
Understanding the Sample Timber Sale Contract



Lawrence Czelusta, Wexford Conservation District, Michigan Forestry Assistance Program

A timber sale contract is the most important document involved in conducting a timber sale. A well-prepared contract will help avoid misunderstandings and conflict by all parties.

The Sample Timber Sale Contract contains a list of possible contract provisions. It is not meant to be exhaustive or necessarily applicable to every situation. You may choose to add or delete (by striking out) provisions. Always consult with an attorney and a professional forester (not the purchaser) in drafting your contract.

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

Down payments are earnest money. They are not performance bonds. Performance bonds assure that costs incurred due to breach can be recovered from the bond, rather than going to court or otherwise recovering costs from the purchaser. A performance bond may take the form of cash, a check, letter of credit, or escrow account. Be aware that many purchasers may not agree to provide a performance bond unless it is to be held by a consulting forester or an objective third party such as an escrow agent.

Prior to signing the contract, seek the advice of a tax specialist to determine whether income may be treated as a capital gain or regular income.

Specifications for how trees are marked or designated for harvesting are explained (for example, “trees marked with orange paint,” or “all trees within a red-marked boundary”). Be certain that your property boundaries are well marked or designated, and understood by the purchaser. If the

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property has not been formally surveyed by a professional surveyor, you should meet with the adjoining landowners to agree on the location of the property boundary.

(Wisconsin Department of Natural Resources – Forestry Division, Wisconsin Woodland Owners Association, & University of Wisconsin-Extension, 2009)

What Is *Reasonable*?

Throughout the Sample Timber Sale Contract, there are references to actions being *reasonable*. In legal terms, reasonable means fair, proper, just, moderate, and suitable under the circumstances. The basic question to ask is: Would an outside observer familiar with harvest practices feel the action was adequate and satisfactory? If you've never harvested timber before or visited a logging site, you must learn about and understand normal logging practices and their impact. Either visit logging sites or hire a consulting forester to help you determine if your expectations of postharvest conditions are reasonable (Wisconsin, 2009).

If feasible, both landowner and purchaser/logger should work together to negotiate and draw up a contract.

Both parties should initial every page at the bottom. Both parties should also initial filled-in blanks, any changes, and empty blanks.

Description of Basic Harvest Types

1. Selection harvest – In a selection harvest, only some of the trees are harvested. Trees selected for harvest could be as simple as the first thinning in a pine plantation where entire rows of trees are selected (for example, third-row thinning). The trees in a hardwood stand should be premarked to a desired stand density as well as to maintain or enhance the quality of the overall forest stand. Some industrial foresters will provide a premarking for their logging crews. Other loggers will just select as they cut. In a pine plantation, the thinnings after the first row thinning will be considered a selection harvest. When trees are marked, they should be marked with paint at eye level *and* on the stump as close to ground level as possible. This will allow easy verification that only marked trees were harvested since the stump mark will remain.

2. Diameter-limit harvest – The least desirable of a select harvest is a diameter-limit harvest. In this type of harvest, the larger trees are harvested down to a certain diameter (for example, harvest all trees greater than 15 inches in diameter). This type of harvest requires no marking, but

does not account for maintaining proper stocking and also reduces the quality of the overall stand. This harvest is difficult to oversee since diameters are generally measured 4.5 feet above the ground, and stump diameters are usually larger because most trees flare out near the ground. This harvest is considered a high-grade harvest because it tends to “take the best and leave the rest” and is not a recommended practice.

3. Clearcut harvest – In a clearcut harvest, all – or nearly all – trees above 2 inches in diameter are harvested. This type of harvest is often recommended in an aspen forest or in the final harvest of a mature pine forest. The purpose of a clearcut is to regenerate the stand. In clearcuts, there may be a recommendation to reserve scattered oak or white pine trees, or to reserve understory balsam fir.

In many low-quality hardwood stands, in stands with a mix of conifers, or in transition areas between forest types, clearcuts can have species-specific cutting regulations for each species, or even add facets of diameter limits for certain species. Sellers should seek the advice of a professional forester in wording cutting regulations.

