence of one of the provisions defined by the general conditions of contract gives rise to the termination of the outstanding contract by right and renders any future tranche sales to be completed null and void.

### **Article 41-2: Contract rescission for failure to complete the subsequent tranche sales of supply contracts**

For supply contracts with multiple tranches spanning one or more years, negotiations to set the prices of the next tranche shall start two months before the end of the tranche under execution.



Should an agreement not be reached before completion of the tranche under execution, any party may acknowledge the disagreement by registered mail with proof of receipt, indicating explicitly that both parties were unable to complete the sale for the next tranche.

This acknowledgment of the parties' disagreement puts an end to the negotiations of future tranches and leads to the rescission of the main contract by right. Rescission comes into effect on the day of issuance of the harvesting discharge for the tranche being harvested and on the basis of the initial harvesting time frames prescribed by the contract.

#### **Article 42: Change or termination of the contract in connection with the withdrawal of one or more owners in the case of a grouped sale**

In the case of a grouped sale as per Article 7 carried out by ONF on behalf of several owners, should any communities or legal entities owning forest under the public forest law system who contribute at least 15% to the contract, withdraw unilaterally by means of a deliberation which cancels that which was made to participate in the contract, the contract is changed to reduce the volume and value of the tranche in progress by an amount apportioned to the volume that should have been contributed by the withdrawing communities. Under any circumstance shall ONF be held responsible for their dropping out.

This change is by right unless the parties agree other provisions by contract amendment. It is notified to the buyer by ONF.

A contract change or termination in pursuance of this Article does not give rise to any compensation for loss or damage.

#### **Article 43: Discontinuance of business**

In the event of the permanent discontinuance of business for a reason other than a safeguard or redress procedure or winding-up proceedings or the buyer's death, the rights and obligations of the defaulting buyer may be transferred to a third party by the buyer, subject to ONF's prior consent.

In the event of a transfer, the assign shall forward to ONF, within a period of 20 days following the transfer, the means of payment and guarantees required by ONF under Articles 24 to 26, as well as the professional liability insurance, in accordance with Article 6-2-2. Failing this, the transfer is deemed lapsed.

#### **Article 44: Death of the buyer**

In the event of the death of the buyer as a natural person, the contract shall expire by lapse as a matter of right.

ONF agrees with the heirs during succession on the ways and means available to close out the situation.

#### **Article 45: Force majeure**

When execution of the contract by one or the other party is rendered impossible by an event of force majeure, rescission of the contract shall be pronounced at the request of the first party to so do.



The rescission of the contract entails the rescission of the sale as a matter of right and puts the parties back in the position where they were before entry into the contract.

If contract execution is temporarily impossible but able to resume at a predictable date without the financial terms of the contract being affected, the contract may be suspended for a period agreed between the parties, provided it does not exceed 6 months.

Force majeure does not lead to any compensation for damages, in accordance with Article 1148 of the Civil Code, in consequence either of contract suspension or contract rescission.

**Article 46: Compulsory safeguard, redress and liquidation of companies****Article 46-1: Timber detention**

In accordance with the provisions of Article 15-2 of these clauses, the cutover, as well as the designated landings in the forest, are not deemed to be part of the buyer's store.

Therefore, if safeguard, redress or winding-up proceedings are called for, the seller is entitled to perform the detention of timber standing or felled, still on the cutover or designated landings in accordance with Article L. 624-14 of the Commercial Code.

This is a right he exercises by virtue of the unpaid seller's lien (Art. 1612 of the Civil Code), which is as much in his own interest as in the interest of the guarantor, in consequence of the monies that the guarantor may already or may be required to pay on account of the sale price, notwithstanding any promissory notes which may become due.

The detention is notified by the seller by registered letter addressed to the administrator (or liquidator) and the buyer. The detention comes into effect upon receipt of this letter, which may be held as a suspension of felling licence or removal permit.

The detention prohibits any timber harvesting or removal.

In order to lift the detention right, the buyer and administrator (or liquidator) have to reach an agreement with the guarantor to pay any monies owing on account of the sale price, or find another solution between them, if the guarantor has already replaced the buyer in so doing.

In all cases, the seller lifts the detention right only on the basis of a written statement by the guarantor authorizing the end of timber detention.

The lifting of a detention right is evidenced by a decision of the seller in writing, by which the felling licence or removal permit becomes effective once again.

**Article 46-2: Election to continue, assign or terminate the contract under execution**

If collective proceedings are called for, and notwithstanding the use of the detention right mentioned in Article 46-1 above, only the administrator (or liquidator) has the authority to decide on the fate of the outstanding contract (Art. L. 622-13 and L. 641-10 of the Commercial Code). If the court has not appointed an administrator, the buyer decides on the fate of the contract in agreement with the judicial agent (Art. 627-2 of the Commercial Code). The buyer must submit this agreement to the seller.

The administrator or buyer (when an administrator has not been appointed), or liquidator, has one month to announce his decision from being notified by the seller by registered mail that he has been called upon to decide on the fate of the outstanding contract.

In the absence of an explicit decision within the legal period, the seller determines the termination of the contract by right in pursuance of Article L. 622-13 of the Commercial Code, in accordance with Article 46-2-3.

### **Article 46-2-1: Continuation of the outstanding contract**

When continuation of the contract has been decided and the sale price has been fully settled by the buyer prior to the opening judgment, the contract is continued in a normal manner.

However, when the decision to continue with the contract conflicts with the detention of timber exercised in accordance with Article 46-1 above, new means of payment need to be provided by the buyer on the basis of the agreements reached with the guarantor and the administrator (or liquidator) and endorsed by the master in chambers, since the payment of a debt previous to the opening judgment requires authorization (Art. 622-7 Paragraph 3 of the Commercial Code). The seller will lift the detention right on the basis of the payment certificate issued by the relevant accountant, thus enabling contract execution to actively resume.

### **Article 46-2-2: Transfer of the outstanding contract**

In the event of contract continuation, the buyer's rights and obligations may be assigned to a third party provided the prior consents in writing of both ONF and the guarantor of the buyer in his capacity as the assignor have been given.

The transfer comes into effect and the assign receives his felling licence (or his removal permit where applicable) only once he has submitted his insurance certificate to ONF as provided by Article 6-2 of these clauses, and deposited with the relevant accountant the means of payment for the remainder of the sale price owing under the assigned contract, together with the required guarantee, where applicable.

### **Article 46-2-3: Termination of the outstanding contract**

When total or partial termination of the outstanding contract has been decided through an explicit decision or silence maintained for more than one month from notification of the formal notice to decide on the fate of the outstanding contract, such total or partial termination is pronounced in accordance with Article L. 622-13 of the Commercial Code.

**Article 47: Settlement of disputes**

For any disputes which may arise during execution of the sale contract, only the French courts of jurisdiction are competent. The court having territorial jurisdiction is that of the location of entry into the contract.

**Article 48: Access to timber sales**

ONF is entitled to deny access to timber sales to buyers who, on account of previous timber purchase contracts:

- have not paid for overdue invoices in full,
- have been penalized repeatedly in pursuance of Chapters 7 and 8 of these clauses.

## APPENDIX: CALCULATION OF COMPENSATION FOR LACK OF CARE TO RETAINED STEMS

### a) Calculation of basic compensation: (*amended 01/01/2012*)

The basic compensation  $I_b$  is proportional to the diameter class  $D$  at breast height (i.e. measured at 1.3 m above the ground) expressed in centimetres. It is calculated per stem by applying the following formula:  $ib=0.2 \cdot C \cdot [D(1+D/50)]$ . In the formula,  $C$  is the discounting coefficient of one euro of 2010 to one euro of the year before compensation calculation ( $n-1$ ).

### b) Upward adjustment of compensation $I_b$ to take into account the importance of damaged stems:

In order to take into account the importance of a stem in the overall stand, a multiplier  $V$  is applied with the following values:

- **25**, for selected top stems: stems highlighted in the supplementary conditions and identified in the forest,
- **10**, for retained stems in a seed stand and for identified pre-selected trees; the class of the stand and presence of pre-selected trees are specified in the supplementary conditions.
- **5**, for stems retained by selection or regeneration felling: the class of felling coupe is specified in the supplementary conditions.
- **1**, in other cases.

### c) Upward adjustment of compensation $I$ to take into account the quantitative extent of damage:

In order to take into account the number of knocked-down or damaged stems, a multiplier  $N$  is applied with the following values:

- **2** when the number of destroyed or damaged stems is higher than 15 per hectare for the whole lot,
- **1.5** when the number of destroyed or damaged stems is included between 11 and 15 per hectare for the whole lot,
- **1** when the number of destroyed or damaged stems is lower than 11 per hectare for the whole lot.

Final compensation equals to:  $I = I_b \cdot V \cdot N$  Euros

# General conditions of contract for sales of processed timber by lump sum

## Chapter 1 – LEGAL FRAMEWORK

### Article 1: Law of the contract

This contract is subject to French law.

Without prejudice to the provisions specific to forest law, sales carried out by ONF are subject to legal terms and conditions pursuant to the Civil Code and Commercial Code or incidental to the law on the international sale of goods pursuant to the Vienna Convention signed on 11 April 1980 for contracts by private agreement or competitive tendering.

### Article 2: Framework specific to timber sales carried out by ONF

#### Article 2-1: General rules of forest law

In respect of woods and forests administered under the public forest law system (Articles L. 111-1 and L. 114-1 of the Forestry Code), felling coupes and products of such coupes are sold by ONF on such legal conditions as provided by Articles L. 134-1 to L. 134-7 of the Forestry Code in particular, in the case of timber from state-owned forests and land for afforestation, and L. 144-1 to L. 144-4 of the Forestry Code in particular, in the case of timber from community forests and land for afforestation administered under the public forest law system.

#### Article 2-2: Scope of the general conditions of contract

The general conditions of contract approved by the Governing Board of ONF in pursuance of Article R. 134-2 of the Forestry Code are applicable to any contract of sale of processed timber by lump sum entered into by ONF.

#### Article 2-3: Enforceability and composition of contract documents

The general conditions of contract and the supplementary conditions of contract make up the sale contract. They are binding on the buyer, his guarantor as well as on any person working on his behalf.

Where applicable, the buyer is bound by the territorial procedures to which the general conditions of contract refer. The procedures are forwarded to the buyer at his request and are published at the front of the public sales catalogue and on the ONF website.

#### Article 2-4: Enforceability of the National Forestry Regulations

The National Forestry Regulations are enforceable against any buyer of a timber lot, in as much as he enters into the forest to carry out the harvesting and removal of sold products, or only their removal.

The buyer is personally responsible by law for ensuring that his agents or any persons acting on his behalf or through him fully adhere to the provisions of the regulations, in pursuance of Articles L. 135-10 and L. 135-11 of the Forestry Code.

### **Article 3: Exemptions from the general conditions of contract**

The supplementary conditions of contract associated with a particular sale cannot override the general conditions of contract except in the cases and within the limits explicitly provided for in the general conditions of contract.

Any clauses opposing or contrary to the above are deemed invalid, ONF not having consented to them in the manner prescribed by Article 2-2.

There can be no exemption from the general conditions except as a consequence of general temporary measures taken in an emergency and ordered by the Director General for a particular geographical zone. As the circumstances require, such an exemption may be applied to outstanding contracts.

## **Chapter 2 – FORMATION, CHARACTER AND DURATION OF THE CONTRACT**

### **Article 4: Formation of the contract**

The contract is formed between ONF and the buyer on such conditions as set out in Article L. 134-7 of the Forestry Code and in accordance with the sales regulations applicable to the sale at issue in particular. As applicable, the sales regulations may be:

- the regulations for sales by competitive tendering,
- the regulations for sales by adjudication,
- or the regulations for sales by private agreement.

### **Article 5: Subject-matter**

The contract of sale concerns timber sold processed and by lump sum; the buyer is responsible for paying its full price and removing all sold timber within the agreed time frame.

The sale is a sale of goods by lump sum as per Article 1583 of the Civil Code.

### **Article 6: Contracting parties**

#### **Article 6-1: The seller**

The sale concerns products from forest estates administered under the public forest law system, whether they are owned by the state or a community or another legal entity. Except in the first case, ONF shall have received the owner's prior consent before engaging in the sale of the products.

When the contract of sale concerns timber from several forest estates, the sale is a grouped sale as per Article L. 144-1-1 of the Forestry Code.

In all cases, the sale contract is agreed and entered into with ONF, who is solely able to take responsibility for the decisions arising from supervision and execution of the contract.

In relation to all aspects of contract execution, ONF is represented by an agent, whose function is to act as a point of contact between ONF, the seller, and the buyer and to provide for the due execution of the contract. His name and contact details are forwarded to the buyer, who will address any queries he has to him.

#### **Article 6-2: The buyer**

##### **Article 6-2-1: General**

A buyer is a professional meeting the criteria set out in the sales regulations and who has bought one or more lots of timber offered for sale by ONF.

In respect of contract execution, the buyer shall appoint one or more French-speaking representatives. The representative(s) shall be contactable by the ONF agent at all times.

##### **Article 6-2-2: Professional liability insurance (*Not applicable*)**



## **Article 7: Character of the sale contract**

Contracts entered into are single sale contracts.

### **Article 7-1: Single sale contract**

Only one timber lot is sold as part of a single sale contract. It is available all at once when a removal permit is issued to the buyer on such conditions as set out in Article 18-1.

### **Article 7-2: Supply contract** *(Not applicable)*

## **Article 8: Duration and end of the contract**

### **Article 8-1: Single sale contract**

The contract ends when the buyer has performed all the technical and financial obligations associated with the contract.

Removal time frames are specified in Chapter 5 of the general conditions of contract and in the supplementary conditions of contract.

### **Article 8-2: Supply contract** *(Not applicable)*

## **Article 9: Assignment of the sale contract**

### **Article 9-1: Single sale contract**

Without prejudice to the provisions of Article 46-2 of the general conditions, single sale contracts entered into by ONF and the buyer cannot be assigned in total or in part by the buyer, be this in return for payment or not.

In the event of an assignment of the products before their removal, the buyer remains responsible for complying with all the terms of the contract and in particular with the provisions of Chapter 5 of the general conditions of contract.

### **Article 9-2: Supply contract** *(Not applicable)*

### Article 10: Type and description of sold products

The products subject to the sale consist of timber harvested and converted by the seller and delivered in random-length logs, cut-to-length bolts or forest chippings. The timber may be available on a landing or in a log yard.

The supplementary conditions of contract specify the type and technical characteristics of the product(s) for sale: species, dimensional and physical characteristics.

Except where otherwise expressly provided by the supplementary conditions of contract, the sale of products does not include the transfer to the buyer of any incorporeal rights associated with the forest or products extracted from the forest.

### Article 11: Product origin

#### Article 11-1: Origin of sold products

The origin of sold products is specified in the supplementary conditions of contract for the sale, together with the owner's or owners' details (and PEFC certificate if applicable).

#### Article 11-2: Product allotment *(Not applicable)*

### Article 12: Product quality

#### Article 12-1: Quality assurance

The timber is sold without quality assurance, given that the information provided in the supplementary conditions of contract in respect of timber grades is given strictly for guidance only to help the buyer make an appraisal of the lot before the sale.

#### Article 12-2: Reference to standards *(Not applicable)*

#### Article 12-3: Quality assurance limits *(Not applicable)*

### Article 13: Quantities

#### Article 13-1: Principle

The timber is sold by lump sum; therefore, there is no assurance of quantity, given that the information provided in the supplementary conditions of contract in respect of presumed volumes, item numbers, species and presumed grades of the items that make up the lot are given strictly for guidance only, to help the buyer make an appraisal of the lot before the sale.

The procedures by which ONF determines this information can be forwarded to the buyer at his request.

Log scaling is carried out for indicative purposes according to Standard NFB 53-020.

#### **Article 13-2: Obvious discrepancy on lot content**

If the buyer makes a written claim before product removal and at the latest within a period of two months after the sale on the grounds of there being a substantial error on the content of a lot, and if the claim is recognized by the seller as being well-founded, the seller reserves the option to grant compensation by way of a sale price reduction or in kind, without litigation or fees.

#### **Article 14: Delivery of non-conforming products** *(Not applicable)*

**Article 15: Transfer of product and risk ownership****Article 15-1: On the day of the sale**

The contract of sale is such that timber ownership and associated risks (especially depreciation, destruction or theft risks) are transferred to the buyer upon contract formation, that is to say as soon as adjudication is pronounced, acceptance of an offer is notified or consents are exchanged in the case of sales by private agreement, as provided by Article 1583 of the Civil Code.

However, timber removal may start only after issuance of a removal permit as defined in Article 18-1 since, upon being issued the removal permit the buyer takes ownership of the timber as per Article 1604 of the Civil Code and his responsibility as defined in Articles L. 135-10 and L. 135-11 of the Forestry Code is acknowledged.

The cutover as well as designated landings in the forest and log yards are not deemed to be part of the buyer's store.

**Article 15-2: On the day of enumeration** *(Not applicable)*

## **Chapter 5 – EXECUTION OF FELLING AND REMOVAL OF PRODUCTS**

**Article 16: Organization of timber harvesting** *(Not applicable)*

**Article 17: Enumeration** *(Not applicable)*

### **Article 18: Product removal**

Execution of the contract of sale of processed timber by lump sum includes:

- the removal of all sold products as defined in Article 10,
- the restoration of the sites to their former state where applicable.

Timber removal by the buyer shall be carried out in compliance with the provisions of the National Forestry Regulations and may be subject to restrictions which are then provided by the supplementary conditions.

