

## SPECIAL PROVISIONS

### Section 42

#### (A) Log Export Restrictions (LE)

(LE-1) All timber sold to the Purchaser under the terms of this contract is restricted from export from the United States in the form of unprocessed timber, and is prohibited from being used as a substitute for exported private timber. For the purpose of this contract, unprocessed timber is defined as:

- (1) any logs, except those of utility grade or below, such as sawlogs, peeler logs, and pulp logs;
- (2) cants or squares to be subsequently remanufactured exceeding eight and three-quarters (8-3/4) inches in thickness.
- (3) split or round bolts or other roundwood not processed to standards and specifications suitable for end-product uses; or
- (4) western red cedar lumber which does not meet lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau R-List Grades of Number 3 Common or better.

Thus, timber manufactured into the following will be considered processed:

- (1) lumber and construction timber, regardless of size, manufactured to standards and specifications suitable for end-product uses;
- (2) chips, pulp, and pulp products;
- (3) green or dry veneer and plywood;
- (4) poles and piling cut or treated for use as such;
- (5) cants, squares, and lumber cut for remanufacturing of eight and three-quarters (8-3/4) inches in thickness or less;
- (6) shakes and shingles.

Substitution will be determined under the definition found in 43 CFR 5400.0-5(n).

The Purchaser is required to maintain and upon request to furnish the following information:

- A. Date of last export sale.
- B. Volume of timber contained in last export sale.
- C. Volume of timber exported in the past twelve (12) months from the date of last export sale.
- D. Volume of Federal timber purchased in the past twelve (12) months from the date of last export sale.
- E. Volume of timber exported in succeeding twelve (12) months from date of last export sale.
- F. Volume of Federal timber purchased in succeeding twelve (12) months from date of last export sale.

In the event the Purchaser elects to sell any or all the timber sold under this contract in the form of unprocessed timber, the Purchaser shall require each party buying, exchanging, or receiving such timber to execute a "Certificate as to Nonsubstitution and the Domestic Processing of Timber." The original of such certification shall be filed with the Authorized Officer. Additionally, when the other party is an affiliate of the Purchaser, the Purchaser will be required to update information under item (2) of Form 5450-17 (Export Determination) and file the form with the Authorized Officer.

In the event an affiliate of the Purchaser has exported private timber within twelve (12) months prior to purchasing or otherwise acquiring Federal timber sold under this contract, the Purchaser shall, upon request, obtain from the affiliate information in a form specified by the Authorized Officer and furnish the information to the Authorized Officer.

Prior to the termination of this contract, the Purchaser shall submit to the Authorized Officer Form 5460-15 (Log Scale and Disposition of Timber Removed Report) which shall be executed by the Purchaser. The purchaser shall also provide a current, interim Log Scale Disposition of Timber Removed Report (Form 5460-15) upon request by the authorized officer at any time during the contract period for cutting and removal specified in Section 4 of this contract as amended. In addition, the Purchaser is required under the terms of this contract to retain, for a three-year period from the date of termination of the contract, the records of all sales or transfer of logs involving timber from the sale for inspection and use of the Bureau of Land Management.

Unless otherwise authorized in writing by the Authorized Officer, the Purchaser shall brand clearly and legibly one end of all logs with a scaling diameter (small end inside bark) of over ten (10) inches, prior to the removal of timber from the contract area. All loads of eleven (11) logs or more will have minimum of ten (10) logs clearly and legibly branded on one end regardless of the diameter of the logs. All logs will be branded on loads of ten (10) logs or less. One end of all branded logs to be processed domestically will be marked with a three (3) square inch spot of highway yellow paint. The Purchaser will stop trucks for accountability monitoring at mutually agreed upon locations when notified by the Authorized Officer.

**(B) Access**

- (1) Access to the sale area is via private, State, and Federal roads. Prior to harvest operations the purchaser is required to execute a road use agreement with the appropriate entity. The purchaser will be required to comply with all stipulations of said road use agreement and present a copy of the agreement, signed by both parties, to the Authorized Officer before acting on it.

**(C) Logging (L)**

- L-1** Before beginning operations on the contract area for the first time or after a shutdown of seven (7) or more days, the Purchaser shall notify the Authorized Officer in writing of the date they plan to begin operations. The Purchaser shall also notify the Authorized Officer in writing if he intends to cease operations for any period of seven (7) or more days.
- L-2** Prior to commencement of operation the Purchaser shall obtain from the Authorized Officer written approval of a written operations and logging plan commensurate with the terms and conditions of the contract, which shall include measures needed to ensure protection of the environment and watershed. A prework conference between the Purchaser's authorized representative and the Authorized officer must be held at a location designated by the Authorized Officer before the logging plan will be approved. All logging shall be done in accordance with the plan.

