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Timber Sale Contracts

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John Szydzik and John E. Gunter, Department of Forestry

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Timber Sale Contracts¹



by John Szydzik and John E. Gunter²
Department of Forestry

Introduction

A written timber sale contract is essential to all timber sales. Both buyer and seller need the protection that only a well-written contract can provide. Oral agreements are subject to misunderstanding and misinterpretation and are simply not adequate.

All items in a timber sale contract are negotiable — there is no one standard contract form. However, many timber buyers have their own preferred form. Generally, such a contract is written to protect the buyer. It may or may not protect the seller. Consequently, buyers and sellers will have to negotiate specific terms.

The items listed in the following sample timber sale contract should be considered by the seller in

negotiating the terms of the contract. The first group of **Essential Items** should be included in all timber sale contracts. The second group labeled **Other Important Considerations** may be essential depending on individual circumstances. The items in the **Special Provisions** section may be applicable to certain specific conditions.

¹Disclaimer — The sample sales contract suggested in this bulletin is written in lay terms by professional foresters. Any actual contract between sellers and buyers of timber should be drafted or approved by the seller's attorney. The authors of this bulletin and the Cooperative Extension Service of Michigan State University assume no legal responsibility for the sample contract presented here.

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Sample Timber Sale Contract

A. Essential Items.

While the exact wording may differ, the following items should be covered in all timber sale contracts.

(1) Agreement entered into this _____ day of _____, 19____, between _____ of _____ hereinafter called the seller, and _____ of _____ hereinafter called the buyer.

Explanation: This specifies the parties to the contract.

(2) This agreement shall be governed by the laws of the State of Michigan.

Explanation: This spells out the State laws which will apply, thus avoiding confusion for absentee landowners and/or out-of-state purchasers.

(3) The seller, having the right to sell, agrees to sell to the buyer, who agrees to buy all timber that has been designated as follows: _____ and owned by the seller on lands located in the _____ of Section _____, Township _____, Range _____, _____ County, State of Michigan, upon the conditions hereinafter stated.

Explanation: It is important to specify how the trees to be cut are identified. There are several ways. For example, all trees marked with red paint on both trunk and stump; all trees larger than some minimum stump diameter, so far above the ground; all trees of a given species; all trees within a marked boundary; etc. are to be cut. Consult a professional forester to determine the best method for your sale. If paint is used in marking, be sure to specify the color and also that a paint mark be made below the level of the stump. This provides some insurance against the cutting of unmarked trees. A plat book or property tax notice can be used to determine the legal description.

(4) Seller represents that he/she owns good title to the premises and authorizes buyer and buyer's employees to enter upon the premises with the necessary vehicles and equipment to perform the logging operation.

Explanation: This item could have an affect when the seller is buying the land and timber under a land contract, which frequently states that there shall be no cutting or selling of timber until the land contract has been paid off.

(5) The purchaser agrees to pay the seller (use a or b):

a. the total sum of _____ dollars (\$) for said timber.

Explanation: This is the usual method for a lump-sum sale. Under a lump-sum sale, the seller is paid a fixed amount (lump-sum) for the designated timber. This fixed amount may be determined through direct negotiation with one buyer or through competitive bidding by several prospective buyers. While buyers base their bids on an estimate of the volume to be harvested, the total dollar amount received by the seller is independent of the amount actually removed. It is generally recommended that landowners use this sales method, but that they do so in conjunction with competitive bidding.

or b. The following price for each unit of timber stumpage removed: _____ per _____ for _____.

Explanation: Under this sale-by-unit, sale-by-scale or sale-by-piece method the designated trees are felled and measured (scaled) to determine volume. The seller is then paid so many dollars per 1,000 board feet, per cord or per post, etc. Since the unit rate will usually vary among species, size, and product classes, an item-by-item listing is indicated. Because it often presents problems in obtaining an accurate production tally, this sales method is more difficult to administer than the lump-sum sale. However, it has definite Federal Income Tax advantages to landowners making frequent sales (i.e. less than five years between sales).

(6) A downpayment of _____ shall be made to the seller upon execution of this contract.

Explanation: A downpayment of 10-20% is common.

(7) Method and time of payment shall be as follows: _____

Explanation: On lump-sum sales it is desirable to have the balance paid in full before harvesting operations begin. For small sale-by-unit sales, it is desirable to have 75-80% of the total estimated value paid in advance of harvesting. The final payment should be due upon measurement of the final log. On large sale-by-unit sales, it may be necessary to establish a payment schedule, wherein the buyer makes periodic payments (i.e. weekly or biweekly) as the timber is harvested and scaled.

(8) All timber marked or products included in this contract, until paid for in full, shall remain as the property of the seller.

Explanation: This protects the seller from buyer's failure to pay.