#### **Article 18-1: Removal permit**

Product removal by the buyer can only take place once a removal permit has been obtained.

A removal permit is issued to the buyer by ONF:

- after delivery and verification of the guarantee, where applicable and,
- for contracts concerning an amount less than 1,000 Euros excluding taxes, upon receipt of the means of payment,
- for contracts concerning an amount higher or equal to 1,000 Euros excluding taxes, on the basis of the payment certificate delivered by the public accountant in accordance with Article 30.

It is essential that the buyer does not proceed with product removal until he has obtained a removal permit.

If he does, he shall be liable for a contractual civil penalty as per Article 34-4-1 of these clauses.

In addition, notwithstanding payment of the penalty by the buyer, ONF reserves the right to prosecute the buyer criminally should such requirements as defined by Article L. 311-1 of the Penal Code be met.

The buyer or his haulage contractors shall be in a position to present the removal permit at any time during timber removal.

#### **Article 18-2: Obligation to remove the timber**

The buyer is required to remove all the products placed on storage areas.

Exceptionally, he may be exempted from doing so with ONF's explicit authorization. To this effect, the buyer shall apply for exemption before expiry of the contract execution deadline prescribed by Article 18-3, and he shall arrange any products he has given up as instructed by ONF.

Upon expiry of the contract execution deadline, should all timber not be removed, the penalties

prescribed by Article 34 of these clauses apply and the contract shall be terminated as a matter of right in favour of the owner in accordance with Article 40 of these clauses.

### **Article 18-3: Contract execution time frame**

Unless otherwise specified in the supplementary conditions, the time frame for timber removal and restoration of the sites to their former state is 6 months from the sale contract date.

If timber removal is suspended on ONF's request in accordance with Article 22-1 of the general conditions of contract or if weather conditions preclude removal for a period longer than would be normal, the buyer may apply for and be granted a free time extension on such conditions as prescribed by Article 22-1.

If the contract cannot be executed by the time frame specified, the buyer informs ONF of this at least 20 days before expiry of said deadline. His application includes information on the timber quantity to be removed, any works to be carried out, the reasons for the delay, the time extension requested and the area of landing occupied. The seller then decides whether or not to grant the time extension requested by way of a landing lease agreement.

Should all timber not be removed and restoration works not be performed on expiry of the contract execution deadline in accordance with Article 19-1, the penalties prescribed by Article 34 of these clauses shall apply and the sale shall be terminated as a matter of right in favour of the owner in accordance with Article 40.

### **Article 18-4: Procedure for timber removal**

Timber removal is carried out via the network of existing forest roads, except if particular provisions are given in the supplementary conditions of contract.

ONF may impose restrictions on tonnes on certain forest roads. These are specified in the supplementary conditions of contract.

Removal may be prohibited during thaw or heavy rain periods, in accordance with the provisions of Section 3.5 of the National Forestry Regulations.

Time restrictions for timber removal are specified in Section 3.1.2 of the National Forestry Regulations.

### **Article 18-5: Road network damage**

Forest road network: In accordance with Section 3.5 of the National Forestry Regulations, should the buyer, or any person working on his behalf, cause damage to the forest roads due to misuse, he is obliged to carry out the necessary works to repair the damage, or have the works carried out by others, at his expense, before expiry of the deadline for contract execution.

Public road network: Special contributions for damage due to improper use of public and country roads which may be owed to Communes and Départements in pursuance of Articles L. 131-8 of "Voirie départementale" (Departmental Road Network) and L. 141-9 of "Voirie communale" (Communal Road Network) and L. 161-8 of the Country Code are at the buyer's expense.

## **Article 19: Procedures for completion of contract execution**

### **Article 19-1: Restoration of sites to their former state**

Before expiry of the contract execution deadline, the buyer shall carry out works to restore the sites to their former state or repair them in accordance with the provisions of Sections 3.9 (“Restoration of sites to their former state”) of the National Forestry Regulations.

If he fails to do so the buyer is liable for penalties in accordance with Article 34-4-2 and the sale may be terminated as a matter of right in favour of the seller in accordance with Article 40 of these clauses.

### **Article 19-2: Felling acceptance** *(Not applicable)*

### **Article 19-3: Harvesting discharge** *(Not applicable)*

## **Article 20: Timber storage on landings**

The buyer may exceptionally ask ONF for permission to use the landing on which the timber is delivered beyond the contract execution deadline. If permission to do so is granted by ONF, use of the landing is provided through a landing lease agreement which defines the technical and financial terms of lease.

## **Article 21: Incidental assignments during a felling coupe** *(Not applicable)*

## **Article 22: Surveillance and suspension of timber removal**

### **Article 22-1: Suspension of timber removal in the event of bad weather**

In the event of bad weather, ONF may suspend timber removal if it deems that its continuation would damage the network of forest roads. Therefore, removal may be prohibited during thaw or heavy rain periods in accordance with the provisions of Section 3.5 of the National Forestry Regulations.

In such a case the buyer is informed of the suspension of the contract. The suspension comes into effect immediately and ends, either by decision of ONF, or after expiry of a period of five working days following receipt by the buyer of the suspension decision. A free time extension may then be granted to the buyer but he must apply for the time extension in writing.

### **Article 22-2: Suspension in the event of damage to equipment**

If ONF notices that the contract is executed in such a manner that it is causing damage to the equipment, it summons the buyer or his representative to take the required action.

In the case of exceptional damage posing a threat to the viability of equipment, ONF shall order the suspension of timber removal. The suspension comes into effect immediately and ends, either by decision of ONF, or after expiry of a period of five working days following receipt by the buyer of the suspension decision.

The authorized ONF representative specifies the terms under which timber removal may resume or continue. In particular, he may prohibit or limit the use of a machine that has caused exceptional damage. The buyer must abide by this decision.

### **Article 22-3: Suspension in default of professional liability insurance** *(Not applicable)*

## Chapter 6 – FINANCIAL CONDITIONS

### Article 23: Sale price

The sale price set upon entry into the contract excludes taxes, i.e. it excludes VAT.

The price is stated exclusively in Euros.

VAT is applied as provided by Articles 24 and 28 of these clauses.

Depending on the ways and means of contract execution, supplementary invoices for restoration costs or penalties may be added to the sale price.

### Article 24: Sale price payment terms for single sale contracts

#### Article 24-1: Contracts of an amount less or equal to 3,000 Euros excluding taxes

When the sale price excluding taxes is less or equal to 3,000 Euros, the buyer shall pay cash within 20 days of contract formation for the full value of the sale price including taxes.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or by cheque.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.

#### Article 24-2: Contracts of an amount higher than 3,000 Euros excluding taxes

The buyer may choose between several payment procedures.

When contract formation follows a sale by adjudication or by competitive tendering, the contract is drawn up on the basis of the choice stated by the buyer during the sale. Any change of payment procedure after the sale may only be exceptional and shall be charged an administration fee amounting to 0.5% of each contract value, payable to ONF. If the administrative fee for any given public sale is less than 200 Euros, it will be increased to this lump sum. The administrative fee may be changed by decision of the Governing Board of ONF.

##### Article 24-2-1: Cash payment

When the buyer wishes to pay cash for the monies owed, he shall do so within 20 days of contract formation for the total value of the sale price including taxes.

In the case of a sale by adjudication or competitive tendering, the buyer then enjoys a 1% discount on the sale price, unless otherwise provided by the supplementary conditions. This rate may be adjusted to reflect any changes in financial markets by decision of the Governing Board of ONF.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or by cheque. A bank cheque may be required.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.



### **Article 24-2-2 (amended 01/01/2012): Deferred payment**

When the sale contract is guaranteed through a joint surety or a combined annual guarantee or a first demand guarantee on such conditions as provided by Article 25, monies owed are settled within a period of 45 days end of the month from the date of issue of the invoice. Within a period of 20 days from the sale date, the buyer delivers a promissory note to the accountant in charge of payment collection or, if invited to do so by ONF, the buyer provides an automatic payment authorization for the amount determined in accordance with Article 23 above (the amount excluding taxes plus the required VAT amount) and payable by the predetermined date.

When the sale contract is not guaranteed on such conditions as provided by Article 25, monies owed are settled within a period of 45 days end of the month from the date of issue of the invoice. This period does not include the 15 day-period in which to lodge the guarantee. Within a period of 20 days from the sale date, the buyer delivers a promissory note to the accountant in charge of payment collection or, if invited to do so by ONF, the buyer provides an automatic payment authorization for the amount determined in accordance with Article 23 above (the amount excluding taxes plus the required VAT amount) and payable by the predetermined date.

### **Article 24-2-3: Special case**

Supplementary conditions may override the provisions of this Article. This override cannot result in an extension of the total period of credit enjoyed by the buyer, except by authorization of the General Director of ONF.

## **Article 25: Financial guarantees for single sale contracts**

### **Article 25-1: Guarantee obligation**

In the case of a sale with deferred payment, the buyer is required to guarantee his commitments through a joint surety or an autonomous first demand guarantee, which may be an annual combined guarantee, on such conditions as provided hereinafter.

The buyer is exempted from the guarantee if he pays by guaranteed promissory note delivered within the same time frame as that prescribed for the guarantee, which it replaces, and before timber removal.

The guarantee beneficiary, ONF, the seller, or the owner, is specified in the supplementary conditions of contract.

The guarantee is provided by an institution authorized to stand surety to a public accountant in France, on the list of lending institutions and investment services providers accredited by CECEI, the *Comité des Etablissements de Crédit et des Entreprises d'Investissement* (Committee for Lending Institutions and Investment Firms), or on the list of accredited insurance companies under Sector 15, "guarantee".

A guarantee provided by a mutual guarantee scheme may also be accepted.

### **Article 25-2: Joint surety and release of guarantee**

The guarantor is held jointly and severally liable for payment of the full sale price including VAT.

This amount is a limit of guarantee, up to which the guarantor may be called once or more times until the release of his commitment. The release of guarantee is pronounced after payment of the sale price in full.

The guarantor gives the surety bond within a period of 20 days following contract formation using a form available at ONF offices. Failing this, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-3: Autonomous first demand guarantee**

The buyer may propose to provide a first demand guarantee.

The guarantee is provided under the terms and conditions prescribed by the general conditions of contract and protects ONF or the communities owning forest land against the risk of non payment by the client for the full sale price.

The bank gives a surety bond as an autonomous first demand guarantor and as such is bound by a personal commitment in favour of the guarantee beneficiary, which is separate from the buyer's contractual commitments to the seller.

It is essential for the guarantee provided by the buyer to cover a period of 6 months beyond the date set for the main price payment. Failing this, the guarantee cannot be accepted.

The guarantor gives the surety bond within a period of 20 days following entry into the contract of sale. Failing this, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-4: Annual combined guarantee**

ONF may suggest that the buyer provides an annual combined guarantee: an annual combined joint surety bond or combined first demand guarantee.

The guarantor undertakes to guarantee all outstandings of the buyer up to a limit scaled to the total value of the contracts for timber purchases entered into between ONF and the buyer during the year preceding the commitment. The scaled amount cannot be lower than a minimum threshold defined by the Governing Board of ONF. This amount is a limit of guarantee, up to which the guarantor may be called once or more times until the release of his commitment. The release of the annual combined guarantee is pronounced after the settlement in full of monies owing under the contracts.

The limit and validity period of the surety bond are provided by the deed of guarantee.

#### **Article 25-5: Special case (*Not applicable*)**

#### **Article 26: Sale price payment terms and financial guarantees for supply contracts (*Not applicable*)**

#### **Article 27: Payment terms for supplementary invoices associated with contract execution**

Supplementary invoices associated with the execution of the contract (penalties, compensation for damage) are payable in cash within 20 days of invoice issuance, by cheque or bank transfer ("swift" transfer for funds issued by foreign banking institutions).

## **Article 28: Formal procedures in respect of value added tax**

For purchases of timber from state forests or forests belonging to communities subject to VAT, the buyer pays the VAT owed, as prescribed by Articles 23, 24 and 27 above, and receives from the seller an invoice showing the VAT amount.

For owners registered under the flat rate repayment scheme, the buyer shall, in pursuance of Articles 265 and 266 of Appendix 2 of the General Taxation Code, (i) attach to each payment, including each promissory note instalment, a purchase form or a delivery slip, and (ii) provide the owner, at the beginning of each calendar year, with an annual certificate summarising all payments made during the previous year.

Purchase forms, delivery slips and annual certificates shall conform to the templates provided by the taxation authorities in Appendixes 1 and 2 of their essential documentation 3 I-2151 dated 30 March 2001.

In all cases, the supplementary conditions specify whether the owner is registered under the flat rate repayment scheme or general VAT scheme (with the option of VAT on debits or on credits) and in the latter case, they provide the applicable rate and payment terms.

## **Article 29: Accountant in charge of payment**

The sale price is owed to the ONF accountant when the sale concerns products from state-owned forests or is part of a grouped sale in accordance with Article L. 144-1-1 of the Forestry Code.

The sale price is owed directly to the forest owner's accountant, when the sale concerns products from a forest owned by a single owner other than the state.

The accountant to receive the payments is specified in the supplementary conditions of contract.

## **Article 30: Issuance of a payment certificate**

For sales of an amount higher than 1,000 Euros excluding taxes, once the buyer has paid the sale price in full within the agreed time frame, in cash or by remittance of promissory notes, the public accountant issues a payment certificate, which is required by ONF offices before they can issue the removal permit prescribed by Article 18-1 above.

Unless payment is by bank cheque, amounts paid in cash are deemed to be paid only once they are actually credited to the recipient's account.

**Article 31: General principle**

A lump-sum contractual penalty of 200 Euros applies for any non-compliance with or lack of awareness of the general and supplementary conditions of contract and the National Forestry Regulations, for which no penalty is provided by the Forestry Code or by Articles 32 to 35; this is owed to ONF, the seller. In addition, the buyer is required to make reparation for any harm resulting from an act of non-compliance, especially in the event of damage to the forest.

**Article 32: Penalties for failure to pay**

For all monies owing under the contract and not paid on time, as well as for any delay in providing the promissory note within 20 days of the sale, the buyer is liable to the forest owner as a matter of right:

- for interest on overdue payments per day of default, at the rate of three times the statutory rate of interest in effect on the due date,
- a fixed financial penalty amounting to 200 Euros to cover follow-up costs.

**Article 33: Penalties for failure to possess professional liability insurance** *(Not applicable)***Article 34: Penalties associated with timber harvesting and removal****Article 34-1: Compensation for lack of care to plants, seedlings and young trees** *(Not applicable)***Article 34-2: Compensation for lack of care to retained stems** *(Not applicable)***Article 34-3: Penalty for non-completion of the felling coupe in the time specified** *(Not applicable)***Article 34-4: Penalties associated with product removal and site restoration****Article 34-4-1: Failure to possess a removal permit**

Should the removal of products be carried out without the buyer having first obtained a removal permit as defined in Article 18-1, the buyer is liable to the forest owner for damages amounting to twice the value of the removed timber on the basis of the prices set by the sale contract.

If product quantity and quality could not be established according to the rules, the value of the products is set by ONF.

**Article 34-4-2: Penalty for non-completion of product removal and/or site restoration**

The buyer is deemed to have fully executed the contract only once he has freed the landings and carried out the restoration works within the time frame specified for contract execution.

In the event of a partial removal of the goods and in the absence of a lease application in accordance with Article 20 of these clauses, the buyer is liable to the forest owner for damages amounting to the value of the timber remaining on the landing. The buyer is released from paying this sum by making the payment in kind which is to yield possession of the timber still

on the landing. The transfer of property and possession takes place on the date of termination, in accordance with Article 40.

In addition, the buyer is liable to the forest owner for the value of the remaining works, assessed by ONF and marked up by the addition of a penalty equal to twice this amount. If the penalty owing under such provisions is lower than 1,000 Euros, it is increased to this fixed lump sum.

**Article 34-4-3: Non-compliance with timber conversion, enumeration, measuring or weighing procedures *(Not applicable)***

**Article 35: Penalties associated with product delivery *(Not applicable)***

**Article 36: Settlement and collection of penalties**

The total amount of contractual penalties arising from these Articles gives rise to a final payment invoice, which shall be paid in accordance with the provisions of Article 27 of these clauses.

The beneficiary of contractual penalties, i.e. ONF, the seller, or the forest owner, and the accountant responsible for collection are specified on the invoice.

## **Chapter 8 – SUSPENSION, FORFEITURE AND EXPIRY OF THE CONTRACT**

### **Article 37: Forfeiture and rescission for non-compliance with financial clauses**

#### **Article 37-1: Forfeiture in default of surety bond, first demand guarantee or annual combined guarantee**

If the buyer does not provide the guarantees required by Articles 25 or 26 of the general conditions of contract within the period specified, his forfeiture is pronounced in pursuance of Article L. 134-5 of the Forestry Code in particular.

Without prejudice to the penalties owing under the provisions of Article 31, the lot can then be re-offered for sale in which case the defaulting buyer is liable to pay the difference between his price and the resale price, on account of damages, without him being able to claim for any excess.

#### **Article 37-2: Rescission for failure to pay**

When the buyer does not remit his means of payment within 20 days of the sale in accordance with the provisions of Articles 24 or 26 of these clauses, ONF may pronounce the rescission of the sale, with provision for a lump-sum contractual penalty for damages amounting to 20% of the sale price excluding taxes, payable to the forest owner, notwithstanding any penalties prescribed by Article 32 of these clauses.