- L-3** Trees reserved from cutting and removal under the terms of this contract are those designated in Sec. 41. Wood Products Reserved from Cutting and are retained as the property of government.
- L-4** All trees designated for cutting shall be cut so that resulting stumps shall not be higher than twelve (12) inches measured from the ground on the uphill side of trees unless authorized by the Authorized Officer.
- L-5** All western redcedar larger than eighteen (18) inches dbh are reserved from cutting. All other conifers larger than twenty-three (23) inches dbh are reserved from cutting.
- L-8** In cutting areas as shown on Exhibit A, all trees designated for cutting shall be felled and whole tree yarded except when excessive stand damage occurs as determined by the Authorized Officer. If excessive stand damage occurs, all logs shall be completely limbed into thirty-three (33) foot logs prior to being yarded.
- L-9** Trees designated for cutting within one-hundred (100) feet of Stream Management Zones shown on Exhibit A shall be felled away from the stream.
- L-12** In the entire contract area shown on Exhibit A, yarding shall be done with rubber tired skidders or crawler type equipment without bulldozers, angle dozers, or arches. Existing skid roads shall be used when possible. New skid roads shall be placed at least one-hundred (100) feet apart where topography allows. Landing size shall not exceed one-quarter (1/4) acre, shall be located along existing roads and/or temporary routes within unit boundaries, and shall be approved by the Authorized Officer. Delivered log lengths shall not exceed forty-one (41) feet.
- L-22** The haul route shall not be blocked by such operations for more than thirty (30) minutes. Residential ingress and egress shall not be hindered by logging operations.
- L-24** Before cutting and removing any trees necessary to facilitate logging in the cutting area shown on Exhibit A, the Purchaser shall identify the location of the skid roads on the ground in a manner approved by the Authorized Officer. Said Purchaser identification of trees to be cut and removed does not constitute authority to proceed with cutting and removal. In addition, before proceeding with cutting the following conditions must met:
- (a) All skid roads upon which timber is identified by the Purchaser to be cut and removed in accordance with this special provision must be necessary for the safe and expeditious removal of timber sold under this contract and shall be limited to the minimum width necessary for yarding of logs with a minimum of damage to reserve trees, however, unless otherwise approved in writing by the Contracting Officer, the width of each skid road shall be limited to twelve (12) feet.
  - (b) The Purchaser may immediately cut and remove additional timber to clear skid roads when thereby approved for cutting and removal by the Authorized Officer. The volume to be sold will be determined by the Authorized Officer in accordance with Bureau of Land Management prescribed procedures. No timber may be cut or removed under the terms of this provision unless sufficient installment payments

have been made in accordance with Section 3.(b). of the contract or sufficient bonding has been provided in accordance with Section 3.(d). of the contract.

- (c) The Purchaser agrees that sale of this additional timber shall be accomplished by a unilateral modification of the contract executed by the Contracting Officer and that such timber shall be sold at the unit prices shown in Exhibit B of this contract; the value of the timber must be reappraised subject to the terms for contract extension set forth in Section. 9 of the contract or; the Authorized Officer determines that the species of trees are not listed in Exhibit B of this contract or any tree that exceeds 21 inches in diameter at breast height shall be appraised and sold by bilateral modification of the contract at current fair market value in accordance with Section 8 of this contract.
- (d) This authorization for the Purchaser to cut and remove additional timber prior to the execution of a modification may be withdrawn by the Contracting Officer if the Authorized Officer determines that the Purchaser has cut and removed any tree not previously marked and approved for cutting by the Authorized officer, which under Section 10 of the contract constitutes a violation of the contract and under Section 13 of the contract may constitute a trespass rendering the Purchaser liable for damages under applicable law.

**L-28** In the partial cutting area shown on Exhibit A, all yarding shall be done by equipment operated entirely on designated skid roads. Before felling and yarding any timber, except skid road right-of-way timber, in the partial cutting area the purchaser shall locate and construct designated skid trails as follows:

- Space designated skid roads at a minimum of 100 feet apart unless otherwise agreed to by the Authorized Officer
- Limit the width of each skid road to a maximum of 12 feet.
- Limit excavation on designated skid roads to a maximum cut of two (2) feet and a maximum length of one hundred (100) feet at any one location with the prior approval of the Authorized Officer.