In some cases, the term *mixed hardwoods* is used to describe products to be removed. Mixed hardwoods are small quantities of hardwood tree species of low relative value or not in sufficient quantity to be marketed in separate species categories. High-value species or products should be identified separately, even if the volume is small. In general, the use of mixed hardwoods should be restricted to pulp, woody biomass, or both (Wisconsin, 2009).

Disclaimer – The information presented in this bulletin is not a legal document and should not be used as such by any prospective parties to a timber sale agreement. Each such agreement is unique and depends on the actual situation of the parties involved. The sample contract presented here is intended only to provide educational information on the general nature of the language that may be included in some timber sale contracts. In every case, anyone desiring to enter into a timber sale contract should consult an attorney in order to obtain an originally drafted contract that is written to accomplish the specific purposes intended in a particular situation. Interested parties should not use the sample contract for their own purposes. Michigan State University does not present the sample contract as legal advice. Nor does it represent that this sample contract is in conformity with the law governing timber sale agreements.

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SAMPLE TIMBER SALE CONTRACT

Essential Items

1. Names of parties

This Contract is entered into by and between _____ (Seller), and _____ (Purchaser).

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

2. Ownership and authorization

The Seller, having the sole right to sell, and has no concurrent sales agreement on the parcel, agrees to sell to the Purchaser, who agrees to buy all the timber that has been designated as follows:

3. State Contract is in

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

4. Location of harvest area

County Name: _____

Township: _____ Range: _____ Section: _____ Parcel Description(s): _____

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

5. Agreed price of timber

The Purchaser and Seller hereby agree to the following price of timber:

Table 1. Unappraised Timber Sales Sold According to Scaled Volume

| Species | Product | Units | Unit price | Tree to harvest designation (all, marked, diameter limit) | Specific designation (color marked, diameters to harvest) |
|---------|---------|-------|------------|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

OR

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Table 2. Appraised Timber Sales Sold on Appraised Volume (Lump Sum)

| Species | Product | Estimated volume | Units | Unit price | Total estimated value |
|---------|---------|------------------|------------------------------|------------|-----------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | Total estimated value | | |

6. Down payment

The Purchaser agrees to pay the Seller an installment in advance of cutting. The first installment of (\$500 or 10% of estimated sale value) dollars (\$ _____) shall be paid when the Contract is signed.

7. Method and timing of payments.

MILL SCALE. The Purchaser shall keep a record of each load removed and its destination. Addresses of the mills where wood products are to be delivered shall be given to the Seller before cutting begins. The Purchaser shall provide mills with the Seller's name and address for each load. Failure to keep a record of any load and its destination shall be a violation of this Contract and considered theft.

The Purchaser shall pay the Seller for the products delivered to the mill, as measured on the mill scale slip, within 30 days of delivery. The Purchaser shall include copies of the mill scale slips with payments. All payments must be paid in full within one month after harvesting operations have concluded.

OR

SOLD ON APPRAISED VOLUME. The Purchaser shall pay for entire sale value, minus the down payment, before cutting begins. (Unit payments can be arranged for larger sales.)

8. Ownership of timber until paid in full

All timber marked or products included in this Contract, until paid for in full, shall remain as the property of the Seller.

9. Contract termination date

Timber harvesting may begin on _____ and may continue until the termination date of _____ unless an extension of time is requested and granted in writing. The Purchaser shall give the Seller a minimum 3-day notice before harvesting begins. After this termination date, all products remaining on the Seller's Premises, cut or uncut, become the property of the Seller unless an extension is granted. If extensions of this Contract are deemed reasonable by the Seller, the stumpage price agreed upon herein shall be adjusted as follows:

- a. First 6-month extension: 0% increase
- b. Second 6-month extension: 5% increase
- c. Additional 6-month extensions: 10% increase

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10. "Hold harmless" clause

The Purchaser agrees to save and hold harmless the Seller from any and all claims, penalties, or expenses of any nature, type, or description whatsoever, arising from the performance of this Contract, whether asserted by an individual, organization, or governmental agency or subdivision. Simultaneously, with the execution of this agreement, the Purchaser shall deliver to the Seller copies of insurance policies indemnifying the Seller against any liability resulting from the operations of the Purchaser in connection with the timber removal covered by this agreement.