### **Article 38: Rescission and termination for failure to possess professional liability insurance** *(Not applicable)*

### **Article 39: Termination for non-execution of harvesting** *(Not applicable)*

### **Article 40: Termination for non-removal of products and/or site restoration**

#### **Article 40-1: Termination for failure to start timber removal**

Upon expiry of the contract execution deadline the contract may be terminated as a matter of right should ONF discover that timber removal has not started.

Termination comes into effect on expiry of this deadline on such conditions as described in Article 40-3 of these clauses.

When the buyer is unable to start removing the timber, even though he has given his means of payment and guarantee, ONF may pronounce the termination of the sale contract, on the buyer's request, before expiry of the contract deadline.

#### **Article 40-2: Termination for non-completion of the contract in the time specified**

The contract may also be terminated by right if all the products have not been removed and/or if the restoration works of the landing or road network have not been completed on expiry of the prescribed deadline.

Termination comes into effect on expiry of this deadline on such conditions as described in Article 40-3 of these clauses.

### **Article 40-3: Termination procedure**

In all cases, the buyer is liable for the penalties owing under the provisions of Articles 31, 32 and 34 of these clauses.

Transfer of ownership of the remaining timber takes place on the day of termination.

If the goods could not be re-sold on equivalent terms on account of their natural deterioration, the buyer whose sale shall have been terminated in pursuance of these clauses shall be liable to the forest owner for damages amounting to the goods' loss of value and to no less than 50% of the value of the goods lost or depreciated calculated on the basis of the goods' initial sale price.

By a sale on equivalent terms it is meant a sale of similar goods of fair average quality under the market terms and conditions in effect on the day of sale termination.

### **Article 41: Rescission and termination of supply contracts** *(Not applicable)*

### **Article 42: Change or termination of the contract in connection with the withdrawal of one or more owners in the case of a grouped sale** *(Not applicable)*

### **Article 43: Discontinuance of business**

In the event of the permanent discontinuance of business for a reason other than a safeguard or redress procedure or winding-up proceedings or the buyer's death, the rights and obligations of the defaulting buyer may be transferred to a third party by the buyer, subject to ONF's prior consent.

In the event of a transfer, the assign shall forward to ONF, within a period of 20 days following the transfer, the means of payment and guarantees required by ONF under Articles 24 to 26. Failing this, the transfer is deemed lapsed.

### **Article 44: Death of the buyer**

In the event of the death of the buyer as a natural person, the contract shall expire by lapse as a matter of right.

ONF agrees with the heirs during succession on the ways and means available to close out the situation.

### **Article 45: Force majeure**

When execution of a contract by one or the other party is rendered impossible by an event of force majeure, rescission of the contract shall be pronounced at the request of the first party to so do.

The rescission of the contract entails the rescission of the sale as a matter of right and puts the parties back in the position where they were before entry into the contract.

If contract execution is temporarily impossible but able to resume at a predictable date without the financial terms of the contract being affected, the contract may be suspended for a period agreed between the parties, provided it does not exceed 6 months.

Force majeure does not lead to any compensation for damages, in accordance with Article 1148 of the Civil Code, in consequence either of contract suspension or contract rescission.



## Chapter 9 – COLLECTIVE PROCEEDINGS

### **Article 46: Compulsory safeguard, redress and liquidation of companies**

#### **Article 46-1: Timber detention**

In accordance with the provisions of Article 15-1 of these clauses, the landings designated in the forest and log yards are not deemed to be part of the buyer's store.

Therefore, if safeguard, redress or winding-up proceedings are called for, the seller is entitled to exercise the detention of timber still on the designated landings or log yard in accordance with Article L. 624-14 of the Commercial Code.

This is a right he exercises by virtue of the unpaid seller's lien (Art. 1612 of the Civil Code), which is as much in his own interest as in the interest of the guarantor, in consequence of the monies that the guarantor may already or may be required to pay on account of the sale price, notwithstanding any promissory notes which may become due.

The detention is notified by the seller by registered letter addressed to the administrator (or liquidator) and the buyer. The detention comes into effect upon receipt of this letter, which may be held as a suspension of removal permit.

The detention prohibits any timber removal.

In order to lift the detention right, the buyer and administrator (or liquidator) have to reach an agreement with the guarantor to pay any monies owing on account of the sale price, or find another solution between them, if the guarantor has already replaced the buyer in so doing.

In all cases, the seller lifts the detention right only on the basis of a written statement by the guarantor authorizing the end of timber detention.

The lifting of a detention right is evidenced by a decision of the seller in writing, by which the removal permit becomes effective once again.

#### **Article 46-2: Election to continue, assign or terminate the contract under execution**

If collective proceedings are called for, and notwithstanding the use of the detention right mentioned in Article 46-1 above, only the administrator (or liquidator) has the authority to decide on the fate of the outstanding contract (Art. L. 622-13 and L. 641-10 of the Commercial Code). If the court has not appointed an administrator, the buyer decides on the fate of the contract in agreement with the judicial agent (Art. 627-2 of the Commercial Code). The buyer must submit this agreement to the seller.

The administrator or buyer (when an administrator has not been appointed), or liquidator, has one month to announce his decision from being notified by the seller by registered mail that he has been called upon to decide on the fate of the outstanding contract.

In the absence of an explicit decision within the legal period, the seller determines the termination of the contract by right in pursuance of Article L. 622-13 of the Commercial Code, in accordance with Article 46-2-3.

### **Article 46-2-1: Continuation of the outstanding contract**

When continuation of the contract has been decided and the sale price has been fully settled by the buyer prior to the opening judgment, the contract is continued in a normal manner.

However, when the decision to continue with the contract conflicts with timber detention exercised in accordance with Article 46-1 above, new means of payment need to be provided by the buyer on the basis of the agreements reached with the guarantor and the administrator (or liquidator) and endorsed by the master in chambers, since the payment of a debt previous to the opening judgment requires authorization (Art. 622-7 Paragraph 3 of the Commercial Code). The seller will lift the detention right on the basis of the payment certificate issued by the relevant accountant, thus enabling contract execution to actively resume.

### **Article 46-2-2: Transfer of the outstanding contract**

In the event of contract continuation, the buyer's rights and obligations may be assigned to a third party provided the prior consents in writing of both ONF and the guarantor of the buyer in his capacity as the assignor have been given.

The transfer comes into effect and the assign receives his removal permit only once he has deposited with the relevant accountant the means of payment for the remainder of the sale price owing under the assigned contract, together with the required guarantee, where applicable.

### **Article 46-2-3: Termination of the outstanding contract**

When total or partial termination of the outstanding contract has been decided through an explicit decision or silence maintained for more than one month from notification of the formal notice to decide on the fate of the outstanding contract, such total or partial termination is pronounced in accordance with Article L. 622-13 of the Commercial Code.

## Chapter 10 – MISCELLANEOUS PROVISIONS

### Article 47: Settlement of disputes

For any disputes which may arise during execution of the sale contract, only the French courts of jurisdiction are competent. The court having territorial jurisdiction is that of the location of entry into the contract.

### Article 48: Access to timber sales

ONF is entitled to deny access to timber sales to buyers who, on account of previous timber purchase contracts:

- have not paid for overdue invoices in full,
- have been penalized repeatedly in pursuance of Chapters 7 and 8 of these clauses.

# General conditions of contract for sales of processed timber by measurement

## Chapter 1 – LEGAL FRAMEWORK

### Article 1: Law of the contract

This contract is subject to French law.

Without prejudice to the provisions specific to forest law, sales carried out by ONF are subject to legal terms and conditions pursuant to the Civil Code and Commercial Code or incidental to the law on the international sale of goods pursuant to the Vienna Convention signed on 11 April 1980 for contracts by private agreement or competitive tendering.

### Article 2: Framework specific to timber sales carried out by ONF

#### Article 2-1: General rules of forest law

In respect of woods and forests administered under the public forest law system (Articles L. 111-1 and L. 114-1 of the Forestry Code), felling coupes and products of such coupes are sold by ONF on such legal conditions as provided by Articles L. 134-1 to L. 134-7 of the Forestry Code in particular, in the case of timber from state-owned forests and land for afforestation, and L. 144-1 to L. 144-4 of the Forestry Code in particular, in the case of timber from community forests and land for afforestation administered under the public forest law system.

#### Article 2-2: Scope of the general conditions of contract

The general conditions of contract approved by the Governing Board of ONF in pursuance of Article R. 134-2 of the Forestry Code are applicable to any contract of sale of processed timber by measurement entered into by ONF.

#### Article 2-3: Enforceability and composition of contract documents

The general conditions of contract and the supplementary conditions of contract make up the sale contract. They are binding on the buyer, his guarantor as well as on any person working on his behalf.

Where applicable, the buyer is bound by the territorial procedures to which the general conditions of contract refer. The procedures are forwarded to the buyer at his request and are published at the front of the public sales catalogue and on the ONF website.

#### Article 2-4: Enforceability of the National Forestry Regulations

The National Forestry Regulations are enforceable against any buyer of a timber lot, in as much as he enters into the forest to carry out the harvesting and removal of sold products, or only their removal.

The buyer is personally responsible by law for ensuring that his agents or any persons acting on his behalf or through him fully adhere to the provisions of the regulations, in pursuance of Articles L. 135-10 and L. 135-11 of the Forestry Code.

### **Article 3: Exemptions from the general conditions of contract**

The supplementary conditions of contract associated with a particular sale cannot override the general conditions of contract except in the cases and within the limits explicitly provided for in the general conditions of contract.

Any clauses opposing or contrary to the above are deemed invalid, ONF not having consented to them in the manner prescribed by Article 2-2.

There can be no exemption from the general conditions except as a consequence of general temporary measures taken in an emergency and ordered by the Director General for a particular geographical zone. As the circumstances require, such an exemption may be applied to outstanding contracts.

## **Chapter 2 – FORMATION, CHARACTER AND DURATION OF THE CONTRACT**

### **Article 4: Formation of the contract**

The contract is formed between ONF and the buyer on such conditions as set out in Article L. 134-7 of the Forestry Code and in accordance with the sales regulations applicable to the sale at issue in particular. As applicable, the sales regulations may be:

- the regulations for sales by competitive tendering,
- the regulations for sales by adjudication,
- or the regulations for sales by private agreement.

### **Article 5: Subject-matter**

The products subject to the sale consist of timber harvested and converted by the seller and delivered in random-length logs, cut-to-length bolts or forest chippings; the buyer is responsible for paying their price after enumeration, and removing the products within the agreed time frame.

The sale is a sale of goods by measurement as per Article 1585 of the Civil Code.

### **Article 6: Contracting parties**

#### **Article 6-1: The seller**

The sale concerns products from forest estates administered under the public forest law system, whether they are owned by the state or a community or another legal entity. Except in the first case, ONF shall have received the owner's prior consent before engaging in the sale of the products.

When the contract of sale concerns timber from several forest estates, the sale is a grouped sale as per Article L. 144-1-1 of the Forestry Code.

In all cases, the sale contract is agreed and entered into with ONF, who is solely able to take responsibility for the decisions arising from supervision and execution of the contract.

In relation to all aspects of contract execution, ONF is represented by an agent, whose function is to act as a point of contact between ONF, the seller, and the buyer and to provide for the due execution of the contract. His name and contact details are forwarded to the buyer, who will address any queries he has to him.

#### **Article 6-2: The buyer**

##### **Article 6-2-1: General**

A buyer is a professional meeting the criteria set out in the sales regulations and who has bought one or more lots of timber offered for sale by ONF.

In respect of contract execution, the buyer shall appoint one or more French-speaking representatives. The representative(s) shall be contactable by the ONF agent at all times.

**Article 6-2-2: Professional liability insurance** (*Not applicable*)

**Article 7: Character of the sale contract**

Single sale contracts or supply contracts may be entered into.

**Article 7-1: Single sale contract**

Only one timber lot is sold as part of a single sale contract. It is available all at once when a removal permit is issued to the buyer on such conditions as set out in Article 18-1.

**Article 7-2: Supply contract**

A timber sale contract entered into between ONF and the buyer may be a supply contract as per Articles L. 134-7 and R. 134-15 of the Forestry Code.

A supply contract may be envisaged as being part of a durable commercial relationship aiming to secure supply for an industrial processing unit.

A sale contract is a supply contract if it has the following attributes:

- it is entered into by private agreement,
- timber delivery is spread over a period of time of at least 6 months,
- timber volumes amount to 1,000 m<sup>3</sup> at least if contract duration is less than one year.

However, in some cases, timber sale contracts without one of these attributes may be referred to as supply contracts. The supplementary conditions shall expressly specify this possibility.

A supply contract may span one or several years. It may consist of several successive tranches, each tranche consisting of one or more lots of timber.

In the case of contracts by multiple tranches, the parties agree distinctly to each tranche in the manner and time frame specified by the contract. The parties' agreement upon entry into the contract concerns only the first tranche. The subsequent tranches shall be reserved for the buyer from the beginning of the contract and in exchange, the buyer undertakes to complete the successive sales contemplated for each subsequent tranche defined in the contract.

During the entire period prescribed by the contract, the parties are obliged by their mutual commitment to complete the subsequent tranches, without prejudice to the provisions set out in Article 41 of the general conditions of contract.

The successive sales arising from each of the tranches are subject to the provisions of the general conditions of contract as a whole.

**Article 8: Duration and end of the contract**

**Article 8-1: Single sale contract**

The contract ends when the buyer has performed all the technical and financial obligations associated with the contract.

Removal time frames are specified in Chapter 5 of the general conditions of contract and in the supplementary conditions of contract.

#### **Article 8-2: Supply contract**

For supply contracts the duration of each tranche is set by the supplementary conditions. Duration of each tranche is usually 6 months, except if the parties agree on a different duration; it cannot be longer than one year.

Contracts associated with the tranches to be completed are required to be signed within five years of the main contract signature, in accordance with Article R. 134-5 of the Forestry Code.

#### **Article 9: Assignment of the sale contract**

##### **Article 9-1: Single sale contract**

Without prejudice to the provisions of Article 46-2 of the general conditions, single sale contracts entered into by ONF and the buyer cannot be assigned in total or in part by the buyer, be this in return for payment or not.

In the event of an assignment of the products before their removal, the buyer remains responsible for complying with all the terms of the contract and in particular with the provisions of Chapter 5 of the general conditions of contract.

##### **Article 9-2: Supply contract**

Supply contracts may be assigned by the buyer subject to the prior and explicit consent of ONF. In the event of a transfer, the assign is required to provide all of the means of payment and guarantees required for due performance of contract execution on such conditions as defined by the general conditions of contract, within the time frame agreed between the parties.



### Article 10: Type and description of sold products

The products subject to the sale consists of timber harvested and converted by the seller and delivered in random-length logs, cut-to-length bolts or forest chippings. The timber may be available on a landing or in a log yard.

The products are defined in the supplementary conditions of contract, which specify as may be necessary:

- the type and technical characteristics of the product(s) for sale,
- the product availability time frames,
- the agreed delivery procedure and timing.

Product types and technical characteristics mean the species, dimensional and physical properties that the seller is obliged to deliver, and exclude any technical specification relating to the material itself or to the commercial end use intended for the products by the buyer and for which he is solely responsible.

The supplementary conditions may include provisions relating to existing product certifications where applicable.

Except where otherwise expressly provided by the supplementary conditions of contract, the sale of products does not include the transfer to the buyer of any incorporeal rights associated with the forest or products extracted from the forest.

### Article 11: Product origin

#### Article 11-1: Origin of sold products

The origin of sold products is specified in the supplementary conditions of contract for the sale, together with the owner's or owners' details (and PEFC certificate if applicable) for single sale contracts.

For supply contracts, the origin of sold products is given on a tentative basis upon entry into each tranche. If the products originate from one or more forests certified under PEFC, the supplementary conditions make reference to this.

#### Article 11-2: Product allotment

Sold products are grouped in one or more lots.

### Article 12: Product quality

#### Article 12-1: Quality assurance

ONF guarantees the timber according to the type and technical characteristics specified by the parties in the supplementary conditions of contract.

The supplementary conditions may specify dimensional or quality allowances as may be necessary, depending on product type and the buyer's requirements of use.

The timber thus sold by ONF is deemed of fair average quality provided it is removed within the time frame specified in the contract.

References to specific grades are excluded if the sold goods are not of a consistent fair average quality because of their origin, especially if the timber consists of windfalls or accidental products, dry or dying or has been infested by pests, fungi or parasites affecting timber appearance. Timber thus sold without guarantee of consistent fair average quality is deemed sold “as is” under the sole responsibility of the buyer who shall not be able to question the actual quality of the goods bought.

#### **Article 12-2: Reference to standards**

The supplementary conditions may refer to product grading standards. The Parties may modify the standard references by express agreement in order to exclude any part of a standard deemed irrelevant to the sale at issue.

#### **Article 12-3: Quality assurance limits**

ONF’s commitment on timber quality as defined by the supplementary conditions is valid only in the cases where defects, damage and degradation of whatever character are not attributable to an event of force majeure (hurricane, glazed frost, fire...) or to an act of the buyer or his employees and agents acting in his name and on his behalf.

In addition, the guarantee is valid only if timber removal is executed within the time frame prescribed in the supplementary conditions. Beyond that time frame ONF is unable to guarantee the grades of natural goods which are exposed to the weather and to all manners of damage inherent to the forest environment such as those carried out by all kinds of insect pests and fungi or faulty storage conditions implemented outside the control and direct responsibility of the seller.