**L-33** Purchaser's operation shall facilitate BLM's safe and practical inspection of Purchaser's operations and BLM's conduct of other official duties on Contract Area. Purchaser has all responsibility for compliance with safety requirements for Purchaser's employees, contractors, and subcontractors. In the event that the Authorized Officer identifies a conflict between the requirements of this contract or agreed upon methods proceeding hereunder and State or Federal safety requirements, the contract may be modified. If the cost of such contract modification is of a substantial nature (\$2,000.00 or more), the Purchaser may request in writing, an adjustment in the Total Purchase Price specified in Section 2 of the timber sale contract, as amended, to compensate for the changed conditions.

**(C) ROAD CONSTRUCTION, MAINTENANCE, AND USE (R)**

- R-1a** The Purchaser shall construct Temporary Road, and decommission Temporary Road in accordance with the plans and specifications shown on Exhibit E, which is attached hereto and made a part hereof. Any required construction or renovation of structures and roads shall be completed and accepted, in accordance with Section 18, prior to the removal of any timber, except right-of-way timber, over that road.
- R-2f** The Purchaser shall perform any required road repair and maintenance work on roads used by them, under the terms of Exhibit C, Road Maintenance Specifications, of this contract, which is contained herein.

**(D) Environmental Protection (E)**

- E-3** The Purchaser shall immediately discontinue specified construction or timber harvesting operations upon written notice from the Authorized Officer that:
- (1) threatened, or endangered plants or animals protected under the Endangered Species Act of 1973, as amended, may be affected by the operation, and a determination is made that consultation or reinitiation of consultation is required concerning the species prior to continuing operation, or;
  - (2) when in order to comply with the Endangered Species Act the Authorized Officer determines it may be necessary to modify or terminate the contract, or;
  - (3) federal proposed, federal candidate, Bureau sensitive or State listed species protected under BLM Manual 6840 - Special Status Species Management - have been identified, and a determination is made the continued operations would affect the species or its habitat, or;
  - (4) other active raptor or owl nests have been discovered, and a determination is made that continued operations under this contract would adversely affect the present use of the discovered nesting area by the raptor or owl.
  - (5) When in order to comply with a court order, which enjoins operations on the sale or otherwise requires the Bureau of Land Management to suspend operations, or;
  - (6) when in order to comply with a court order, the Contracting officer determines it may be necessary to modify or terminate the contract, or;
    - (a) species have been discovered which were identified for protection through survey and manage and/or protection buffer standards and Guidelines established in the ROD and RMP, and the Contracting

Officer determines that continued operations would affect the species or its habitat, or;

- (b) when, in order to protect species which were identified for protection through survey and manage and/or protection buffer standards and guidelines established in the ROD and RMP, the Contracting Officer determines it may be necessary to modify or terminate the contract.

Those operations necessary for a safe removal of personnel and equipment from the contract area and those directed by the Contracting Officer which required in order to leave the contract area in an acceptable condition will be permitted. Discontinued operations may be resumed upon receipt of written instructions and authorization by the Contracting Officer.

During any period of suspension, the Purchaser may withdraw performance and payment bond coverage aside from that deemed necessary by the Authorized Officer to secure cut and/or removed timber for which the Bureau of Land Management has not received payment, and/or unfulfilled contract requirements associated with harvest operations that have already occurred and associated post-harvest requirements.

In the event of a suspension or a combination of suspension periods that exceed a total of 30 days, the First Installment held on deposit may be temporarily reduced upon the written request of the Purchaser. For the period of suspension extending beyond 30 days, the First Installment on deposit may be reduced to five (5) percent of the First Installment amount listed in Section 3.b. of the contract. Any First Installment amount temporarily reduced may be refunded or transferred to another BLM contract at the request of the Purchaser. However, if the Purchaser has outstanding debt owed to the United States, the Contracting Officer must first apply the amount of the First Installment that could be refunded to the debt owed in accordance the Debt Collection Improvement Act, as amended (31 USC 3710. et seq.). Upon Purchaser's receipt of a bill for collection and written notice from the Contracting Officer lifting the suspension, the Purchaser shall restore the First Installment to the full amount shown in Section 3.b. of the contract within 15 days after the bill for collection is issued, subject to Section 3.j. of the contract. The Purchaser shall not resume contract operation until the First Installment amount is fully restored.

