

Lump Sum Advance Contract – Example only, not authorized for use

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This timber sale and purchase contract (the "contract") is made and entered into on this (Date), by and between (Seller's Name), whose mailing address is (Address), hereinafter referred to as "Seller", and, (Purchaser's Name), whose mailing address is (Address), hereinafter referred to as "Purchaser", under the following terms and conditions:

Witnesseth:

1. Seller is the owner of certain said "contract timber" being: (Description of Timber). Notation of marking is as follows: (Marking description) located in (County Name), (State), described as (Legal Description), and further indicated on the timber sale map and/or plats attached hereto and made a part hereof. Streamside Management Zone (SMZ) being flagged with pink flagging labeled with "Streamside Management Zone" (refer to plat for SMZ location).
2. Seller agrees to sell and Purchaser agrees to purchase all of said timber the "contract timber"; totaling (Tree count) individual trees: being (Description of Timber): the pine sawtimber trees are marked with (Paint Color) forestry paint; and all of said trees lying or situated on the lands described above and on the attachments hereto. For and in consideration of the payments hereinafter set forth, and of the obligations undertaken by Purchaser, Seller hereby grants unto Purchaser, upon the terms and conditions hereinafter set forth, a license, privilege or permit to cut and remove all of said marked timber or trees hereinabove described (the "contract timber") and Seller agrees that Purchaser shall have the right to cut and remove said "contract timber." Purchaser shall have the right and obligation to so cut and remove all of, but only, the said "contract timber," and Purchaser hereby agrees to cut and remove all of the "contract timber" and no other standing trees.
3. Immediately upon execution of this contract, Purchaser shall pay to Seller an advance payment equal to the total purchase price. The total purchase price shall be based as schedule per Addendum #1 as agreed by both parties. Seller may commingle said advance payment deposit with Seller's other funds and retain all income earned thereon, whether or not any of such advance payment is refunded hereunder to Purchaser as per the stipulations in paragraphs 5 and 16 hereto. Purchaser shall not be entitled to any interest on any amount paid as an advance payment. It is hereby agreed that adjustments may be made as necessary; per paragraph 6 hereafter; in the TOTAL PRICE, PRICE PER TREE, AND TOTAL NUMBER that are set out above in this paragraph.
4. Title to a tree designated for severance under this contract shall vest in Purchaser, and become Purchaser's property, at such time as said tree is severed by Purchaser or Purchaser's loggers, contractors or others claiming through or under Purchaser. Seller shall retain the risk of loss or damage prior to severance with respect to all "contract timber" designated for severance under this contract, and is responsible for loss or damage to all such trees and timber prior to severance, unless the loss or damage is caused by Purchaser, or Purchaser's agents, contractors, employees or other representatives.
5. In the event any "contract timber" is damaged or destroyed by fire, wind, flood, lightning, drought, disease, insects, theft, trespass, condemnation or any other type of involuntary conversion, so as to be unmerchantable, the party holding title thereto shall bear the loss resulting from such damage or loss. In the event such damage or loss to a tree occurs while the title to such tree so damaged or destroyed is vested in Seller, Purchaser shall be released and relieved of Purchaser's obligation hereunder to cut and purchase the tree so damaged or destroyed and Seller shall be under no obligation to mark and sell, or Purchaser to cut and buy, any other tree or trees in lieu of those so damaged or destroyed. In the event of such damage or destruction to trees whose title is still vested in Seller, an adjustment shall be made as follows: (a) the volume of such damaged or destroyed trees will be determined by Seller or Seller's agent on a per ton basis for sawtimber trees and on a per ton basis for pulpwood trees; (b) the volumes so determined will be multiplied by local market stumpage values that prevailed on the signing date of this contract, as determined by Seller or Seller's agent; and (c) the dollar amount determined in (b) of this paragraph immediately above will be reimbursed to Purchaser by Seller as part of the final settlement stipulated in paragraph 16 of this contract.
6. If an adjustment is made as stipulated above in paragraph 5, the terms set out in paragraph 3 above will be changed as follows: (a) the new TOTAL NUMBER of individual marked contract trees will become the original TOTAL NUMBER of individual marked contract trees damaged or destroyed as per paragraph 5 above; (b) the new total purchase price (TOTAL PRICE) will become the TOTAL PRICE stated in paragraph 3 above minus the dollar amount determined under paragraph 5(b) above; and (c) the new PRICE PER TREE will become the new TOTAL PRICE as determined in (b) of this paragraph immediately above divided by the new TOTAL NUMBER as determined in (a) of this paragraph above.
7. All timber subject to this contract shall be cut and removed by (Contract End Date), whereupon this contract shall terminate and expire unless extended by Seller and/or expire upon harvest completion, whichever occurs first.
8. During the term of this contract, Purchaser, and Purchaser's agents, contractors and assigns, shall have the right of ingress, egress and access over and across the real property on which the contract timber is growing, and over and across any other lands or right-of-ways owned by Seller, as may be reasonably, necessary or required by Purchaser to cut and remove the contract timber, with the necessary employees, trucks, tractors, logging equipment and any other machinery and appliances necessary or convenient for the purposes of cutting and removing the contract timber and for the transportation of employees.
9. Seller warrants and guarantees the marketable title to the timber subject to this contract, and warrants and guarantees that the contract timber is free discharged and unencumbered from any and all former and other grants, titles, charges, estates, judgments, encumbrances and claims of whatever kind or nature, except for state and/or county/parish property and/or ad valorem taxes as may accrue and be due from timber or time during the period of this contract, which said taxes Seller agrees to assume and pay in full. Seller agrees to defend and hold harmless Purchaser against any and all claims against the contract timber. Purchaser acknowledges that Purchaser or Purchaser's agent has examined the contract timber and nothing herein shall be construed as a warranty by Seller as to the total volume of the contract timber.