### **Article 13: Quantities**

#### **Article 13-1: Principle**

For each product type and grade defined in the contract, the supplementary conditions specify the quantities of goods that the seller is obliged to deliver. Product scaling is carried out in accordance with Standard NFB 53-020.

The supplementary conditions define the quantitative allowances for which the seller is deemed to have fulfilled his obligation to deliver and the buyer is obliged to pay for the associated goods.

In the case of supply contracts the seller undertakes to deliver 90% of the total timber quantity prescribed for the tranche in progress, unless the supplementary conditions of contract specify otherwise. If this requirement is not met, the buyer may demand that the seller makes up for the missing quantities by supplying goods of a similar type to reach this minimum. If the seller is unable to supply the missing products, he is liable for the penalties defined by Article 35-1.

#### **Article 13-2: Obvious discrepancy on the number of stems *(Not applicable)***

#### **Article 14: Delivery of non-conforming products**

The seller's obligation to deliver concerns goods conforming to the covenants pursuant to the supplementary conditions of contract and subject to the allowances specified therein and within the limits pursuant to the general conditions of contract.

Delivered goods may be rejected by the buyer only if such a rejection results from an enumeration, measurement or weighing process in the presence of both parties, implemented on such conditions as prescribed by the supplementary conditions and showing that the delivered goods are different from the kind prescribed by the sale contract.

Delivered goods may not be rejected by the buyer if they show characteristics which cause the buyer to have reservations but which are within the qualitative and quantitative allowances prescribed by the contract. The goods at issue are then subject to a discount on the sale price which may not be greater than that resulting from the downgrading of the goods into a lower grade defined by the reference standards.

**Article 15: Transfer of product and risk ownership**

**Article 15-1: On the day of the sale** *(Not applicable)*

**Article 15-2: On the day of enumeration**

The enumeration of products entails the transfer of product ownership to the buyer in accordance with Article 1585 of the Civil Code. An enumeration report is produced and signed by ONF on the one hand, and by the buyer or his representative on the other hand.

In the absence of the buyer or in the event of his refusal to be involved in the enumeration, notification of the enumeration report or the acceptance by the buyer of counted, weighed or scaled products, as applicable, leads automatically to the transfer of product ownership.

Once their ownership has been fully transferred to the buyer, the goods are entirely at the buyer's own risk (depreciation, destruction and theft risks in particular), even though they may be delivered roadside in the forest, without prejudice to any detention right used in the event of collective proceedings.

Transport of goods to the buyer's workshop is carried out on his responsibility and at his own risk, unless otherwise expressly specified by the supplementary conditions for factory-delivered goods.

Any goods item processed by the buyer is deemed to have been accepted without reservation and its ownership is deemed to have been transferred, if acceptance could not take place before processing (in the presence of both parties or not).

The cutover as well as designated landings in the forest and log yards are not deemed to be part of the buyer's store.

## **Chapter 5 – EXECUTION OF FELLING AND REMOVAL OF PRODUCTS**

**Article 16: Organization of timber harvesting** *(Not applicable)*

**Article 17: Acceptance and enumeration**

**Article 17-1: Principle**

An enumeration of the goods is carried out in the presence of both parties in order to measure the quantity of goods sold to the buyer.

In order to carry out the enumeration and scaling of products, the supplementary conditions define:

- the appropriate units of measurement to determine the number, measure or weight of the products, as well as the sale price owed by the buyer;
- the enumeration, measurement or weighing procedures for the goods.

In the absence of further information in the supplementary conditions of contract, acceptance and enumeration operations are conducted in accordance with the model procedure put together by each territorial direction and forwarded to the buyer. If a territorial model procedure is not available, such operations are conducted according to the national model procedure available on ONF's website.

A report of enumeration is drawn up by ONF and signed by the buyer or his representative. This report constitutes evidence that the transfer of ownership has taken place in accordance with the provisions of Article 15-2.

In the absence of the buyer or in the event of his refusal to take part in the enumeration, this is carried out by ONF and notification of the enumeration report leads automatically to the transfer of goods' ownership in accordance with Article 15-2. Any absence or refusal by the buyer to sign the enumeration report is noted by ONF on said report.

Partial enumerations may be carried out with ONF's agreement at the request of the buyer.

**Article 17-2: Preparation of acceptance and enumeration operations by the buyer**  
*(Not applicable)*

**Article 17-3: Scaling or weighing at the mill**

Timber scaling or weighing may be carried out separately from enumeration.

In particular, when timber is sold roadside, the supplementary conditions may specify that scaling or weighing is carried out on the buyer's premises and with his own resources.

In such a case, an enumeration of the products is carried out in the forest on such conditions as defined in Article 17-1. The enumeration thus conducted entails the transfer of product ownership to the buyer in accordance with Article 15-2 and transport is carried out at the buyer's expense and at his own risk.

Product scaling or weighing is carried out on arrival at the mill using the buyer's own resources as provided by the supplementary conditions or by the procedure set out in Article 17-1, especially in respect of time frames, the measuring equipment used and control procedures.

This shall enable ONF to verify the consistency between the forest enumeration results and the scaled amounts obtained by the buyer.

The buyer delivers to ONF a bordereau detailing the acceptance-tested timber quantities and quality grades. Except when there is a discrepancy with the forest enumeration results, the bordereau is authoritative for calculating lot value.

When the timber is acceptance-tested and scaled on the buyer's premises (timber sold "factory-delivered"), the supplementary conditions may prescribe that timber scaling or weighing by the buyer is held as enumeration.

## **Article 18: Product removal**

Timber removal by the buyer shall be carried out in compliance with the provisions of the National Forestry Regulations and may be subject to restrictions which are then provided by the supplementary conditions.

### **Article 18-1: Removal permit**

Product removal by the buyer can only take place once a removal permit has been obtained.

The removal permit is issued to the buyer by ONF:

- after delivery and verification of the guarantee, where applicable, and,
- for contracts concerning an amount less than 1,000 Euros, upon receipt of the means of payment,
- for contracts concerning an amount higher or equal to 1,000 Euros, on the basis of the payment certificate delivered by the public accountant in accordance with Article 30.

Unless otherwise provided by the supplementary conditions of contract, the enumeration report may be held as a removal permit when the contract is guaranteed by a joint surety, a combined annual guarantee or a first demand guarantee as provided by Article 25.

It is essential that the buyer does not proceed with product removal until he has obtained a removal permit. If he does, he shall be liable for a contractual civil penalty as per Article 34-4-1 of these clauses. In addition, notwithstanding payment of the penalty by the buyer, ONF reserves the right to prosecute the buyer criminally should such requirements as defined by Article L. 311-1 of the Penal Code be met.

The buyer or his haulage contractors shall be in a position to present the removal permit at any time during timber removal.

A removal permit is not required when the timber is acceptance-tested and counted on the buyer's premises.

### **Article 18-2: Obligation to remove the timber**

The buyer is required to remove all the products placed on storage areas.

Exceptionally, he may be exempted from doing so with ONF's explicit authorization, in which case the buyer shall apply for exemption before expiry of the contract execution deadline prescribed by Article 18-3, and he shall arrange any products he has given up as instructed by ONF.

Upon expiry of the contract execution deadline, should all timber not be removed, the penalties prescribed by Article 34 of these clauses apply and the contract shall be terminated as a matter of right in favour of the owner in accordance with Article 40 of these clauses.

#### **Article 18-3: Contract execution time frame**

Unless otherwise specified in the supplementary conditions, the time frame for timber removal and restoration of the sites to their former state where relevant is 6 months after the enumeration report date.

If timber removal is suspended on ONF's request in accordance with Article 22-1 of the general conditions of contract or if weather conditions preclude removal for a period longer than would be normal, the buyer may apply for and be granted a free time extension on such conditions as prescribed by Article 22-1.

If the contract cannot be executed by the time frame specified, the buyer informs ONF of this at least 20 days before expiry of said deadline. His application includes information on the timber quantity to be removed, any works to be carried out, the reasons for the delay, the time extension requested and the area of landing occupied. The seller then decides whether or not to grant the time extension requested by way of a landing lease agreement.

Should all timber not be removed and restoration works not be performed on expiry of the contract execution deadline in accordance with Article 19-1, the penalties prescribed by Article 34 of these clauses shall apply and the sale shall be terminated as a matter of right in favour of the owner in accordance with Article 40.

#### **Article 18-4: Procedure for timber removal**

Timber removal is carried out via the network of existing forest roads, except if particular provisions are given in the supplementary conditions of contract. ONF may impose restrictions on tonnes on certain forest roads. These are specified in the supplementary conditions of contract. Removal may be prohibited during thaw or heavy rain periods, in accordance with the provisions of Section 3.5 of the National Forestry Regulations.

Time restrictions for timber removal are specified in Section 3.1.2 of the National Forestry Regulations.

#### **Article 18-5: Road network damage**

Forest road network: In accordance with Section 3.5 of the National Forestry Regulations, should the buyer, or any person working on his behalf, cause damage to the forest roads due to misuse, he is obliged to carry out the necessary works to repair the damage, or have the works carried out by others, at his expense, before expiry of the deadline for contract execution.

Public road network: Special contributions for damage due to improper use of public and country roads which may be owed to Communes and Départements in pursuance of Articles L. 131-8 of "Voirie départementale" (Departmental Road Network) and L. 141-9 of "Voirie communale" (Communal Road Network) and L. 161-8 of the Country Code are at the buyer's expense.

## **Article 19: Procedure for completion of contract execution**

### **Article 19-1: Restoration of sites to their former state**

Before expiry of the contract execution deadline, the buyer shall carry out works to restore the sites to their former state or repair them in accordance with the provisions of Sections 3.9 (“Restoration of sites to their former state”) of the National Forestry Regulations.

If he fails to do so, the buyer is liable for penalties in accordance with Article 34-4-2 and the sale may be terminated as a matter of right in favour of the seller in accordance with Article 40 of these clauses.

### **Article 19-2: Felling acceptance** *(Not applicable)*

### **Article 19-3: Harvesting discharge** *(Not applicable)*

## **Article 20: Timber storage on landings**

The buyer may exceptionally ask ONF for permission to use the landing on which the timber is delivered beyond the removal deadline. If permission to do so is granted by ONF, use of the landing is provided through a landing lease agreement which defines the technical and financial terms of lease.

### **Article 21: Incidental assignments during a felling coupe** *(Not applicable)*

## **Article 22: Surveillance and suspension of timber removal**

### **Article 22-1: Suspension of timber removal in the event of bad weather**

In the event of bad weather, ONF may suspend timber removal if it deems that its continuation would damage the network of forest roads. Therefore, removal may be prohibited during thaw or heavy rain periods in accordance with the provisions of Section 3.5 of the National Forestry Regulations. In such a case, the buyer is informed of the suspension of timber removal. The suspension comes into effect immediately and ends, either by decision of ONF, or after expiry of a period of five working days following receipt by the buyer of the suspension decision.

A free time extension may then be granted to the buyer but he must apply for the time extension in writing.

### **Article 22-2: Suspension in the event of damage to equipment**

If ONF notices that the contract is executed in such a manner that it is causing damage to the equipment, it summons the buyer or his representative to take the required action.

In the case of exceptional damage posing a threat to the viability of equipment, ONF shall order the suspension of timber removal. The suspension comes into effect immediately and ends, either by decision of ONF, or after expiry of a period of five working days following receipt by the buyer of the suspension decision.

The authorized ONF representative specifies the terms under which timber removal may resume or continue. In particular, he may prohibit or limit the use of a machine that has caused exceptional damage. The buyer must abide by this decision.

### **Article 22-3: Suspension in default of professional liability insurance** *(Not applicable)*



## Chapter 6 – FINANCIAL CONDITIONS

### Article 23: Sale price

The sale price is the product of the unit price(s) set upon entry into the contract by the quantities counted during enumeration. The price is expressed excluding taxes, i.e. excluding VAT.

The price is stated exclusively in Euros.

VAT is applied as provided by Articles 24 and 28 of these clauses.

Depending on the ways and means of contract execution, supplementary invoices for restoration costs or penalties may be added to the sale price.

### Article 24: Sale price payment terms for single sale contracts

#### Article 24-1: Contracts of an amount less or equal to 3,000 Euros excluding taxes

When the estimated sale price excluding taxes is less or equal to 3,000 Euros, the buyer shall pay cash within 20 days of the enumeration report for the full value of the sale price including taxes.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or by cheque.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.

#### Article 24-2: Contracts of an amount higher than 3,000 Euros excluding taxes

The buyer may choose between several payment procedures.

When contract formation follows a sale by adjudication or by competitive tendering, the contract is drawn up on the basis of the choice stated by the buyer during the sale. Any change of payment procedure after the sale may only be exceptional and shall be charged an administration fee amounting to 0.5% of each contract value, payable to ONF. If the administrative fee for any given public sale is less than 200 Euros, it will be increased to this lump sum.

The administrative fee may be changed by decision of the Governing Board of ONF.

#### Article 24-2-1: Cash payment

When the buyer wishes to pay cash for the monies owed, he shall do so within 20 days of the enumeration report for the total value of the sale price including taxes.

In the case of a sale by adjudication or competitive tendering, the buyer enjoys a 1% discount on the sale price, unless otherwise provided by the supplementary conditions. This rate may be adjusted to reflect any changes in financial markets by decision of the Governing Board of ONF.

Cash payments are made by bank transfer (“swift” transfer for funds issued by foreign banking institutions) or by cheque. A bank cheque may be required.

Any exchange rate risk and all fees associated with the transfer of funds in favour of the sale beneficiary are at the buyer’s expense.

#### **Article 24-2-2 (amended 01/01/2012): Deferred payment**

##### **1- Forest scaling**

When the sale contract is guaranteed through a joint surety or a combined annual guarantee or a first demand guarantee on such conditions as provided by Articles 25 and 26, monies owed are settled within a period of 45 days end of the month from the date of issue of the invoice. Within a period of 20 days from the enumeration report date, the buyer delivers a promissory note to the accountant in charge of payment collection or, if invited to do so by ONF, the buyer provides an automatic payment authorization for the amount determined in accordance with Article 23 above (the amount excluding taxes plus the required VAT amount) and payable by the predetermined date.

When the sale contract is not guaranteed on such conditions as provided by Articles 25 and 26, monies owed are settled within a period of 45 days end of the month from the date of issue of the invoice. This period does not include the 15 day-period in which to lodge the guarantee. Within a period of 20 days from the enumeration report date, the buyer delivers a promissory note to the accountant in charge of payment collection or, if invited to do so by ONF, the buyer provides an automatic payment authorization for the amount determined in accordance with Article 23 above (the amount excluding taxes plus the required VAT amount) and payable by the predetermined date.

##### **2- Factory scaling**

Monies owed are paid in cash with no discount.

#### **Article 24-2-3: Special case**

Supplementary conditions may override the provisions of this Article. This override cannot result in an extension of the total period of credit enjoyed by the buyer, except by authorization of the General Director of ONF. In particular, the supplementary conditions may provide for the payment of a lump-sum deposit.

#### **Article 25: Financial guarantees for single sale contracts**

##### **Article 25-1: Guarantee obligation**

In the case of a sale with deferred payment, the buyer is required to guarantee his commitments through a joint surety or an autonomous first demand guarantee, which may be an annual combined guarantee, on such conditions as provided hereinafter.

The buyer is exempted from the guarantee if he pays by guaranteed promissory note delivered before timber removal.

The guarantee beneficiary, ONF, the seller, or the owner, is specified in the supplementary conditions of contract.

The guarantee is provided by an institution authorized to stand surety to a public accountant in France, on the list of lending institutions and investment services providers accredited by

CECEI, the *Comité des Etablissements de Crédit et des Entreprises d'Investissement* (Committee for Lending Institutions and Investment Firms), or on the list of accredited insurance companies under Sector 15, “guarantee”.

A guarantee provided by a mutual guarantee scheme may also be accepted.

#### **Article 25-2: Joint surety and release of guarantee**

The guarantor is held jointly and severally liable for payment of the sale price including taxes up to an amount contractually determined by the supplementary conditions of contract and consistent with the estimated sale value, minus any deposit paid in cash or by remittance of a guaranteed promissory note or notes within 20 days of contract signature.

This amount is a limit of guarantee, up to which the surety may be called once or more times until the release of his commitment. The release of guarantee is pronounced after payment of the sale price in full.

The guarantor gives the surety bond within a period of 20 days following contract formation using a form available at ONF offices. Failing this, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-3: Autonomous first demand guarantee**

The buyer may propose to provide a first demand guarantee.

The guarantee is provided under the terms and conditions prescribed by the general conditions of contract and covers ONF or the communities owning forest land against the risk of non payment by the client for the share of the price not paid in cash.

The bank gives a surety bond as an autonomous first demand guarantor and as such is bound by a personal commitment in favour of the guarantee beneficiary, which is separate from the buyer's contractual commitments to the seller.

It is essential for the guarantee provided by the buyer to cover a period of 6 months beyond the contract due date. Failing this, the guarantee cannot be accepted.

The guarantor gives the surety bond within a period of 20 days following entry into the contract of sale. Failing this, forfeiture is pronounced by ONF on such conditions as set out in Article 37-1.

#### **Article 25-4: Annual combined guarantee**

ONF may suggest that the buyer provides an annual combined guarantee: an annual combined joint surety bond or combined first demand guarantee.

The guarantor undertakes to guarantee all outstandings of the buyer up to a limit scaled to the total value of the contracts for timber purchases entered into between ONF and the buyer during the year preceding the commitment. The scaled amount cannot be lower than a minimum threshold defined by the Governing Board of ONF. This amount is a limit of guarantee, up to which the guarantor may be called once or more times until the release of his commitment. The release of the annual combined guarantee is pronounced after the settlement in full of monies owing under the contracts.