In the event of a suspension period or a combination of suspension periods that exceed a total of 30 days, the unamortized Out-of-Pocket Expenses for road or other construction required pursuant to Exhibit E of the contract shall be refunded or transferred to another BLM contract at the request of the Purchaser. Upon written notice from the Contracting Officer lifting the suspension, the Purchaser shall reimburse the Government the amounts refunded or transferred. The Purchaser may choose to pay this reimbursement at once or in installments payable at the same time as payments are due for the timber under the contract and in amounts approximately equal to the expenses associated with the timber for which payment is due.

In the event that operating time is lost as a result of the incorporation of additional contract requirements, or delays due to Endangered Species Act consultation with the U.S. Fish and Wildlife Service or U.S. National Marine Fisheries Service, or court injunctions, the Purchaser agrees that an extension of time, without reappraisal, will constitute a full and complete remedy for any claim that delays due to the suspension hindered performance of the contract or resulted in damages of any kind to the Purchaser.

The Contracting Officer may determine that it is necessary to terminate cutting and removal rights in this contract to comply with the Endangered Species Act, protect species that have been discovered which were identified for protection through survey and manage and/or protection buffer standards and guidelines established in the ROD and RMP or comply with a court order. Following the issuance of a written notice that cutting and removal rights will be terminated, the Purchaser will be permitted to remove timber cut under the contract, if allowed by the Endangered Species Act, or court order requirements necessitating the termination.

In the event cutting and removal rights are terminated under this subsection, the Purchaser agrees that the liability of the United States shall be limited to the actual cost incurred by the Purchaser which have not been amortized by timber removed from the contract area. This calculation of liability shall utilize actual Purchaser costs and Government estimates of timber volumes. At the Authorized Officer's request, the Purchaser agrees to provide documentation of the actual costs incurred in the performance of the contract. In addition, the Purchaser shall be released from the obligation to pay the contract price for any timber which is not authorized to be removed from the contract area.

The Purchaser specifically and expressly waives any right to claim damages, other than those described in the preceding paragraphs, based on an alleged breach of any duty to the Purchaser, whether express or implied, regarding the manner in which the Government defended the litigation which resulted in the court order affecting the operation of the contract. The waiver also extends to any claims based on effects on the operation of the contract that arise from litigation against another agency. Furthermore, the Purchaser specifically acknowledges and agrees that a court ruling that the Government violated the Administrative procedures Act cannot be interpreted, in itself, to mean that the Government had not acted reasonably in regard to its duties to the Purchaser under this contract.

**(E) Fire Prevention and Control (F)**

**(F1a)** The Purchaser shall comply with the provisions set forth in Exhibit F - BLM FIRE PROTECTION REQUIREMENTS

**(F1b)** Primarily for purposes of fire prevention and control, the Purchaser shall, prior to the operation of power-driven equipment in construction or logging operations under this contract during the closed fire season or periods of fire danger, prepare a fire prevention and control plan to the satisfaction of the Authorized Officer.

Primarily for purposes of fire prevention and control, the Purchaser shall comply with the following provisions:

- (1) Prior to the operation of power-driven equipment in construction or logging operations under this contract during the closed fire season or periods of fire danger, prepare a fire prevention and control plan to the satisfaction of the Authorized Officer.
  - (2) Provide and maintain in good repair, on the contract area, the following equipment for use during closed fire season or periods of fire danger:
    - (a) Two (2) back-pack pumps at each landing and one (1) at each tail block, all to be kept full of water and in good operating condition.
    - (b) A serviceable chemical fire extinguisher of at least eight (8) ounces minimum capacity shall be carried during the closed fire season or period of fire danger by each member of the falling crew and each buckner using a power saw on the contract area. Such fire extinguisher shall be filled and in effective operating condition and shall at all times be immediately available to the operator when the saw is being fueled or the motor of the saw is running.
    - (c) Any fueling of a power saw shall be done in an area which has first been cleared of all flammable material. Power saws shall be moved at least twenty (20) feet from the place of fueling before the engine is started.
    - (d) A shovel in good condition with not less than a three (3) foot handle and a blade not less than seven and three-quarters (7 3/4) inches wide shall be within fifty (50) feet of any power saw when in operation.
    - (e) Where blocks and cables are used on the contract area during periods of fire danger, the Purchaser shall remove all flammable material at least ten (10) feet from the place where the tail or any other block will hang when the cable is tight. Such clearings shall be kept free of flammable material.
    - (f) The Authorized Officer may require additional fire tools and fire equipment as the fire danger may warrant. Such additional tools and equipment shall include but not be limited to the following items:
      - Portable pumps,
      - tank truck or portable tank,
      - bulldozer,
      - headlight for each man in the woods-crews, and
      - a pair of headlights for each bulldozer.
- (F-2c)** Serviceable cell phone or radio-telephone equipment able to provide prompt and reliable communication between the contract area and emergency services. Such communication shall be available during periods of operation including the time watchman service is required.