10. Purchaser shall report and pay the forest product severance or yield tax, as the case may be, if required by state law, for the contract timber purchased under this contract, and shall reimburse Seller for any such taxes that Seller may be required to pay.
 11. Purchaser covenants and agrees to cut and remove the contract timber in a good and workmanlike manner, not unnecessarily or unreasonably damaging timber not covered by this contract; to take all reasonable precautions against destructive logging practices; to keep all gates closed; to avoid felling or dropping trees or tops into fences, fields, trails, roads, creeks or mowed areas on Seller's lands or on adjacent lands; to not, during excessively wet weather, to enter upon the lands covered by this contract so as to needlessly damage Seller's roads or excessively rut Seller's land; to restore and repair any and all roads, fire lanes, pastures and fences which have been damaged or destroyed by Purchaser's operations to substantially the same condition as existed prior to such damage or destruction; to remove all butts, tops, limbs and other debris resulting from Purchaser's operations on Seller's roads, fields, pastures, fire lanes and all weather creeks and streams; and to conduct cutting, skidding and hauling operations only when the roads and adjacent lands are firm enough to support loaded trucks and other equipment. Reasonably repairing road to original status following logging is the purchaser's responsibility. If logged in the winter and road too wet to repair, then purchaser must return the following summer to complete road repair. Road responsibility does not transfer from purchaser to logging contractor (if contractor utilized by purchaser), but remains the purchaser's responsibilities.
 12. All logging is to be conducted based on state Best Management Practices (BMP handbook guidelines). If Seller determines that destructive logging operations are occurring, or if ground conditions are such that continued logging operations would cause excessive damage (greater than 10% of surface area in rutting exceeding six inches, unless special exception is agreed) to Seller's lands and/or timber, unless logging operations are already voluntarily suspended, then Seller shall be entitled, to postpone logging operations hereunder by giving a written notice of such postponement to Purchaser, and the period of postponement shall be deemed an extension of the contract period.
 13. The Purchaser covenants and agrees to take reasonable precautions against fire during its logging activities and will accept full liability for damages to Seller's, and any surrounding property occurring as a result of any fire attributable to Purchaser's loggers activities.
 14. Upon completion of cutting by Purchaser, Seller or Seller's agent will count the uncut trees marked for severance under this contract to determine the number of such uncut trees remaining. This quantity will be subtracted from the total number of marked trees (Total Number) specified in paragraph 3 above, or in paragraph 6 above, as the case may be, and the difference will establish the number of marked trees actually cut. The number of marked trees actually cut multiplied by the respective unit rate (Price Per Tree) specified in either paragraph 3 above, or in paragraph 6 above, as the case may be, will determine the amount to be paid by Purchaser to Seller for marked trees harvested.