The limit and validity period of the surety bond are provided by the deed of guarantee.

## **Article 25-5: Special case**

By derogation of Article 25-1, when timber is sold “factory-delivered”, the buyer is required to provide a joint surety bond or first demand guarantee even if the timber is paid for by a guaranteed promissory note. The supplementary conditions of contract prescribe the terms and conditions applicable to this case, in particular the guaranteed amount.

## **Article 26: Sale price payment terms and financial guarantees for supply contracts**

Sale price payment terms for supply contracts are the same as for single sale contracts subject to the following specifics:

- they apply separately to each tranche,
- payment may be by bank transfer (“swift” transfer for funds issued by foreign banking institutions).

Financial guarantees shall be provided upon contract signature as provided by Article 25 subject to the following specifics:

- they apply separately to each tranche,
- the institution providing the guarantee is specified in the supplementary conditions of contract,
- the guarantor is held jointly and severally liable for payment of the sale price including taxes up to an amount contractually determined by the supplementary conditions of contract and representing between 3 and 6 times the estimated value of an average monthly delivery,
- when payment is by a guaranteed promissory note, the buyer is exempted from providing a joint surety bond except if he wishes the enumeration report to be held as a removal permit in accordance with the provisions of Article 18-1. The amount committed by the joint surety may then be limited to between 2 and 3 times the estimated value of the average monthly delivery and this shall be determined by the supplementary conditions of contract.

If the means of payment and financial guarantee for one of the subsequent tranches are not provided, rescission of the tranche and termination of the contract may be pronounced as provided by Articles 37-1 and 37-2.

## **Article 27: Payment terms for supplementary invoices associated with contract execution**

Supplementary invoices associated with the execution of a contract (penalties, compensation for damage) are payable in cash within 20 days of invoice issuance, by cheque or bank transfer (“swift” transfer for funds issued by foreign banking institutions).

## **Article 28: Formal procedures in respect of value added tax**

For purchases of timber from state forests or forests belonging to communities subject to VAT, the buyer pays the VAT owed, as prescribed by Articles 23, 24 and 27 above, and receives from the seller an invoice showing the VAT amount.

For owners registered under the flat rate repayment scheme, the buyer shall, in pursuance of Articles 265 and 266 of Appendix 2 of the General Taxation Code, (i) attach to each payment, including each promissory note instalment, a purchase form or a delivery slip, and (ii) provide the owner, at the beginning of each calendar year, with an annual certificate summarising all

payments made during the previous year.

Purchase forms, delivery slips and annual certificates shall conform to the templates provided by the taxation authorities in Appendixes 1 and 2 of their essential documentation 3 I-2151 dated 30 March 2001.

In all cases, the supplementary conditions specify whether the owner is registered under the flat rate repayment scheme or general VAT scheme (with the option of VAT on debits or on credits) and in the latter case, they provide the applicable rate and payment terms.

#### **Article 29: Accountant in charge of payment**

The sale price is owed to the ONF accountant when the sale concerns products from state-owned forests or is part of a grouped sale in accordance with Article L. 144-1-1 of the Forestry Code.

The sale price is owed directly to the forest owner's accountant, when the sale concerns products from forests owned by a single owner other than the state.

The accountant to receive the payments is specified in the supplementary conditions of contract.

#### **Article 30: Issuance of a payment certificate**

For sales of an amount higher than 1,000 Euros excluding taxes, once the buyer has paid the sale price in full within the agreed time frame, in cash or by remittance of promissory notes, the public accountant issues a payment certificate, which is required by the relevant ONF office before it can issue the removal permit prescribed by Article 18-1 above.

Unless payment is by bank cheque, amounts paid in cash are deemed to be paid only once they are actually credited to the recipient's account.

**Article 31: General principle**

A lump-sum contractual penalty of 200 Euros applies for any non-compliance with or lack of awareness of the general and supplementary conditions of contract and the National Forestry Regulations, for which no penalty is provided by the Forestry Code or by Articles 32 to 35; this is owed to ONF, the seller. In addition, the buyer is required to make reparation for any harm resulting from an act of non-compliance, especially in the event of damage to the forest.

**Article 32: Penalties for failure to pay**

For all monies owing under the contract and not paid on time, as well as for any delay in providing the promissory notes within 20 days of the enumeration report, the buyer is liable to the forest owner as a matter of right:

- for interest on overdue payments per day of default, at the rate of three times the statutory rate of interest in effect on the due date,
- a fixed financial penalty amounting to 200 Euros to cover follow-up costs.

In the event of late payment and for as long as the monies are not paid, the seller is entitled to detain the timber of the next deliveries.

**Article 33: Penalties for failure to possess professional liability insurance** *(Not applicable)***Article 34: Penalties associated with timber harvesting and removal****Article 34-1: Compensation for lack of care to plants, seedlings and young trees** *(Not applicable)***Article 34-2: Compensation for lack of care to retained stems** *(Not applicable)***Article 34-3: Penalty for non-completion of the felling coupe in the time specified** *(Not applicable)***Article 34-4: Penalties associated with product removal and site restoration****Article 34-4-1: Failure to possess a removal permit**

Should the removal of products be carried out without the buyer having first obtained a removal permit as defined in Article 18-1, the buyer is liable to the forest owner for damages amounting to twice the value of removed timber on the basis of the prices set by the sale contract.

If product quantity and quality could not be established according to the rules, the value of the products is set by ONF.

**Article 34-4-2: Penalty for non-completion of product removal and/or site restoration**

The buyer is deemed to have fully executed the contract only once he has freed the landings and carried out the restoration works within the time frame specified for contract execution.

In the event of a partial removal of the goods and in the absence of a lease application in accordance with Article 20 of these clauses, the buyer is liable to the forest owner for damages

amounting to the value of timber remaining on the landing. The buyer is released from paying this sum by making the payment in kind which is to yield possession of the timber still on the landing. The transfer of property and possession takes place on the date of termination, in accordance with Article 40.

In addition, the buyer is liable to the forest owner for the value of the remaining works, assessed by ONF and marked up by the addition of a penalty equal to twice this amount. If the penalty owing under such provisions is lower than 1,000 Euros, it is increased to this fixed lump sum.

#### **Article 34-4-3: Non-compliance with timber conversion, enumeration, measuring or weighing procedures**

Non-compliance by the buyer with the provisions concerning the conversion, enumeration, measuring or weighing of goods prescribed by the supplementary conditions of contract gives rise to a lump-sum penalty of 500 Euros, payable to ONF, without prejudice to any damages owing to the forest owner, where applicable.

If product quantity and quality could not be established according to the rules, the value of the products is set by ONF.

#### **Article 35: Penalties associated with product delivery**

##### **Article 35-1: Non-compliant quantity**

In the case of supply contracts and in accordance with Article 13-1, if ONF is unable to supply the missing timber quantity, it is required to pay the buyer compensation amounting to 40% of the total price of products remaining to be supplied to reach the 90% required.

##### **Article 35-2: Product late delivery**

Delayed deliveries at the seller's request and with the prior consent of the buyer do not give rise to any penalty at the seller's expense, provided the seller makes such a request in writing and it is accepted by the buyer in writing.

In the absence of such an agreement between the buyer and the seller, a delayed delivery caused by the seller shall give rise to a lump-sum penalty of 200 Euros per delayed delivery at the seller's expense.

Delayed deliveries at the buyer's request and with the prior consent of the seller do not give rise to any penalty at the buyer's expense, provided the buyer makes such a request in writing and it is accepted by the seller in writing.

In the absence of such an agreement between the buyer and the seller, delayed deliveries at the buyer's request give rise to a lump-sum penalty of 200 Euros per delayed delivery at the buyer's expense.

#### **Article 36: Settlement and collection of penalties**

The total amount of contractual penalties arising from these Articles gives rise to a final payment invoice, which shall be paid in accordance with the provisions of Article 27 of these clauses.

The penalty beneficiary, i.e. ONF, the seller, or the forest owner, and the accountant responsible for collection are specified on the invoice.



## **Chapter 8 – SUSPENSION, FORFEITURE AND EXPIRY OF THE CONTRACT**

### **Article 37: Forfeiture and rescission for non-compliance with financial clauses**

#### **Article 37-1: Forfeiture in default of surety bond, first demand guarantee or annual combined guarantee**

If the buyer does not provide the guarantees required by Articles 25 or 26 of the general conditions of contract within the period specified, his forfeiture is pronounced in pursuance of Article L. 134-5 of the Forestry Code in particular.

Without prejudice to the penalties owing under the provisions of Article 31, the lot can then be re-offered for sale in which case the defaulting buyer is liable to pay the difference between his price and the resale price, on account of damages, without him being able to claim for any excess.

#### **Article 37-2: Rescission for failure to pay**

When the buyer does not remit his means of payment within 20 days of the enumeration report in accordance with the provisions of Articles 24 or 26 of these clauses, ONF may pronounce the rescission of the sale, with provision for a lump-sum contractual penalty for damages amounting to 20% of the sale price excluding taxes, payable to the forest owner, notwithstanding any penalties prescribed by Article 32 of these clauses.

#### **Article 38: Rescission and termination for failure to possess professional liability insurance** *(Not applicable)*

#### **Article 39: Termination for non-execution of harvesting** *(Not applicable)*

#### **Article 40: Termination for non-removal of products and/or site restoration**

##### **Article 40-1: Termination for failure to start timber removal**

Upon expiry of the contract execution deadline the contract may be terminated as a matter of right should ONF discover that timber removal has not started.

Termination comes into effect on the date of deadline expiry as defined above, and is performed as prescribed by Article 40-3 of these clauses.

When the buyer is unable to start removing the timber even though he has given his means of payment and guarantee, ONF may pronounce the termination of the sale contract, on the buyer's request, before expiry of the contract deadline.

##### **Article 40-2: Termination for non-completion of the contract in the time specified**

The contract may also be terminated by right if all the products have not been removed and/or if the restoration works of the landing or road network have not been completed on expiry of the prescribed deadline.

Termination comes into effect on the date of expiry of the above period, and is performed as prescribed by Article 40-3.



### **Article 40-3: Termination procedure**

In all cases, the buyer is liable for the penalties owing under the provisions of Articles 31, 32, 34 and 35 of these clauses.

Transfer of ownership of the remaining timber takes place on the day of termination.

If the goods could not be re-sold on equivalent terms on account of their natural deterioration, the buyer whose sale shall have been terminated in pursuance of these clauses shall be liable to the forest owner for damages amounting to the goods' loss of value and to no less than 50% of the value of the goods lost or depreciated calculated on the basis of the goods' initial sale price.

By a sale on equivalent terms it is meant a sale of similar goods of fair average quality under the market terms and conditions in effect on the day of sale termination.

### **Article 41: Rescission and termination of supply contracts**

#### **Article 41-1: General**

The termination or rescission of a supply contract in consequence of one of the provisions defined by the general conditions of contract gives rise to termination of the outstanding contract by right and renders any future tranche sales to be completed null and void.

#### **Article 41-2: Contract rescission for failure to complete the subsequent tranche sales of supply contracts**

For supply contracts with multiple tranches spanning one or more years, negotiations to set the prices of the next tranche shall start two months before the end of the tranche under execution.

Should an agreement not be reached before completion of the tranche under execution, any party may acknowledge the disagreement by registered mail with proof of receipt, indicating explicitly that both parties were unable to complete the sale for the next tranche.

This acknowledgment of the parties' disagreement puts an end to the negotiations of future tranches and leads to the rescission of the main contract by right. Rescission comes into effect on the due date of the tranche in progress and according to the time frame initially prescribed by the contract.

### **Article 42: Change or termination of the contract in connection with the withdrawal of one or more owners in the case of a grouped sale**

In the case of a grouped sale as per Article 7 carried out by ONF on behalf of several owners, should any communities or legal entities owning forest land under the public forest law system who contribute at least 15% to the contract, withdraw unilaterally by means of a deliberation which cancels that which was made to participate in the contract, the contract is changed to reduce the volume and value of the tranche in progress by an amount apportioned to the volume that should have been contributed by the withdrawing communities. Under any circumstance shall ONF be held responsible for their dropping out.

This change is by right unless the parties agree other provisions by contract amendment. It is notified to the buyer by ONF.

A contract change or termination in pursuance of this Article does not give rise to any compensation for loss or damage.

#### **Article 43: Discontinuance of business**

In the event of the permanent discontinuance of business for a reason other than a safeguard or redress procedure or winding-up proceedings or the buyer's death, the rights and obligations of the defaulting buyer may be transferred to a third party by the buyer, subject to ONF's prior consent.

In the event of a transfer, the assign shall forward to ONF, within a period of 20 days following the transfer, the means of payment and guarantees required by ONF under Articles 24 to 26. Failing this, the transfer is deemed lapsed.

#### **Article 44: Death of the buyer**

In the event of the death of the buyer as a natural person, the contract shall expire by lapse as a matter of right.

ONF agrees with the heirs during succession on the ways and means available to close out the situation.

#### **Article 45: Force majeure**

When execution of a contract by one or the other party is rendered impossible by an event of force majeure, rescission of the contract shall be pronounced at the request of the first party to so do.

The rescission of the contract entails the rescission of the sale as a matter of right and puts the parties back in the position where they were before entry into the contract.

If contract execution is temporarily impossible but able to resume at a predictable date without the financial terms of the contract being affected, the contract may be suspended for a period agreed between the parties, provided it does not exceed 6 months.

Force majeure does not lead to any compensation for damages, in accordance with Article 1148 of the Civil Code, in consequence either of contract suspension or contract rescission.

## Chapter 9 – COLLECTIVE PROCEEDINGS

### Article 46: Compulsory safeguard, redress and liquidation of companies

#### Article 46-1: Timber detention

In accordance with the provisions of Article 15-2 of these clauses, the landings designated in the forest and log yards are not deemed to be part of the buyer's store.

Therefore, if safeguard, redress or winding-up proceedings are called for, the seller is entitled to exercise the detention of timber still on the designated landings or log yard in accordance with Article L. 624-14 of the Commercial Code.

This is a right he exercises by virtue of the unpaid seller's lien (Art. 1612 of the Civil Code), which is as much in his own interest as in the interest of the guarantor, in consequence of the monies that the guarantor may already or may be required to pay on account of the sale price, notwithstanding any promissory notes which may become due.

The detention is notified by the seller by registered letter addressed to the administrator (or liquidator) and the buyer. The detention comes into effect upon receipt of this letter, which may be held as a suspension of removal permit.

The detention prohibits any timber removal.

In order to lift the detention right, the buyer and administrator (or liquidator) have to reach an agreement with the guarantor to pay any monies owing on account of the sale price, or find another solution between them, if the guarantor has already replaced the buyer in so doing.

In all cases, the seller lifts the detention right only on the basis of a written statement by the guarantor authorizing the end of timber detention.

The lifting of a detention right is evidenced by a decision of the seller in writing, by which the removal permit becomes effective once again.

#### Article 46-2: Election to continue, assign or terminate the contract under execution

If collective proceedings are called for, and notwithstanding the use of the detention right mentioned in Article 46-1 above, only the administrator (or liquidator) has the authority to decide on the fate of the outstanding contract (Art. L. 622-13 and L. 641-10 of the Commercial Code). If the court has not appointed an administrator, the buyer decides on the fate of the contract in agreement with the judicial agent (Art. 627-2 of the Commercial Code). The buyer shall submit this agreement to the seller.

The administrator or buyer (when an administrator has not been appointed), or liquidator, has one month to announce his decision from being notified by the seller by registered mail that he has been called upon to decide on the fate of the outstanding contract.

In the absence of an explicit decision within the legal period, the seller determines the termination of the contract by right in pursuance of Article L. 622-13 of the Commercial Code, in accordance with Article 46-2-3.

### **Article 46-2-1: Continuation of the outstanding contract**

When continuation of the contract has been decided and the sale price has been fully settled by the buyer prior to the opening judgment, the contract is continued in a normal manner.

However, when the decision to continue with the contract conflicts with timber detention exercised in accordance with Article 46-1 above, new means of payment need to be provided by the buyer on the basis of the agreements reached with the guarantor and the administrator (or liquidator) and endorsed by the master in chambers, since the payment of a debt previous to the opening judgment requires authorization (Art. 622-7 Paragraph 3 of the Commercial Code). The seller will lift the detention right on the basis of the payment certificate issued by the relevant accountant, thus enabling contract execution to actively resume.

### **Article 46-2-2: Transfer of the outstanding contract**

In the event of contract continuation, the buyer's rights and obligations may be assigned to a third party provided the prior consents in writing of both ONF and the guarantor of the buyer in his capacity as the assignor have been given.

The transfer comes into effect and the assign receives his removal permit only once he has deposited with the relevant accountant the means of payment for the remainder of the sale price owing under the assigned contract, together with the required guarantee, where applicable.

### **Article 46-2-3: Termination of the outstanding contract**

When total or partial termination of the outstanding contract has been decided through an explicit decision or silence maintained for more than one month from notification of the formal notice to decide on the fate of the outstanding contract, such total or partial termination is pronounced in accordance with Article L. 622-13 of the Commercial Code.

## Chapter 10 – MISCELLANEOUS PROVISIONS

### Article 47: Settlement of disputes

For any disputes which may arise during execution of the sale contract, only the French courts of jurisdiction are competent. The court having territorial jurisdiction is that of the location of entry into the contract.