**(F-2d)** A pair of headlights capable of being quickly attached to each bulldozer used on the contract area. The headlights shall be adequate to provide illumination sufficient to allow use of the bulldozers for firefighting and construction of fire trails at night.

**(F-2f)** A headlight for each person in the woods crew adequate to provide sufficient illumination for night firefighting.

**(G) Slash Disposal (SD)**

**(SD-1)** Fire Hazard Reduction; In addition to the requirements of Sec. 15 of this contract, and notwithstanding the Purchaser's satisfactory compliance with State laws and regulations regarding offsetting or abating the additional fire hazard created by this operation and the State's willingness to release the Purchaser from liability for such hazard, the Purchaser shall remain responsible to the Government for performance of the following hazard reduction measures required by this contract:

Prior to the commencement of any operation under this Section G of the contract, a slash disposal and pre-work conference between the purchaser's representative and the Authorized Officer must be held at a location designated by the Authorized Officer. All slash disposals shall be done in accordance with the plans developed at this pre-work conference. A post-logging assessment shall be conducted to confirm or change slash treatment needs in all units.

Slash as defined for ALL sections, shall mean all material (brush, limbs, tops, unmerchantable stems, and chunks) severed or knocked over as a result of Purchaser's operation under terms of this contract.

**(SD-1c)** Pile all road right-of-way and landing slash. Finished piles shall be tight and free of earth.

(a) Pile all slash located within clearing limits on each side of constructed spur road. Finished piles shall be tight and free of earth.

(b) Pile all landing slash. Slash shall be piled by crawler tractor with brush blade. Finished piles shall be tight and free of earth.

(c) Slash shall be disposed of in accordance with the written instructions of the Authorized Officer.

(d) Pile all slash and debris and subsoil/ripping all landings and skid trails designated by the Authorized Officer in accordance with the following specifications:

(1) Piling, scarifying, and subsoiling shall be accomplished with a crawler tractor equipped with a clearing or brush blade and/or winged rippers (See Exhibit D). Finished piles shall be tight and free of earth.

(2) During the scarification process, all grass, brush, and debris shall be up-rooted on the entire area, where feasible, to expose mineral soil. Solid stumps may be worked around.

- (3) Road construction required by this contract shall be closed off by piling road and landing slash and stumps for the first 200 feet of new road.
- (5) Firefighting tools shall be kept at each landing or at such other place as the Authorized Officer shall designate whenever people are working on the contract area. All fire-fighting tools shall be kept in a sturdily constructed box which shall be painted red and lettered on the front or top in large letters, "For Fire Only." The box shall have a hinged lid and a hasp by which the lid can be sealed. One box may serve two landings not

**(H) Utilization of Woody Biomass**

1. The contractor may remove and utilize woody biomass, if:
  - (a) Project work is progressing as scheduled; and
  - (b) Removal is completed before contract expiration.
2. To execute this option, the contractor must submit a written request to the Government.
3. Following receipt of the written request, and if appropriate, the Government and the contractor will negotiate and execute a separate timber/vegetative sales contract. Payment under the timber/vegetative sales contract must be at a price equal to or greater than the appraised value of the woody biomass. The contractor must make any appropriate payment specified in the related timber/vegetative sales contract before removal may be authorized.
4. If required by law, regulation or Bureau policy, the Government will prepare a timber/vegetative sales notice and/or prospectus, including volume estimates, appraised value and any appropriate special provisions.
5. The contractor must treat any woody biomass not removed in accordance with the specifications in the service contract.
6. The sales contract and service contract are severable; default or termination under either contract does not remove the contractor from payment or performance obligations under the other contract.
7. Definitions:

*Timber/vegetative sales contract and/or notice:* the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

*Woody biomass:* the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.