11. Independence of Purchaser

It is understood by both parties that the Purchaser is an independent contractor and not an employee of the Seller.

12. Purchasers compliance with Worker's Compensation

The Purchaser certifies compliance with Michigan Worker's Compensation Statutes, or if not applicable, must show proof of liability insurance on his or her person, employees, and equipment.

13. Contract violation clause

The Seller may suspend or cancel all operations for violation of any term of this Contract by the Purchaser, and for cause, may retain all monies deposited.

14. Amendments to Contract

Any modifications or amendments to this Contract must be written, dated, and signed.

15. Performance bond

Prior to commencing harvesting operations, the Purchaser shall post a performance bond in the amount of _____ dollars (\$). (A third party named in the Contract should hold the performance bond.) The Seller shall refund any performance deposit or notify the Purchaser of intent to retain said deposit within thirty (30) days of sale completion or expiration, whichever comes first. Recommended performance bond for sales 20 acres or less is \$50 per acre, or \$40 per acre for sales more than 20 acres.

16. Subcontracting

The Purchaser may not subcontract any part of this Contract without prior written approval of the Seller.

17. Disputes – 3rd party arbitration

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 arbitration board. Costs of arbitration shall be shared equally by the Purchaser and Seller.

Cutting Regulations

1. Cutting unmarked trees

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

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2. Tree tops/slash disposal (*Slash* is a term that describes the branches, leaves, needles, and pieces of wood left on a harvest site after the merchantable products have been removed.)

Slash falling in any lake or stream, in a right-of-way, or on land of an adjoining landowner shall be immediately removed from the waters, right-of-way, or adjoining land. All trees shall be completely felled and not left leaning or hanging in other trees.

3. Boundaries – responsibilities

The Seller is responsible for the designation of all property boundaries. The Purchaser must remain within the sale boundaries designated by the Seller. Boundaries are marked with _____.

4. Right of access

The Purchaser has the right of access onto the Seller's land for harvesting purposes. If the Purchaser has to cross a third party's property to enter the Seller's land, the Purchaser must clear the right of access with the third party.

5. Road location agreement

The location of all roads, landings, and decking areas must be agreed upon by Purchaser and Seller before operations begin. The Purchaser will be responsible for obtaining necessary permits for crossing streams and/or wetlands as required by law.

6. Notifications of activity

The Purchaser shall give a minimum 3-day notice to the Seller of any activity on the Seller's property and the Purchaser shall supply the Seller with the name and phone number of the person in charge of that operation.

7. Scale rule for sawtimber

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, for example, three different log rules are used: the International 1/4-inch rule, Scribner Decimal C, and Doyle rule. The International 1/4-inch rule is preferred, but consult your local forester.

8. Seller's right of inspection

The Seller has the right to inspect the sale area at any time. If logging operation is active, the Seller will make his presence known to the crew supervisor as a safety precaution, before inspecting the sale area.

9. Prevention of fires

The Purchaser agrees to take reasonable precautions to prevent the starting and spreading of fires. The Purchaser shall be responsible for damage and forest fire suppression costs caused by their operation under this Contract.

10. Liability waiver for uncontrollable events

Neither Purchaser nor Seller are liable for payments or performances due to uncontrollable events such as fires and floods.

11. Prohibition of on-site mills

Purchaser shall not erect and maintain a mill or flail debarker on the Premises without the prior written consent of the Seller.

12. Stump height

Stump height must not exceed 6 inches for pulpwood and 12 inches for sawtimber.

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13. Timing of road building

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

14. Rehab of roads and landings

Pre-existing roads and trails are to be restored to original or better condition. Woody logging debris on the landings should be left, scattered over sale area, or bunched over sale area. (Describe the agreed terms.)