### Article 48: Access to timber sales

ONF is entitled to deny access to timber sales to buyers who, on account of previous timber purchase contracts:

- have not paid for overdue invoices in full,
- have been penalized repeatedly in pursuance of Chapters 7 and 8 of these clauses.

# National Forestry Regulations

## Foreword

The forest is a fragile natural environment which needs to be preserved. The balance of such a complex ecosystem requires that any human activities carried out in the forest comply with rules of good conduct. The forest also plays an important social role because of its potential for providing opportunities for public access and landscape value for space planning.

The *Office National des Forêts* (ONF) is certified in compliance with ISO 9001 and ISO 14001. ONF has made a commitment to achieve PEFC forest certification, in collaboration with its partners in the timber industry. ONF has defined an environmental policy under ISO 14001 and has undertaken to implement the sustainable management quality policy prepared by PEFC regional entities<sup>13</sup>. These approaches include protective measures for the forest environment which ONF must comply with and enforce.

Persons engaged in activities in a public forest (state-owned forests and forests owned by communities or public institutions under the public forest law system) should ensure that they do not impair the integrity of the forest environment, that they adhere to good professional practice with regard to the quality of work carried out in the forest and provide for their own safety as well as the safety of third parties and other users. The rules of good conduct described hereinafter are based on good practice and professional practice recognized and shared by the industry as a whole.

The National Forestry Regulations make such rules compulsory. They are binding on any persons involved in activities in a public forest in whatever capacity, in order to harvest timber, whether they are:

- professionals: timber buyers, harvesting companies and forest contractors, including their employees, agents, providers or sub-contractors,
- or members of the public: individuals collecting estovers and taking or purchasing small products.

All these persons are referred to hereinafter by the term *intervening party*; the following provisions are enforceable against them in so far as they concern the area of competence and scope of liability associated with their status. When a contract giver, the intervening party must communicate all provisions and necessary information concerning these Regulations and the supplementary conditions of contract to the persons working on his behalf.

The term *ONF agent* is used as a generic term to refer to the ONF person qualified to take the decision at issue. This person is usually named in the timber sales contract or contract for the supply of services (agent in charge of the felling coupe for example).

Harvesting works carried out by ONF or by Communes owning forests<sup>14</sup> under the public forest law system shall also be carried out in compliance with these Regulations.

<sup>13</sup> These Regulations comply with Appendix 7 "National set of rules for forestry" of the *Schéma français de certification forestière 2007-2011* (French Framework for Forest Certification 2007-2011).

<sup>14</sup> Throughout, the document refers to ONF as the manager of forests under the public forest law system and to the communities as owners. When one or the other carry out works themselves, they are bound by the liabilities and provisions vested in the intervening parties.

Any non-compliance with these Regulations results in penalties defined in the timber sales contract (see the general conditions of sale) or contract for the supply of services.

Any changes in the Regulations that might take place after these Regulations were approved and which would go further than the provisions therein shall be applied by the intervening party.

The National Forestry Regulations are applicable only to public forests in continental France (including Corsica). A document specific to French overseas Départements will be drafted later, taking account of their distinctiveness.

There can be no exemption from the Regulations except as a consequence of general temporary measures taken in an emergency and ordered by the Director General of ONF and specifying the scope of the exemption (geographical area and associated provisions). As the circumstances require, such an exemption may be applied to outstanding contracts.

The technical terms used in the Regulations are defined in the attached glossary.

# 1 PRESERVATION OF THE NATURAL FOREST ENVIRONMENT

## 1.1 Environmental protection

The intervening party is required to comply scrupulously with:

- effective laws and regulations, in particular in respect of forests and the environment concerning:
  - . the conservation of natural environments and fauna and flora,
  - . the conservation of biotopes and habitats,
  - . the protection of water and wetlands,
  - . the conservation of protected monuments and identified heritage features of special interest;
- other voluntary commitments made by ONF or the forest owner (PEFC commitments, commitments associated with ONF's environmental policy on account of its ISO 14001 certification, Natura 2000 contract or adherence to a Natura 2000 charter) which are specified in the supplementary conditions of contract;
- protective or inventory measures specific to the compartment being harvested and specified in the supplementary conditions of contract.

### 1.1.1 Biodiversity conservation

In order to conserve natural environments and animal and plant species, part of the forest land is subject to regulations (national parks, nature reserves and biological preserves, biotopes protected by prefectorial order) or to management contracts (regional nature parks, Natura 2000 sites).

In order to comply with these regulations and contracts, harvesting operations may be subject to specific provisions.

In all compartments, a decision may be made to leave dead or dying trees standing when trees are designated for felling, in order to contribute to the biodiversity of natural environments. Patches of ageing or senescent trees may be maintained intentionally within the boundaries of the harvesting site. Special provisions may apply to cause as little disturbance as possible to heritage animal species, while ensuring that a sufficiently long harvesting period is granted.

No substances shall be poured into the river system or the natural environment.

### 1.1.2 Soil conservation

A party intervening in the forest shall endeavour to conserve soil physical integrity by using appropriate equipment for local conditions and organising the works in such a way as to reduce impacts on soil caused by his activities.

Supplementary conditions may apply as required by soil characteristics. If not provided by the supplementary conditions, the choice of harvesting system is left to the intervening party.

Off-road haulage machinery and vehicles travel in the corridors, extraction roads and tracks designated by the ONF agent at the start of harvesting. Where there are no or not enough facilities, the intervening party shall adapt the harvesting technique he uses to the soil's physical capacity in the interest of soil conservation, after discussion with the ONF agent.

Any track opening involving civil engineering works requires the prior consent of the ONF agent and of the owner, where relevant. Works resulting in a cut or fill greater than 100 m<sup>2</sup> and



higher or deeper than 2 m shall conform to the provisions of Article R. 421-23 of the Urban Code.

### **1.1.3 Conservation of water quality and wetlands**

If an intervening party's site is located within a regulatory potable catchment area, he shall comply with effective prefectorial orders and regional PEFC rules which define specific rules for such areas. They are specified in the supplementary conditions of contract.

The intervening party shall take appropriate measures to protect the condition and quality of streams, wetlands and associated habitats. In particular, he makes appropriate provisions to prevent any lubricant and fuel spillages.

All due precautionary measures shall be taken during harvesting in order to preserve the quality of aquatic environments and drainage. For sites identified in the supplementary conditions with the words "water protection", harvesting is subject to specific supplementary precautions because of the presence of springs, streams, watercourses, ponds, pools, wetlands and potable water catchment areas.

Wetlands not subject to an inventory or a protection scheme (Natura 2000, special interest wetlands, biological preserves etc.) are also specified to the intervening party by ONF in the supplementary conditions so that he can take the necessary steps to avoid crossing the wetlands with machinery or storing timber on them.

In pursuance of Articles L. 214-3, L.215-9 and L. 215-14 of the Environmental Code concerning drainage and maintenance of watercourses and Article L. 432-2 of said Code concerning water pollution, the storage of logs and disposal of slash in streambeds, riverbeds and ditches is forbidden. Likewise, felling into a streambed or riverbed should be avoided as far as possible by using techniques such as directional felling.

It is forbidden to cross and travel along watercourses (streams and rivers) when not using the appropriate permanent facilities and infrastructures. If there are no such facilities, the intervening party is required to apply for an administrative authorization issued by the relevant authority in respect of police regulations governing watercourses if he wishes to use removable devices or travel along the watercourse on a temporary basis<sup>15</sup>.

### **1.1.4 Prevention of pollution risks**

In order to reduce pollution risks the intervening party using non portable machinery shall possess appropriate storage, filling and disposal equipment for oils and hydrocarbons, specifically designed for these purposes, as well as absorbent products. This kind of equipment shall be in place permanently on the sites and/or in the machinery in order to prevent spillages in the natural environment and stop the flow of polluting substances in the event of a hose failure or other similar incident.

If the environment has been polluted, the intervening party shall also inform the local authority and ONF agent immediately.

### **1.1.5 Use of biolubricants**

The intervening party shall comply with the regulations pursuant to Article 44 of the *Loi d'orientation agricole* (Agriculture Act) of 5 January 2006.

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<sup>15</sup> Currently: DDAF or MISE (Mission Inter-Services de l'Eau)

The extensive use of biodegradable lubricants or lubricants with a European Ecolabel is compulsory at all times for chainsaws and tree feller heads in sensitive natural areas.

Sensitive natural areas include:

- watercourses, canals, lakes and water stretches, ponds, lagoons, fresh water estuaries;
- shores and banks (area of ground located less than 10 m away from the water edge) of watercourses, canals, lakes and water stretches, ponds, lagoons, fresh water estuaries;
- dunes, coastal heathland, beaches and lidos, foreshores and coastal cliff edges;
- the following protected spaces: central areas of natural parks, natural reserves, biological preserves in state-owned forests, sites pertaining to the *Conservatoire de l'espace littoral et des rivages lacustres* (Shoreline and Bankline Protection Board), wetlands such as defined in Article L. 211-1 of the Environmental Code;
- immediate, close and distant regulatory catchment areas associated with a drinking water supply in pursuance of Article L. 212-1 of the Environmental Code.
- and, where relevant, other sensitive areas defined by regulations pursuant to Article 44 of the Agriculture Act.

In line with the commitments made by ONF as part of its environmental policy, this obligation will be extended gradually to include all public forests by 31 December 2011.

#### **1.1.6 Tree marking**

If the intervening party needs to make markings, he should not use the colours or marking methods used by the ONF agent on the site. The use of paint is only permitted on marked trees or if an exemption has been granted by the ONF agent.

### **1.2 Protection of forest stands**

#### **1.2.1 Protection of unmarked stems during harvesting**

Harvesting of stems shall be carried out in a manner that preserves the stand in place which shall not sustain any direct damage as a result of the intervening party's actions. In particular, final crop trees and designated trees of biological interest shall be preserved. Hardwood maidens and seedlings broken during harvesting shall be cut back by the intervening party.

#### **1.2.2 Preservation of natural seedlings (regeneration phase and selection forest) and young plants**

Particular care shall be taken with regard to felling direction in the case of felling coupes where regeneration growth is present: the intervening party ensures that stems are felled directionally with as little contact as possible from the falling stems or subsequent extraction activities with seedling patches.

Depending on the condition of the seedlings concerned, the supplementary conditions may prescribe one or more of the following rules in order to protect regeneration growth:

- R1: Total ban on harvesting works (felling, skidding, extraction) between 15 April and 31 August
- R2: Ban on felling between 15 April and 31 August.
- R3: Ban on skidding and extraction between 15 April and 31 August.

When rules R2 and R3 are prescribed, crown processing and dismantling are allowed during the ban period.

In the case of rule R3, felling is permitted and crown dismantling is carried out as felling advances.

R4: Crown processing and dismantling outside the period from 15 April to 31 August.

Supplementary conditions may modify the conditions above, in mountainous areas for example.

### **1.2.3 Preservation of stands against parasites**

For softwood felling coupes at risk from parasite spread, specific information is included in the supplementary conditions of contract, such as:

#### **“Conifer-base polypore” risk (*Heterobasidion annosus*)**

In such a case, the intervening party is responsible for implementing the requisite preventative measures to stop the spread. Such measures include the application of a urea or boron solution (product references provided by the ONF agent) on stumps as trees are felled and in any case no later than half a day from felling, either by hand (paint-on treatment or spraying), or mechanically when tree fellers are equipped with treatment devices.

#### **“Bark beetle” risk**

In such a case, specific provisions or prefectorial orders may prescribe a strict time frame in which to carry out the extraction of products out of the forests, as well as specific slash management options.

When the timber cannot be transported sufficiently far away from a softwood stand, the intervening party may be ordered to debark the timber on the felling area or landing or, exceptionally and with the ONF agent's permission, to treat it with an insecticide on the landing (in so far as the landing location is compatible with such a treatment, i.e. it is outside a protected area, far from a water supply source, ditch or watercourse). If such an insecticide treatment is carried out, it should be done with an appropriate registered commercial product and applied by a certified individual/company (see Article L. 254 of the Country Code). Treated timber shall be identified (see Section 3.4 also).

If parasites are detected on timber while on a landing, the timber owner may be formally notified to take appropriate preventative measures at once or take the products away from the forest immediately.

### **1.3 Fire protection**

Fires shall be lit and used in the forest in strict compliance with policing regulations and prefectorial orders in respect of forest protection against fire, and strict compliance with fire ban periods in forests shall be ensured.

In the event of a fire, the intervening party, his staff and subcontractors are required to:

- first call emergency services immediately,
- then alert the closest ONF agent as well as the local authorities or Gendarmerie.

Throughout harvesting, the intervening party shall keep brush-cut edges of fire lanes as well as firebreaks clear of obstructions and in working order. He shall ensure that vehicles and machinery used for the harvesting works are parked in such a manner that they do not impede access and circulation of emergency services.

## **2 PROTECTION OF PERSONS AND PROPERTY – LIABILITY OF THE INTERVENING PARTY**

The intervening party has a third-party liability for any damage inflicted upon another person as provided by general liability law, or by special laws applicable in the specific circumstances (in particular Articles L. 135.10 and L. 135.11 of the Forestry Code, and Article L. 110.1 of the Environmental Code in respect of environmental liability). He shall provide proof that he holds appropriate professional liability insurance for his activities.

The intervening party operates in the forest on his sole liability toward third parties.

He has penal liability for any offences committed while carrying out his activities on such conditions as prescribed by effective laws and regulations, especially the Labour Code, Forestry Code, Country Code and Environmental Code.

### **2.1 Due respect for other forest users**

Many different activities are carried out in the forest, such as walking, hiking on marked footpaths, horse riding, cycling, hunting etc. These activities are carried out privately by a wide range of families or individuals not aware of professional practices in the forest, or by right-holders who have a contract with ONF or the forest owner. Forest site planning shall therefore allow for the fact that the forest is an open space and the intervening party shall take all safety measures required as a result of this.

ONF may need to specify the conditions under which work can be carried out in the forest on certain days, to allow for hunting or walking or in any other particular circumstances associated with the use of the forest by other right-holders. The supplementary conditions of contract shall contain information on such provisions. Specific regulations applying to felling in certain national or regional parks are also entered in the supplementary conditions.

In addition, the intervening party is required to inform other forest users of any harvesting works to be carried out and associated risks, considering visitor numbers and felling coupe accessibility. In any case, he should comply with the regulations in effect concerning felling coupe reporting (Decree 2003-131 of 12 February 2003 and Article L. 324-11-3 of the Labour Code) and signage.

As far as possible, the intervening party shall maintain the facilities in place on the site clear of obstructions and in working order. If he has to prohibit the use of these facilities for safety reasons, he shall put up appropriate signage for the duration of harvesting.

### **2.2 Conservation of the natural heritage**

The intervening party shall preserve cultural and architectural heritage features of special interest, historical monuments and listed or scheduled sites located within and around the boundaries of the harvesting site. These features are identified in the supplementary conditions of contract and on the ground so that any special protection measures they need can be planned.

If any archaeological heritage features are discovered by chance, the intervening party shall declare the chance find immediately at the Mairie (town hall) in accordance with Article L. 531.14 of the Heritage Code and notify the ONF agent.

The intervening party shall take care to avoid damage to identified trees of special interest, such as resulting from wounds or soil compaction in their vicinity.

### 2.3 Site safety

The intervening party is responsible for taking all the required safety precautions, at his own expense, in respect of persons and belongings during the planning and execution stages of the works in order to prevent hazards of whatever kind which may be caused by harvesting.

The intervening party maintains his own safety and that of his employees in strict compliance with regulations and with occupational health and safety rules in particular, as well as with the DUER, *Document Unique d'Evaluation des Risques* (unique document for risk assessment). In particular, he ensures that all persons engaged in a particular activity on the site:

- have adequate training or experience for the task they are carrying out;
- have been given approved personal protection equipment (PPE) which is suitable for the job and periodically changed, after an assessment of the risks associated with each workstation has been conducted and in compliance with effective regulations; are informed of their obligation to use the equipment and are actually using it;
- have been given equipment and machinery with all compulsory safety devices and which is regularly serviced in accordance with the manufacturer's instructions.

In an emergency, the intervening party, when faced with a particular danger during harvesting, shall take all relevant steps immediately to prevent an accident from happening. As may be necessary, he asks for the help of the police and emergency services.

If an explosive war device is found, the intervening party shall:

- suspend work in its vicinity;
- alert the ONF agent immediately, who will ensure that all necessary steps to neutralize the device are implemented;
- resume operations with the agreement of the ONF agent.

Where applicable, in areas which are particularly affected by this problem, the intervening party shall comply with any specific territorial procedures modifying these provisions.

### 2.4 Legal liability

The intervening party is deemed to be very familiar with the terrain on which he is required to operate on the basis of the supplementary conditions of contract in particular. During the preliminary meeting at the start of harvesting (see Section 3.2.1), the ONF agent specifies the information provided by the contract by adding any necessary information.

The intervening party is thus deemed to know any structures, facilities, infrastructures, buildings etc. visible and apparent, located within and immediately around the boundaries of the site, without objecting he was not informed about such things by ONF or the forest owner.

The information provided by the ONF agent does not exempt the intervening party from the fulfilment of his regulatory obligations where applicable, in particular in respect of the application of Decree 91.1147 dated 14 October 1991 concerning the presence of underground, aerial or subaquatic structures for the transport or distribution of electricity, hydrocarbons, gas, telecommunications etc.

