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G77-334 Timber Sale Contracts

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Hamilton, Rick, "G77-334 Timber Sale Contracts" (1977). *Historical Materials from University of Nebraska-Lincoln Extension*. 866.

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Timber Sale Contracts

A good contract protects both seller and buyer from legal problems arising from the harvest and sale of standing timber.

Rick Hamilton, District Extension Forester

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A timber sale contract is a legally binding written document governing the terms of a timber sale. A good contract protects both seller and buyer from legal problems arising from the harvest and sale of standing timber.

Timber has historically been sold under gentlemen's agreements. These verbal agreements have caused seller and buyer dissatisfaction and loss of trust. A contract clarifies the obligations of both parties prior to timber harvest.

Essential Components

An effective timber sale contract should include:

1. *Names and addresses of seller and purchaser* - To identify the parties to the contract for legal reasons and so that each party will know with whom he is dealing.
2. *Declaration of sellers ownership and right to convey* - To insure the buyer that he is not wasting time or money on timber he has no chance of obtaining.
3. *Exact location and legal description of the area* - The legal description should describe the sale area by the rectangular system of U.S. Public Land Survey. Acreage and method of marking the sale area boundary should be included.
4. *Timber bought and sold* - The wording must designate timber sold on the basis of volume by species. Unit of measure (cords, cubic feet, board feet, or weight), log rule, and method and place of scaling should be included. Provisions should be made as to who shall do the scaling, at what place, at whose expense.
5. *Price basis and methods and terms of payment* - Timber may be sold for a lump sum or on value per unit basis (such as dollars per thousand board feet). The price basis, method and timing of payment, and the timing of title transfer must be understood by both parties.

6. *Financial responsibility of the buyer* - The seller should compel the buyer to carry personal liability insurance, property damage insurance, and Workmen's Compensation Insurance during the life of the contract. To insure performance, the buyer may be required to put a cash bond in escrow.
7. *Duration of agreement* - Provisions for or against extending time limits may also be included.
8. *Conditions governing removal* - Generalities are worthless; clauses restricting the manner and methods of harvesting must be specific. Include: 1) equipment limitations, 2) provisions for buyer's ingress and egress, 3) responsibility for damage to other property by fire or negligence.
9. *Conditions governing utilization* - Include stump heights, minimum lengths and diameter of merchantable material, and penalties for noncompliance.
10. *Ownership of by-products* - Slabs, shavings, chips, stumps, and sawdust are salable in some areas. Ownership disputes may occur when local markets suddenly develop during the life of the contract.
11. *Provision for or against assignment of the contract* - If the seller definitely wants the party with whom he negotiates to be responsible for performance, he will forbid assignment of the contract in whole or in part. On the other hand, an assignable contract will sometimes command a higher price for the timber and it might be to the advantage of the seller to grant this right. When assignment is permitted, the buyer will sometimes agree to be fully responsible for performance even though he sells his interest in the timber to another.
12. *Clause for arbitration* - Generally, in the case of disagreement, each party to the contract names one person and they agree on a third to settle disputes of a technical nature. If the contract is of long duration it may not be feasible to select the arbitrators at the time of writing the agreement and name them therein, but it is a good plan to do so when practicable.
13. *Signatures of all parties.*
14. *Notarization.*
15. *Registration* - Despite the importance of legal documents and the care of handling which they deserve, they sometimes become lost or destroyed. Timber sale contracts convey real property and they should be recorded in the public registry at the courthouse.

Sample Contract

Contracts should be kept as simple as possible. Consult a lawyer or forestry consultant when developing any contract. A sample contract is presented below. With minor modification such a contract can be applied to a wide variety of timber sales.

TIMBER SALE CONTRACT

Agreement entered into this _____ day of _____, 19____, between ____ **(Name of Seller)** _____ and ____ **(Spouse)** ____ of ____ **(Post Office)** ____ **(County)** ____, ____ **(State)** ____, hereinafter called the SELLER AND ____ **(Name of Pur.)** ____, of _____, _____, hereinafter called the PURCHASER.

Witnesseth:

PARAGRAPH 1: The SELLER being the legal owner or the lawful authorized agent for the following described timber, agrees to sell and the PURCHASER agrees to buy, upon the terms and conditions hereinafter stated: The marked or designated timber estimated at **_(Amount & Unit Measure)_** more or less, from the area about _____ acres designated on-the-ground Subdivision _____, Section (s) _____, Twp. _____, Range _____, County of _____, State of _____.