(9) This agreement will be in effect from _____, 19__ to _____, 19__, after which time the contract is null and void, unless written extension is granted by the seller. If no extension is granted, all rights to remaining timber return to the seller.

Explanation: The buyer must be given a reasonable period of time to harvest the timber. However, if no termination date is established, the contract can continue indefinitely, with the buyer harvesting growth in addition to the original volume. Furthermore, extensions may be necessary due to poor logging conditions. Depending upon the circumstances of the extension, additional compensation to the seller may be in order.

(10) The seller is free from responsibility for any injury, death or property damage caused by the buyer's logging operation in the sale area during the tenure of the agreement.

Explanation: This protects the seller from liability for buyer's operation.

(11) It is understood by both parties that the buyer is an independent contractor and not an employee of the seller.

Explanation: This protects the seller from liability for Worker's Compensation, unemployment insurance, etc.

(12) The buyer certifies compliance with the Michigan Worker's Compensation Statutes; or if not applicable, must show proof of liability insurance on his person, employees, and equipment.

Explanation: Once again this protects seller from liability.

(13) Seller may suspend operations, including removal of cut timber, if conditions of the contract are violated. Violations of conditions of the contract are sufficient grounds for termination.

Explanation: This protects the seller from buyer's failure to follow agreed upon terms and conditions.

(14) Any modifications or amendments, to this contract must be written, dated, signed, and witnessed.

Explanation: This is to ensure that both parties are in agreement concerning any changes in the contract.

(15) Prior to commencing harvesting operations, the buyer shall post a performance bond with _____ in the amount of _____ dollars (\$ _____).

Explanation: A performance bond (over and above the sale price) of \$500 minimum and up to 10% of sale value on large sales provides evidence and insurance to the seller that the buyer will not cause unusual damage or cut trees not in the sale. The bond can work as a joint deposit by the buyer and seller in a local bank in which a withdrawal can be made after certain conditions have been met. The bond can also be a surety bond purchased through the buyer's insurance agent. In either case, the bond is returned to the buyer upon satisfactory completion of the sale.

(16) In witness whereof, the parties hereto have executed this Agreement this _____ day of _____, 19__.

Witness:

date

date

Seller(s):

date

date

Buyer(s):

date

date

Explanation: The buyer and seller should sign and date the contract and have it witnessed by at least two impartial observers. It is also a good idea to have the contract notarized. Both parties should be provided with their own copy of the signed agreement.

B. Other Important Considerations.

The items in this section should be considered for inclusion in any timber sale contract. Depending on the circumstances, some items may be as essential as those listed in Section A. Others may not be needed and should not be included simply as a matter of course. **A note of caution:** Too many restrictions may render the contract unacceptable to the buyer.

(1) No unmarked trees shall be cut without prior written approval of the seller. For any unmarked trees cut **with** the seller's permission, the buyer agrees to pay _____ dollars (\$) per _____. For unmarked trees greater than _____ (12) _____ inches in diameter at _____ (6) _____ inches above ground level that are cut **without** permission, the buyer agrees to pay _____ dollars (\$) per _____. For unmarked trees greater than _____ (6) _____ inches and less than _____ (12) _____ inches at _____ (6) _____ inches above ground level that are cut **without** permission, the buyer agrees to pay _____ dollars (\$) per _____. Upon payment of appropriate compensation to the seller, the severed tree becomes the property of the buyer.

Explanation: It may be necessary to cut some additional trees in order to construct logging roads, etc. Should this be necessary, it is only proper that the seller be compensated for the additional timber. The usual penalty for cutting unmarked trees without permission is double or triple the stumpage rate. Such penalties will vary by species, size and quality of the timber and serve to protect the seller from buyer carelessness.

(2) All tops remain property of the seller.

Explanation: In a lump-sum sale, the whole tree is sold. Therefore, if the seller wants to retain the tops, this condition must be spelled out to avoid future misunderstanding.

(3) The buyer may not subcontract any part of this contract, without prior written approval of the seller.

Explanation: This protects the seller from unknown third party interests.

(4) In the event of dispute over the terms of this contract, final decision shall rest with a reputable person to be mutually agreed upon by the parties to this contract; and in case of further disagreement, with an arbitration board of three persons, one to be selected by each party to this contract and a third to be selected by the first two members of the board. Costs of arbitration shall be shared equally by the buyer and seller.

Explanation: This establishes procedures for settling potential disputes.

(5) The buyer must remain within the sale boundaries designated by the seller.

Explanation: Make sure the boundaries are adequately marked.

(6) The buyer has the right of access onto the seller's land for harvesting purposes. If the buyer has to cross a third party's property to enter the seller's land, the buyer must clear the right of access with the third party.

Explanation: The buyer generally knows what is needed in the way of access. In the event of problems with the third party, it is better (from the seller's standpoint) for the third party to be annoyed at the buyer and not at the seller.