15. Frozen ground requirement/Excessive rutting

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

Ruts greater than 8 inches deep for more than 100 feet long must be repaired. No rutting is allowed that disturbs the channelized flow of a stream or wetland.

16. Period and timing when logging prohibited (To consider night logging, hunting season, Sabbath Day, etc.)

Logging activity should cease from _____ (date) to _____ (date).

Logging activity should cease from _____ (date) to _____ (date).

Logging activity should cease from _____ (time of day) to _____ (time of day).

17. Repair of damages.

Damage caused by logging to ditches, fences, bridges, culverts, deer blinds and stands, trails, or other improvements shall be repaired at Purchaser's expense.

18. Use of surrounding fields

No use of surrounding fields during the growing season shall be permitted unless written approval is given by the Seller/Owner.

19. Damage to buildings

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.

20. Removal of litter

The Purchaser shall remove equipment, tools, solid waste, and trash remaining on the sale area or Seller's property or adjoining land used in conjunction with the harvest upon completion of performance under this Contract.

21. Crop damage

Crop damage shall be paid for by the Purchaser.

22. Prohibition of hunting by buyer

Loggers are prohibited from hunting in the woodlot.

23. All logging activities shall comply with Michigan's Best Management Practices for Sustainable Soil and Water Quality Practices on Forest Land.

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Seller: _____

Purchaser: _____

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24. Utilization Standards:

- a. Clearcuts – All stems 2 inches in diameter shall be cut except for _____, which are reserved from harvest.
- b. Marked sales – All and only trees marked with _____ paint shall be cut.
- c. All wood 4 inches in diameter and larger on the small end and at least 8 feet in length shall be cut and removed from the site.
- d. Diameter-limit harvests – Trees above designated stump diameter only shall be harvested.

| SPECIES | DIAMETER LIMIT |
|---------|----------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

25. Damage to residual trees

- a. If residual timber or other forest products are unreasonably damaged by the Purchaser, the Purchaser agrees to pay the Seller, as a penalty, the amount equal to the stipulated amount in the “Cutting Unmarked Trees” section. Permission to cut and remove the damaged trees resides with the Seller’s discretion.
- b. “Reasonable” in this Contract is defined as fair, proper, just, moderate, and suitable under the circumstances, not arbitrary or capricious.
- c. When residual tree damage exceeds the total acreage of the timber sale x .5 factor, then it is considered excessive damage. (for example, 10-acre thinning X .5 factor = 5; if 5 or more trees are damaged beyond reason, damages would be assessed).

END OF CONTRACT

In witness whereof, the parties have signed on the dates shown below.

| | |
|-------------------|-------------------|
| Seller: _____ | Purchaser: _____ |
| Name: _____ | Name: _____ |
| Address: _____ | Address: _____ |
| _____ | _____ |
| Phone: _____ | Phone: _____ |
| Cell Phone: _____ | Cell Phone: _____ |
| Email: _____ | Email: _____ |

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

Date: _____ by _____ Seller

Date: _____ by _____ Purchaser

INITIALS:

Seller: _____

Purchaser: _____

References & Resources

University of Minnesota Extension. (2007). *Sample Minnesota Timber Harvest Contract*. Retrieved from MyMinnesotaWoods website: www.myminnesotawoods.umn.edu (Language used by permission from University of Minnesota.) (Sample timber harvest contract obtained from the University of Minnesota Extension's MyMinnesotaWoods website: www.myminnesotawoods.umn.edu.)

Wisconsin Department of Natural Resources – Forestry Division, Wisconsin Woodland Owners Association, & University of Wisconsin-Extension. (2009). *Wisconsin Extension, Forestry Facts No. 94 – Understanding the Sample Timber Sale Contract* (Rev. ed.). (Language used by permission from Wisconsin Department of Natural Resources-Division of Forestry, Wisconsin Woodland Owners Association, and University of Wisconsin Extension.)

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