ONF or the forest owner may be held liable for any accidents occurring during harvesting and caused by the spontaneous or induced explosion of war devices, slumping or sliding, caving in of old underground facilities or by the presence of remains of various military equipment (iron stakes, barbed wire), only in so far as it can be established by evidence that they have committed an actual and serious fault.

### **3 GENERAL HARVESTING CONDITIONS**

#### **3.1 Site planning**

##### **3.1.1 *General principle of the professional's responsibility for site planning***

The intervening party is responsible for site planning. In the absence of specific provisions, he is responsible for choosing the felling and extraction techniques and equipment, which he is required to adapt to:

- the felling coupe conditions,
- the requirements for protection of the natural environment, the forest and its facilities,
- the safety of operators and other forest users.

He conforms to all effective laws and regulations concerning his activities and the machinery and equipment he uses, which he is deemed to be familiar with and have control over.

The intervening party shall take due care with all facilities located on or immediately around the site (pipelines, aerial or underground power lines, playgrounds, game enclosures...) as well as with all routes and roadsides used for access to the site. In particular, he is required to deal directly with the facility operator and take the relevant steps (notice of intent to start works) as prescribed by the above-mentioned Decree 91.1147 of 14 October 1991 and comply with any legislative provisions which may be notified to him.

In the event of damage to fencing (young stand protection against wild animals) the intervening party is required to make all necessary temporary repairs as a matter of urgency to maintain protection and alert the ONF agent without delay.

Where necessary, for sites bordering on or crossed by a public road open to traffic, the intervening party shall obtain an order to regulate or stop traffic temporarily from the relevant authorities. Suitable signage shall be put up and maintained in accordance with the provisions of the operator of the road at issue and government directions on road signage (Official Journal of 30 January 1993).

##### **3.1.2 *Working hours***

The intervening party cannot work on Sundays or public holidays.

In addition, without prejudice to the provisions specific to the Forestry Code, timber removal is prohibited between 10pm and 5am.

The intervening party may be exempted from these provisions by a written exemption granted by the ONF agent.

##### **3.1.3 *Installation of temporary site facilities***

The procedure to install temporary site facilities (mobile shelters, caravans etc.) or any shelter, workshop or shed in the forest, as required by harvesting, shall first be authorized in writing by the ONF agent, who shall choose the appropriate location and determine the terms and conditions for such a use of forest land. The intervening party is responsible for any damage and nuisance resulting from the installation and use of these facilities.



### **3.1.4 Preservation of reproductive material from classified stands or seed stands**

Felling coupes marked in classified softwood seed stands are identified in the supplementary conditions: these will show the words “Seed collection” and specify the species for which there is a compulsory felling period, which is specific to each species.

Crown processing may only take place once the harvesters have finished their work or by authorization of the ONF agent.

Felling coupes marked in seed class hardwood stands, where seeds need to be collected, are identified in the supplementary conditions; they bear the description “Seed collection” and specify the species and period during which felling is prohibited (except in the case where it has been authorized by the ONF agent).

## **3.2 Conduct of operations**

### **3.2.1 Preliminary meeting at the start of harvesting**

A preliminary meeting at the start of harvesting is organised between the intervening party or his appointed representative and the ONF agent. It is incumbent on both the intervening party and the ONF agent to give each other a 48 hours notice when setting a date for the meeting.

The preliminary meeting enables the buyer to obtain all information relevant to the conduct of operations and enables the ONF agent to clarify the most important facts.

Its aim is to:

- to clearly identify the site boundaries, stand and trees in the stand (marking of trees to be felled, trees to be retained);
- to recall the environmental provisions to be complied with;
- to gain an understanding of constraints and risks specific to the felling coupe (time frame and prohibited periods, equipment to be treated with care, protection and special areas, road network, harvesting and extraction, extraction routes, slash management, presence of seedlings, landing location, presence of structures, facilities etc.);
- to identify any issues in relation to attendance of the public and actions to undertake;
- to verify that the machinery is appropriate to the features of the terrain (soil condition) and complies with the supplementary conditions;
- to identify the various operators, especially the representative of the intervening party (as the beneficiary of the harvesting contract), who shall be contactable at all times and able to understand and speak French;
- to verify the credentials of the staff responsible for using insecticides in consideration of the specificities of the harvesting site;
- to specify how the emergency services shall be called in the event of an emergency;
- to define how and when the ONF agent shall be contacted, before the start of the works and before they resume following a period of inactivity.

An inventory of the felling coupe, roads servicing the coupe and facilities may be conducted in the presence of both parties before the start of operations.

### **3.2.2 Compliance with professional practice during harvesting**

The intervening party conducts harvesting according to recognized good and customary professional practice and in accordance with effective standards, in particular with regard to

stem felling and conversion, product skidding and extraction as well as timber grading and scaling.

As a minimum, the intervening party shall comply with the rules of professional practice repeated below:

### **Stem felling**

Except if particular provisions are given, stems are felled as close to the ground as possible (at the base), when topography permits. What remains of the hinge on the stump shall be removed and the felling plane shall be cut horizontally. For stems marked on the stump, the part of the tree with the hammer imprint shall remain undamaged and not come away from the ground or be obscured. For trees marked on the stump, notching of the stump is required except otherwise provided by the supplementary conditions or by explicit exemption given by the ONF agent, in the case of mechanized felling in particular.

Felling is directional and takes account of the extraction direction and of any extraction roads or cable lines. All necessary arrangements, in particular with regard to directional felling, shall be made so that falling crowns cause the least possible damage to retained trees, seedling patches and plantations, including during extraction.

Every effort shall be made for harvested trees to be put to the ground immediately. If this is not possible, the area of risk shall be delineated immediately and trees shall be taken down as soon as possible. If a designated stem is lodged in a retained stem, the lodged tree is taken down by appropriate means as necessary and if damaged, the retained stem may be felled subject to the prior approval of the ONF agent.

The supplementary conditions may prescribe the topping of certain stems before felling. Topping shall be carried out by qualified staff.

### **Stem conversion**

Logs shall be carefully lopped (and any forks shall be removed), with the knots completely sawn off, at the location of felling and cross-cut to a suitable length, especially if they have a fork or pronounced sweep, in order to preserve the stand and facilities during skidding and extraction operations. The butt end is cornered and trimmed to facilitate product extraction.

### **Product skidding and extraction**

Product extraction is carried out via the extraction roads and secondary roads servicing the felling coupe or via routes authorized by the ONF agent. When additional routes need opening, this shall be done at the start of harvesting operations, with the prior consent of the ONF agent.

The skidding of products inside the stand is carried out using a cable or articulated arm or any other method likely to reduce stand damage (cable-crane, animal traction etc.). Loads are suitable to the ground bearing capacity. Log trailing is possible provided that the trail is not larger than the width of the tractor and that logs are lifted as much as possible; in all cases outside mountainous regions, it is forbidden on surfaced or metalled roads, except with the prior consent of the ONF agent.

If some converted timber is inaccessible to off-road haulage machinery and cannot be extracted without damaging the soil or stand, the intervening party and ONF agent shall agree on the opening of new extraction roads. If this is the case, these shall be opened as provided by



Article R. 421-23 of the Urban Code (cut or fill greater than 100 m<sup>2</sup> and taller or deeper than 2 m).

When cable logging (by long distance cableway or cable crane) is carried out, notice shall be given to the Direction Générale de l'Aviation Civile before the start of harvesting for lines higher than 50 m above the ground.

In the event of prolonged bad weather likely to affect the condition of the cutover, the intervening party or the ONF agent suspends skidding and extraction in order to preserve the forest environment and in particular the soil's physical integrity. The interruption is strictly limited to the time necessary for the soil to drain. If necessary, it gives rise to an extension of the contract execution time frame. The procedures for contract suspension, restart and extension are set out in the contract provisions.

### **3.3 Product stacking**

Harvested products are stacked on the landings provided, in such a manner that they do not hamper traffic or damage the forest or facilities and do not pose a threat to the safety of people. With regard to the latter point, the intervening party is obliged to ensure that the landing is safe by ensuring that the timber stacks are perfectly stable and by putting up signage if the timber stacks pose a safety risk. The use of the harvesting site cutover and landings takes place on the responsibility of the intervening party.

The intervening party is reminded that in accordance with Article L. 135-8 of the Forestry Code, he is not allowed to stack timber on the cutover/site or on the landings allocated to him, which do not originate from the felling coupe/site, unless expressly allowed to do so by the ONF agent.

Landings shall be restored after use.

### **3.4 Treatment for pin worm holes**

When felled timber cannot be removed within the time frame required to avoid any degradation of the products, timber debarking or treatment may be carried out on the landing, provided the natural environment is protected as per Title 1 of these Regulations and only with the written authorization of ONF. The intervening party is then required to provide an Approval as prescribed by Act 92/533 of 17 June 1992 on the application of agricultural phytosanitary products and similar products by service providers. Suitable signage is put in place after treatment.

### **3.5 Product removal, traffic on forest roads not accessible to the public**

Without prejudice to the special provisions of the Road Network Code on damage due to improper use of public or country roads as a consequence of the removal of forest products, the intervening party is responsible for damage due to the misuse of private forest roads used for product extraction and transport. The intervening party is also liable for any damage due to the improper use of the harvesting roads for which right of way belongs completely or in part to abutting owners and which the owner's right-holders use for the purposes of harvesting.

As a right-holder, the intervening party is authorised to have access to the forest roads not accessible to the public for the duration of harvesting.

Throughout the harvesting period, the intervening party shall keep the forest roads open to traffic by ensuring that they are not blocked for a long period (except in the case of specific

technical constraints. e.g. use of a cable crane). If he has to block traffic, the intervening party shall place road signs on either side of the blockage to inform the public of the road closure. The blockage arrangements shall be removed if the harvesting works are suspended without the authorization of the ONF agent.

In the event of concurrent harvesting operations in the same forest area, particular care should be taken to allow free access to all intervening parties.

The intervening party is required to clean up the roads of any material deposited during timber extraction which is likely to hamper traffic. He should also ensure that the ditches, grips, waste pipes, drainage ditches and any other drainage structures are kept in good operating order and that the road signs and other traffic control devices are maintained in good condition.

In order to keep the surface course of forest roads in good condition and to avoid imprints, the intervening party is required to use appropriate devices under truck stabilisers.

Outside mountainous areas, machinery with chain fitted tyres and tracks is not allowed on surfaced forest roads, except if an explicit exemption has been granted by the ONF agent.

In the event of prolonged bad weather likely to seriously affect the condition of the roads and tracks used, the operator of the affected road network may decide to restrict the traffic temporarily. With respect to forest roads, restrictions to traffic are strictly limited to the time required for the relevant roads and areas to drain. Thaw barriers may be put in place on forest roads by the ONF agent or the road owners.

### **3.6 Management of harvesting slash**

In order to protect regeneration growth, facilitate the breakdown of organic matter and conserve soil integrity which may be affected by travelling off-road haulage machinery, products remaining on the felling area, whether they are part of the sale or not, are managed as provided by the supplementary conditions.

In all cases, slash management shall be carried out:

- away from drainage and boundary ditches, as well as from watercourses, ponds or wetlands;
- away from footpaths, bridle ways and serviced areas for public access;
- away from boundary and compartment limits.

In the case of steep slopes, timber pieces removed from the logs (butts etc.) are arranged longitudinally in the direction of the greatest slope to stop them from rolling.

Whatever the slash management option used, slash shall not cover the stumps of felled trees included in the felling coupe.

Given the silvicultural objectives or the specific features of the terrain under consideration, the various options of slash management likely to be prescribed by the supplementary conditions are specified herinafter, in accordance with good professional practice:

If a specific option is not prescribed by the supplementary conditions, the option to be used is to spread the slash on the felling area.

<b><i>Options for slash management</i></b>	<b>Description</b>
Leaving on site unprocessed	Leave crowns on site unprocessed.
Dismantling of crowns	Leave crowns (or other products) on site after dismantling and cross-cutting into 2 m lengths maximum.
Chipping	Chip slash on the cutover.
Redistribution on the felling area	Redistribute slash on the cutover to facilitate breakdown and reduce damage to seedlings. Process slash into 1 m lengths maximum in the case of regeneration felling coupes and 2 m lengths maximum in the case of other types of coupes.
Spreading on extraction roads	Lay slash across extraction tracks as extraction advances, with main branches transverse to direction of machinery travel. The intervening party shall ensure by all means necessary that extraction is actually carried out on the extraction roads which have slash mats.
Forming windrows	Form small size windrows no larger than 3 to 4 m wide, as extraction progresses.
Stacking	Do not stack against standing trees or over seedlings or plantation areas. Stacks are formed as extraction progresses.

### **3.7 Disposal of miscellaneous non-forest waste**

In order to conserve the natural qualities of the site and the biological integrity of the forest environment, the intervening party shall remove from the site, ancillary areas and the forest all harvesting waste other than slash, especially metal, glass or plastic objects (cans, cables, chains and other manufactured waste items).

The intervening party is responsible for the disposal of this waste via the appropriate channels (Art. L. 541-2 of the Environmental Code) and for its recycling whenever possible.

### **3.8 Equipment maintenance**

Maintenance of mechanical equipment shall be kept to a minimum in the forest and carried out outside the forest instead, in a workshop or serviced area. However, if such maintenance operations need to be carried out in the forest, the intervening party shall take all necessary precautions (distance from watercourses and water stretches, waste recovery system etc.).

### **3.9 Restoration of sites to their former state**

Restoration of sites to their former state includes the repair of damage and cleaning of the sites on such technical conditions and in the time frame set out in the contract, at the intervening party's expense and on his sole responsibility.

As such, the intervening party shall in particular:

- replace or restore forest boundary bollards, barriers, posts, walls, wire and other fences, tracks separating compartments, ditches and all facilities on the cutover, in place at the start of harvesting and damaged, destroyed or displaced by his activities;
- fill in ruts and restore waste pipes on extraction roads and tracks;
- carry out the works prescribed in the authorisation on the location of authorised facilities (shelter, shed etc.);
- pick up and remove all debris and slash, restore facilities such as barriers, ditches, conduits etc. and fill in holes and ruts on the landings;

- repair damage caused on forest roads including secondary roads. If external materials are used, the intervening party seeks the agreement of the ONF agent about the use of such materials.

The restoration of the sites to their former state is recorded in a harvesting completion report drawn up in the presence of both parties on the basis of the site inventory at the start of harvesting or during the felling acceptance process.

### **3.10 Acceptance**

During felling acceptance as provided by the sales contract or the contract for the supply of services, it is verified whether these Forestry Regulations have been complied with.

# GLOSSARY

## A

### **Acceptance**

Technical process by which ONF ascertains that harvesting and site restoration have been carried out as set out in the general conditions of contract for the sale of timber.

#### **Felling coupe acceptance for timber sold standing:**

The felling coupe acceptance process aims to verify that the site has been suitably restored and the harvesting completed (see Article 19 of the general conditions of contract).

#### **Acceptance process for sales by measurement:**

The acceptance process carried out following a sale by measurement aims to verify that product enumeration and scaling are carried out in accordance with the terms and conditions of the contract (see Article 17 of the general conditions of contract).

The technical acceptance process leads legally to the issuance of a harvesting discharge.

### **Accidental products**

Harvest beyond the control of the forest manager due to natural agents (gale, snowfall, lightning etc.) or made necessary by the occurrence of a fire, an insect or fungus attack or any other accident (e.g. pollution).

### **Ageing forest patch**

Small patch of forest which is given a prolonged silvicultural cycle which may be up to twice as long as a normal cycle. An ageing forest patch may be subject to silvicultural intervention since the trees of the main stand have kept their productive function. These are harvested before the economic value of the butt log starts to depreciate. In addition, an ageing forest patch also benefits from the exemplary implementation of measures promoting biodiversity (dead wood on the ground, dead trees and hollow trees).

### **Allotment**

Operation by which goods or products are divided into lots and stored in a manner in which they can easily be identified, removed or distributed later (see Article 11-2 of the general conditions of contract).

## B

### **Biodiversity**

Biological diversity in a given area, which depends especially on the number of animal or plant species occupying that area, their distinctiveness, rarity or specific character and on the number of individuals in each species.

### **Biological preserve**

Forest environment which aims to conserve and in some cases restore natural biodiversity.

**Biotope**

A set of factors typical of a specific uniform physicochemical environment harbouring specific flora and fauna or a heritage species.

**Buyer's liability**

The Forestry Code (Art. L 135.10) establishes a special penal liability (penalties) and third party liability (compensation for damage) for buyers purchasing timber in forests under the public forest law system, for all damage and offences committed in the cutover, which start upon issuance of the felling licence. If the buyer lodges a complaint with the police for events which have occurred in his felling coupe, by so doing he frees himself from his penal liability.

## C

**Contract**

In the National Forestry Regulations and the general conditions of contract, the contract means either a timber sales contract, or a contract for the supply of services or a contract of employment.

**Conversion or Processing**

All of the operations taking place after felling (lopping, choosing where to cross cut, crosscutting).

**Coppice** see Stands

**Cornering**

Removal of buttresses and root swelling at the butt end of the tree.

**Crosscutting**

Act of cutting felled and lopped trees or slash across the length.

**Cubic metre**

Unit of measurement of full volume used for roundwood.

## D

**Deadline**

Closing date by which something must be carried out or completed (payment, harvesting, timber extraction etc.).

For standing timber sold by lump sum or measurement, the contract execution deadline is the same as the "harvesting time frame" (see Articles 16-3 and 18-3 of the general conditions of contract).