Additional Description is as follows:

PARAGRAPH 2: The PURCHASER agrees to purchase the following timber which is estimated to be:

SAMPLE

The PURCHASER agrees to pay the SELLER for said timber on the basis of **_(log scale, cruise, tree estimate, marked trees, etc.)_** in the amount of \$_____ as _____**(Down payment, payment in full, etc.)_____**.

Additional payments shall be made as follows: _____

The scaling and measurement shall be handled and recorded as follows: **____(Who should scale; location such as woods; landing, at dump; scale records, etc.)_____**

The title of the timber and other products remain in the SELLER until paid for by the PURCHASER.

PARAGRAPH 3: The PURCHASER further guarantees to the SELLER faithful performance by**_____ (Performance bond, cash deposit, liability, ins.)_____**

PARAGRAPH 4: It is understood and agreed between the PURCHASER and the SELLER that this agreement begins _____, 19_____, and ends _____, 19_____, and that any timber and other products not cut or removed prior to said termination date shall revert to the SELLER.

Additional provisions whereby time limits may be extended, amendments to this agreement, or termination because of failure to comply with the terms of this agreement are:

PARAGRAPH 5: The following (designate whether SELLER or PURCHASER) will be responsible for compliance with: Slash responsibility & disposal

Fire protection (suppression tools, equipment, shutdown periods, snag requirements, etc.):

PARAGRAPH 6: The PURCHASER agrees to cut and remove said timber in strict accordance with the following conditions:

- a. Only marked or designated timber within the sale area will be cut. Excessive damage to standing unmarked or undesignated timber shall be paid for at the rate of \$_____ per_____.
- b. Stumps shall be cut as low as possible, but not to exceed _____ inches in height.
- c. Material which is _____ feet or more in length, _____ or more in diameter inside the bark at the small end, and _____ percent or more sound shall be considered

merchantable. Merchantable material cut and left in the woods and marked or designated trees left uncut shall be paid for at the rate specified in paragraph 2.

- d. PURCHASER shall use existing roads; new roads shall be located only with the consent of the SELLER, and roads at all times shall be kept free of logs, brush, and debris resulting from the PURCHASER'S operations. Any road used by the PURCHASER in connection with this sale that is damaged or injured beyond ordinary wear and tear through such use shall promptly be restored by him to its original condition.
- e. Rights-of-way affecting timber or lands outside the sale area shall be handled as follows:_____
- f. **_(tops, slabs, sawdust, etc.)_** shall remain the property of the SELLER.
- g. PURCHASER shall protect property such as fields, fences, telephone, light and power lines, buildings, ditches, bridges, etc., against unnecessary injury, and shall repair damage caused by him in restoring them immediately to the condition found prior to change.
- h. As far as practicable all logging and hauling operations shall be in an orderly and progressive manner, exercise all possible protection to young growth and shall give due consideration to disturbances which will affect soil movement or impair and aggravate water movement.
- i. The PURCHASER and the SELLER agree that only the following types of logging equipment shall be used:_____

PARAGRAPH 7:

- a. All modifications of this contract will be reduced to writing, dated, signed, and witnessed, and will be attached to this contract.
- b. This agreement, or any interest therein, may not be assigned by the PURCHASER without prior consent of the SELLER.
- c. Resale of any portion of the standing timber conveyed by this contract will not release the PURCHASER from all the terms of this contract unless the SELLER signs a written release.
- d. This agreement shall be binding upon the heirs, administrators, executors, successors, or assignees of both parties.
- e. PURCHASER agrees to identify and hold harmless the SELLER from any and all damages, claims or demands upon the part of the third parties on account of any action by PURCHASER, his agents, servants, or employees, under this agreement, and furthermore to respect and protect all rights-of-way, easements, and servitudes belonging to any other party or parties, and enjoin not to injure, damage, waste the same in any way whatsoever, and does hereby indemnify and hold harmless the SELLER therefrom.
- f. In case of dispute over the terms of this contract, final decision shall rest with a reputable person to be mutually agreed upon by parties to this contract, and in the case of further disagreement, with an arbitration board of three persons, one to be selected by each party to this contract and the third to be selected by the other two.

IN WITNESS THEREOF, this agreement has been executed by the parties hereto on the date first written above.

(Witness)

(Seller)

(Witness)

(Purchaser)

File G334 under: FORESTRY

D-2, Marketing

Issued February 1987; 15,000 printed.

Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Elbert C. Dickey, Director of Cooperative Extension, University of Nebraska, Institute of Agriculture and Natural Resources.

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