(7) The location of all roads, landings, and decking areas must be agreed upon by buyer and seller before operations begin.

Explanation: The parties to the contract should discuss and agree upon which areas and how much area will be used.

(8) Seller shall be informed of the commencement of harvesting operations _____ days in advance.

Explanation: This is usually a week to 10 days. This provision keeps the seller better informed about what is happening on his property.

(9) All sawtimber is to be scaled by the _____ rule. Measurements shall be made at the small end of the log along the average diameter inside bark to the nearest inch.

Explanation: This provision is necessary only when selling sawtimber by the unit. In Michigan three different log rules are used. The International 1/4-inch rule gives values very close to the actual lumber yield and is used mostly in the northern Lower Peninsula. The Doyle rule underestimates the yield of small diameter logs. It is used mostly in the southern Lower Peninsula. The Scribner rule also underestimates the yield of small diameter logs. It is used mostly in the Upper Peninsula. The International 1/4-inch rule is preferred, but consult your local forester.

(10) The seller has the right to inspect the sale area at any time.

Explanation: This allows the seller to check the adequacy of the logging job being performed on his land.

(11) The buyer and his employees shall exercise care at all times against the starting and spreading of fires in the sale and surrounding areas.

Explanation: This protects seller from needless loss due to fire.

(12) Neither buyer nor seller are liable for payments or performances due to uncontrollable events such as fires and floods.

Explanation: "Uncontrollable" is the key word here. If events occur due to buyer's action or negligence, then the buyer is usually liable. Conversely, if the buyer is not at fault, then a contract extension may be in order.

(13) Buyer shall not erect and maintain a mill on the premises without the prior written consent of the seller.

Explanation: By controlling the erection of a sawmill on the property, the seller controls the amount of mill residue that is likely to be left to accumulate.

C. Special Provisions

It is the intent of this section to provide landowners with some specific provisions for their own situation. However, this list of special provisions may be longer than necessary.³ Remember that too many provisions may cost the buyer money, which could mean less money to you for your timber.

(1) Stump heights may not exceed _____ inches.

Explanation: Usually no greater than the diameter of the tree.

(2) Trees may not be left hanging in other trees.

Explanation: This is for safety.

(3) Roads and trails must be opened and/or built before the skidding operation begins.

Explanation: This provides an incentive to the buyer to become familiar with the terrain and plan the harvesting operation accordingly.

(4) Rutted roads, fields, and decking areas will be smoothed.

Explanation: This is for access and appearance.

(5) Logging can only be done when the ground is dry or frozen.

Explanation: This is to avoid rutting.

(6) Logging can only be done (date) to (date).

Explanation: This is to avoid special seasons such as hunting, growing, fire seasons or harvesting of field crops.

(7) Trees marked with the letter "X" are to be girdled by buyer. Chainsaw girdle must sever the entire cambium layer in two separate cuts spaced four (4) inches apart.

Explanation: Undesirable, "cull", or otherwise unmerchantable trees can be killed by girdling and left standing. This practice improves the growth and quality of the timber stand and minimizes damage to surrounding good quality trees that could occur if the culls are felled. However, requiring the buyer to bear the costs of this practice will likely result in a lower price for the merchantable timber. Furthermore, some buyers may be unwilling to bid on the timber under these conditions.

(8) Damaged fencing shall be repaired with fencing of the like kind of existing fence.

Explanation: 8 through 13 are self explanatory.

(9) No use of surrounding fields during the growing season shall be permitted unless written approval is given by the seller.

(10) Any damage to buildings will be paid for based on a written estimate obtained by the seller from a local contractor for repairing to previous condition and quality.

(11) All litter resulting from the logging operation must be removed from the woods.

(12) Crop damage shall be paid for by buyer.

(13) Loggers are prohibited from carrying firearms and/or hunting in the woodlot.

Contract Tips

1. Consult an attorney for advice and counsel.
2. Put all agreements in writing.
3. Oral agreements are superseded by written ones.
4. Signing under duress or fraud voids a contract.

³The list was provided by the Forest Management Division of the Michigan Department of Natural Resources.

5. Try to avoid mistakes in the contract.
6. There must be consideration (promise, money, property, services) by both parties to have an enforceable contract.
7. Try to make all parts of the contract easily understood, or courts (if necessary) will interpret for you.
8. Contracts entered into for illegal purposes are void.
9. The buyer is usually liable for not performing under contract, when it is due to his/her own carelessness. When performance is beyond buyer's control, the contract may not be enforceable unless the buyer accepts responsibility.
10. Make sure that each party has a copy of the contract.
11. A contract which gives the seller all the advantages and/or with too many provisions will probably not be accepted by the buyer.
12. If a **buyer written contract** is used, be concerned about what is included. **Do not sign the contract just to get the sale completed.**
13. Buyer should know of any special conditions before negotiating a contract, since this may affect prices.

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