For processed timber sold by lump sum or measurement, the contract execution deadline is the same as the "removal and site restoration time frame" (see Articles 18-3 of the general conditions of contract).

# E

## **Enumeration**

Counting of the number of units of sold product. Depending on the product, a unit may be a number of logs, a stere (a stack of cordwood of  $1 \times 1 \times 1$  metres), a cubic metre or a tonne (see Article 17 of the general conditions of contract). Enumeration is essential when timber is sold by measurement.

## **Extraction**

Process of skidding and forwarding timber from the location of felling to a place accessible to trucks.

## **Extraction road**

Road opened in a stand, wide enough to accommodate harvesting machinery (skidders and off-road haulage vehicles).

# F

## **Felling coupe**

Planned cutting to harvest a group of trees designated to be felled

### **Progressive regeneration felling**

In regular high forest or in a regular high forest conversion stand, cutting which aims to produce a mature stand and regenerate it naturally or artificially.

Seed cutting: first regeneration cutting conducted in a stand whose canopy was closed until that point (shelterwood cutting before planting, also referred to as “canopy lifting” counts as seed cutting).

Secondary cutting: removing trees after the seed cutting, in order to gradually admit more light for the seedlings which have established themselves or the plants which have been introduced.

Final cutting: cutting of the last seed trees or last stems in the initial stand.

### **Improvement felling**

Felling to improve the quality of a forest stand, as well as its stability in the medium term. Improvement felling is referred to chronologically as first, second, third thinning etc.

### **Selection felling**

Cutting in selection high forest or uneven-aged high forest which combines several objectives: improvement of growing trees, harvesting of large trees and regeneration.

### **Clear felling**

Cutting in which all wood products are felled, except the stems retained to enhance the landscape or biodiversity:

Right-of-way cutting: clear felling on a area occupied or used by a road or any other facility.

Strip cutting or patch cutting: clear cutting which removes the crop in strips of varying width and spacing or creates openings of varying size. Strip cutting may be coupled with the removal of stems between the strips.

Clear cutting: cutting to prepare artificial regeneration and remove a stand entirely in order to create a new stand.

### **Felling for estovers in high forest**

Cutting of one of the types described above in which the buyer takes the bole only.

### **Coppice selection felling**

Method of coppicing by selection cutting in which the largest shoots in a clump are cut at each felling (giving an uneven-aged coppice stand).

### **Coppice with standards felling**

Felling in a coppice with standards which includes selection cutting of the overstorey (standards) and clear cutting of the coppice, except retained stems.

### **Coppice felling**

Cutting in which a coppice is completely harvested, also called “coppice rejuvenation cutting”.

### **Felling licence**

Written authorization given by ONF to a buyer of standing timber, by which he is allowed to harvest the timber, in accordance with Article 16-2-1 of the general conditions of contract. May also be held as a removal permit in the case of a sale of standing timber by lump sum. The refusal to issue a felling licence by the seller when he has not been paid counts as goods detention by the unpaid seller (Art. 1612 of the Civil Code). Once the buyer has been issued a felling licence, he becomes the owner of the timber, the custodian of the sold trees and he becomes bound by penal and third-party liabilities for all damage and offences committed on the cutover of his felling coupe (Art. L 135.10 and 11 of the Forestry Code).

### **Fire lane**

Dedicated access road, not open to general traffic, used as a matter of priority by services for the prevention and control of forest fires. Fire lane use for harvesting purposes may therefore be restricted and even prohibited during high risk periods. It is essential that fire lanes are not obstructed or narrowed in a manner which would prevent the passage of fire fighting vehicles. Fire lanes usually have special facilities: emergency water supplies (access by fire fighting vehicles should be maintained at all times), passing places and turning places (parking and storage on these are not permitted). Brush may be cut on the edges of fire lanes to control fire spread; if this is the case, it is forbidden to deposit or store any plant-based material on edges which have been cleared of brush.

### **Forest corridor**

Straight and narrow passage designed to facilitate silvicultural work.

### **Forest path**

Narrow track in the forest which may be used by harvesting machinery by authorization of the ONF agent.

### **Forest secondary road**

Track or road opened in a stand, of a width which allows the circulation of harvesting machinery. It may be rideable.



**Forfeiture**

Penalty held against a buyer who does not provide the guarantee required within the specified period. As a result of this penalty, the buyer loses his right to be granted the contract to which he was entitled, before the contract has even started to have any effect (see Article 37 of the general conditions of contract and Article L. 134-5 of the Forestry Code). Not to be confused with rescission or termination.

**Forwarding**

The conveying of timber from the location of felling to a place accessible to trucks, by forwarding (the timber does not touch the ground) or sliding (the timber slides with its butt end supported). In time studies, forwarding refers to the work stage when timber is transported by a moving vehicle.

## G

**Grouped sales**

Sales contract concerning products originating from several forest estates (see Articles 6.3 and 42 of the general conditions of contract).

## H

**Habitat**

A natural habitat is a place on land or in water which is distinctive because of its geographic characteristics, its environmental conditions, and the groups of plant species that occupy it; a species habitat is an environment with specific physical and biological features, which is occupied by an animal or plant species at a given stage in its biological cycle.

**Harvesting discharge**

Process by which ONF acknowledges that the buyer has suitably and regularly discharged all the duties under the contract in a technical sense, including felling, extraction, site clean-up and restoration, and which puts an end to the buyer's liability in a legal sense for all the deeds, damage and offences which could have been committed during harvesting but which were not discovered before the harvesting discharge date (see Article 19-3 of the general conditions of contract).

**Hidden defect guarantee**

Obligation incumbent on the seller to give the buyer a guarantee of the absence of hidden defects which, if they been known would have made the sale impossible or would have resulted in a reduction in price (Art. 1641 of the Civil Code). Since the sales concerned are between professionals, a contract may legally exclude such a guarantee, as in the case of the ONF general conditions of contract for standing timber.

**High-flow channel of a watercourse**

Part of a watercourse along the flow channel which is formed by flood flow. The high-flow channel boundaries are established by the biggest flood that occurred.

**High forest** see Stand

# I

## **Incidental assignment**

A sale, incident to the main sale contract, in which in certain circumstances, the buyer is required to buy accidental products located in his cutover (see Article 21 of the general conditions of contract).

## **Intervening party**

In the National Forestry Regulations, the intervening party refers to all the persons who have business to do in the forest: professionals buying wood, logging companies and forest contractors and their employees, agents, service providers or sub-contractors, loggers, persons collecting estovers (firewood) and individuals purchasing small products (assignees).

When ONF or communities owning forest land under the public forest law system carry out works themselves, they are also bound by the liabilities contained in the provisions vested in the intervening parties.

# L

## **Location of felling**

All felling coupes should be marked out in the forest. This is to ensure that the intervening party complies strictly with the requirements of the prescribed coupe. The location of felling is defined by:

- delineating spatial boundaries clearly,

- designating the trees to be harvested (the designation method is specified in the model territorial procedures and on the front of catalogues).

On a more general level, the location of felling stems from the tree marking process which establishes the type, location, surface area or volume of trees to be felled. Tree marking certifies that marked trees are part of the felling coupe (marking of trees to be felled) or are excluded from it (marking of trees to be retained).

## **Log**

Felled tree trunk which has been lopped and topped, with the bark still on or not.

## **Lot**

Any quantity of standing, felled or processed timber which makes up a unit for sale.

## **Low-flow channel of a watercourse**

Channel which is always occupied and which is delineated by banks.

# N

## **Non-surfaced landing**

Storage area in the forest on natural ground, accessible to logging trucks.

**Notching**

The cutting out of a mark on the stump above the hammer mark to facilitate checking of felling coupe conformity (verification).

**Notice to perform**

Injunction notified to the buyer ordering him to do or not to do certain things as prescribed by the contract (see Article 16-3-5 of the general conditions of contract).

A notice to perform is given by registered mail with acknowledgement of receipt (notification). It often marks the start of a fixed time frame. In exceptional circumstances a notice to perform may be notified by a bailiff.

## O

**ONF agent**

The term ONF agent is used as a generic term to refer to any ONF person qualified to take the decision at issue. This person is usually named in the timber sales contract or the contract for the supply of services (agent in charge of the felling coupe for example).

**Ownership transfer**

Legal process by which the rights and risks associated with something sold are passed on to the person buying it. Ownership transfer, which takes place as soon as the sale is executed (known price and counted goods), does not necessarily entail that the buyer takes immediate possession of the goods (see Article 15 of the general conditions of sale). For sales of standing timber by lump sum, the buyer only assumes ownership of the timber once a felling licence is issued.

## P

**Pass**

Old marks made by machinery (trail).

**Patch of old forest**

Generic term referring to both the patches of ageing forest and patches of senescent forest.

**Processing or Conversion**

All of the operations taking place after felling (lopping, choosing where to cross cut, crosscutting).

## R

**Release of guarantee**

Decision of the accountant by which the guarantor is released from his guarantee obligation when the buyer has settled all the monies owed under the contract at issue.

**Removal permit**

Written authorization given by ONF to a buyer of processed or standing timber sold by measurement, by which he is allowed to remove the timber, in accordance with Article 18-1 of the general conditions of contract. The issuance of a removal permit is considered in law to be a goods delivery by the seller who has been paid for them.

**Rescission**

Decision to put an end to an existing contract before its execution has even started. For timber sales contracts, see Articles 37, 38 and 41 of the general conditions of contract.

**Restoration**

Contractual obligation by which the intervening party is required to clean up the felling area and repair any damage or degradations which may have been caused to the forest estate or its facilities. Restoration is carried out as instructed by ONF.

## S

**Sale by adjudication**

Public law practice by which a sale is carried out by public auction following sale advertising and competitive bidding. The contract is formed immediately when the buyer makes an offer in response to a price called out by the auctioneer (verbal adjudication) or when the Bureau announces the winning bid (written adjudication). Adjudication, once pronounced, is final (Art. R 134.10 of the Forestry Code).

Disputes are settled during the adjudication event by the Adjudication Bureau and any objections should be raised by appealing to an administrative judge within a period of 2 months. A contract made by adjudication is a commercial contract in private law and as such, falls within the jurisdiction of the courts of law; the adjudication practice itself (separate from the contract) falls within the jurisdiction of an administrative judge.

**Sale by competitive tendering**

Sale practice subject to private law with advertisement and competitive tendering, in which the buyers make price bids. Following a review of the bids by a Competitive Tendering Committee, ONF as the seller notifies its agreement to the winning bidder. The sale takes place only upon notification of ONF's agreement.

**Sale by lump sum**

Sale concerning goods neither measured nor counted. The stated quantity is only indicative and the total price is decided upon entry into the contract; therefore, the sale is executed as soon as the parties are agreed on the sale. Ownership transfer takes place on the day of the sale (Art. 1586 of the Civil Code)

**Sale by measurement**

Sale concerning goods which need to be measured and counted before the sale can be executed. Until the goods have been counted, their quantity and total price stay unknown and ownership cannot be transferred (Art. 1585 of the Civil Code).

**Sale by private agreement**

Process of awarding a commercial contract in common law, in which the seller and the buyer agree on the sale's terms and conditions (subject, price, delivery time frame etc.) following freely conducted negotiations.

**Seeds**

Generic term used for seeds and cones.

**Senescent forest patch**

Small patch of forest left to develop freely without silvicultural intervention and preserved until its physical term, i.e. until the trees fall down. Senescent forest patches consist of trees with poor economic value but which have special biological value (large hollow trees, senescent trees etc.). They have an essential role to play in the conservation of species which occupy old woodlands.

**Site**

Place where harvesting works are carried out. In the National Forestry Regulations this term is used to mean all the felling coupes which relate to the same contract.

**Site waste**

Any refuse resulting from a process of production, conversion or use, as well as any substance, material or product which is intended to be discarded. On certain conditions, site waste may be disposed of through the same collection and treatment channel as household waste or, otherwise, through a dedicated channel providing traceability (used oils, soiled packaging, aerosol spray cans...).

**Skidding**

The conveying of timber, usually by dragging (winching) it lengthwise between the location of felling and a place accessible to trucks. In time studies, skidding means the work stage of hauling timber to a stationary vehicle.

**Slash**

By-products (branches, crowns...) which are not removed from the cutover. Amongst other things, site restoration includes the management of slash in accordance with ONF's instructions.

**Stacking into steres**

Stacking method employed to scale products by loose volume (as opposed to full volume expressed in m<sup>3</sup>).

**Stand – Types of forest stand****Uneven-aged high forest:**

Stand which cannot be distinguished by an age class and in which coupes combine (in space and in time) regeneration and improvement operations.

**Selection high forest:**

Forest stand consisting of stems of all sizes and age classes, from seedling to mature tree. The stem number distribution by diameter is a decreasing curve whose actual shape is variable, which used to be assumed exponential (old Liocourt's law).

**Regular high forest:**

Forest stand with trees that are mostly of the same diameter (and age) and which originate from natural or planted seedlings (or exceptionally, from sprouts).

**Uneven-aged coppice:**

Coppice consisting of clumps with uneven-aged sprouts in which the largest shoots are harvested at each coupe, thus achieving a kind of stump selection.

**Simple coppice:**

Forest stand formed by even-aged stump sprouts or suckers and perpetuated through rejuvenation cutting, also called “coppice felling”.

**Coppice with standards:**

Forest stand consisting of a simple coppice under all-aged high forest with the same cutting cycle as the coppice.

**Conversion coppice with standards:**

Coppice with standards being converted into high forest, which often features dense high forest and sparse coppice.

**Standing trees, poles, maidens**

In all ONF documents, stems to be harvested are designated by diameter class at breast height, i.e. 1.3 m above the ground (measured from the top side of the slope on sloping ground).

Stems are classified by diameter class. Diameter classes are given in 5 cm increments. The indicative value for each class is the centre value for each 5 cm interval. For example, in the 20 diameter class there are stems with diameters ranging from 17.5 cm (included) to 22.5 cm (excluded).

For trees with two or more trunks at the base, the diameter is taken for each trunk at the height nearest to 1.3 m above ground.

Commercial descriptions for tree, pole and maiden classes are specified in the territorial procedures.

**Stem**

Generic term referring to “trees”, “poles” or “maidens”.

**Stere**

Unit of measurement of apparent (or loose) volume equivalent to a cube of 1 m on edge used for wood of equal lengths, the lengths being neatly stacked parallel to each other.

**Surfaced landing**

Storage area on surfaced ground, accessible to logging trucks (not always adjacent to the felling area).

**Suspension of harvesting or removal**

Temporary measure taken to stop timber harvesting, extraction or removal

## T

**Termination**

Decision to put an end to a contract under execution before its due date. For timber sales contracts, see Articles 38, 39, 40, 41 and 42 of the general conditions of contract.

**Timber detention**

Right of the unpaid seller to detain goods for as long as they remain in his possession. In the event of redress or judicial winding-up of the buyer, if promissory notes are still due or if all or part of the price has already been paid by the guarantor, ONF detains the timber (felling licence suspension) until an agreement between the guarantor, the buyer and the administrator is reached on how to settle the remaining amount owed.

**Timber removal**

Transport of timber out of the forest on a logging truck to a processing or storage place.

**Timber sales contract**

Agreement by which the seller makes a commitment to supply the goods specified in the contract on certain conditions and the buyer makes a commitment to pay for these goods and remove them on specified conditions. Such an agreement may be made immediately during an adjudication event or in writing in the case of a sale by competitive tendering (ONF sends a written notification to the buyer whose offer has been accepted) or by private agreement (both the seller and the buyer sign the contract). The sales documents include the general conditions of contract, the supplementary conditions of contract which are specific to each lot, and the National Forestry Regulations.

**Time extension**

Postponement of the date set for the execution of the contract, in the case of the removal of processed timber (see Article 18-3 of the general conditions of contract) or the supply of logging services.

Postponement of the date set for the harvesting of timber sold standing. Such harvesting time extensions given by ONF upon written application by the buyer may be granted free of charge or for a fee (as provided by Article 16-3 of the general conditions of contract).

**Tree**

In ONF documents, a tree means a stem of diameter class at breast height (i.e. 1.3 m or 4.5 feet above the ground) equal to 30 cm or more for oak species and beech and 25 cm or more for all other species.

**Retained tree**

A tree which is not included in the sale and which the intervening party is required to leave standing.

The felling of a retained tree by an intervening party in a forest administered under the public forest law system is a criminal offence (Art. L 135.4 of the Forestry Code).

Such trees not included in the sale may include for example final crop trees, trees of biological interest or trees of special interest with high heritage or cultural value.

**Final crop tree**

A tree whose potential is deemed sufficiently high for it to provide a significant contribution to the goal (usually a production objective) set out for the stand. Silvicultural operations conducted in the stand are for the benefit of such trees and the intervening party is required to preserve them.

**Tree of biological interest**

A tree having a particular feature and/or function in respect of biodiversity: hollow tree, dead tree etc. The intervening party is required to preserve such trees.

## V

### **Verification**

If ONF and the buyer disagree on the quantity and type of harvested and/or removed timber or if ONF has a doubt of a similar nature, ONF may decide to resort to verification, which is an official felling coupe acceptance procedure prescribed by the Forestry Code (Art. L 136.1 and see Article 19-2-2 of the general conditions of contract). The harvesting discharge is issued if the official verification report is not challenged by the end of a two week period following its notification to the buyer.

## W

### **Wetland**

An area which may or may not be harvested, usually temporarily or permanently flooded or waterlogged by fresh, salt or brackish water; vegetation, when there is any, consists mainly of hygrophytic plants during part or all of the year.