 15. Liquidated damages shall be paid by Purchaser to Seller for Purchaser's failure to cut and remove all contract timber, except that contract timber which is damaged or destroyed as per the stipulations in paragraph 5 hereto while title yet remains with Seller. Such liquidated damages shall be equal to the value of such uncut contract trees remaining, as determined by using the unit rate (Price Per Tree) specified in either paragraph 3 above, or in paragraph 6 above, as the case may be, less the salvage value of such uncut contract trees. Salvage value will be determined by Seller or Seller's agent, taking into account all factors reasonably affecting value, including the number, size distribution and accessibility of all marked contract trees remaining, and current market prices, and may be less than the value determined by using the unit rate (Price Per Tree) specified in either paragraph 3 above, or in paragraph 6 above, as the case may be.
 16. Purchaser agrees to pay to Seller liquidated damages for the cutting or damage of any and all trees which are not contract timber, which Purchaser cuts or damages in the process of carrying out the terms of this contract. Such liquidated damages shall be paid double by purchaser (and purchaser removes damaged trees (the Seller may option to take single damages and leave the trees). Skinned tree damage determined by RFC as follows: sawtimber trees skinned greater than 144 square inches and pulpwood trees skinned greater than 72 square inches. The parties hereto agree that Purchaser in a thinning may cut small trees as may be reasonably necessary in order to conduct Purchaser's logging operations. In a final harvest, all trees are preferred, by seller, for cutting excluding the Streamside Management Zones (SMZ).
 17. Final Settlement, consisting of payment of any balance due by Purchaser, or refund by Seller as per paragraph 5 above, together with any liquidated damages due by Purchaser to Seller as per paragraphs 15 and 16 above, shall be made within 30 days of the expiration of this contract or within 30 days from notification by Purchaser to Seller that cutting has been completed, provided however that the total compensation due by Purchaser to Seller for timber purchased under this contract (not including that due under paragraph 16 above) may be less than, but will not exceed, the total price specified in paragraph 3 above.
 18. Purchaser agrees to protect, indemnify, defend and hold Seller harmless from any and all liability, claims and damages whatsoever to any person or thing, and from any loss, damage or expense, including reasonable attorney's fees and other costs of litigation, arising out of or in connection with Purchaser's performance of this contract, including, but not limited to, claims arising from the Purchaser's negligence, acts or omissions, or the negligence, acts of omissions of Purchaser's agents, employees, contractors or subcontractors. Before commencing operations, Purchaser shall furnish Seller with evidence of:
 - 1) Employer's Auto Liability with minimum limit of \$1,000,000.
 - 2) Employer's Workers Compensation Liability with minimum limits of \$500,000 each accident, \$500,000 policy limit, and \$500,000 each employee.
 - 3) General Liability insurance coverage of not less than \$1,000,000 aggregate for bodily injury and property damage.
- Purchaser agrees that such insurance coverage will not be canceled or reduced in amount during the term of this contract, or during the cutting period if less than the contract term, without the prior written consent of Seller.
19. In the event that either party hereto shall breach this contract, the party required to enforce the provisions hereof in any court of law shall be entitled to recover from the defaulting party, in addition to any other equitable relief or damages allowable by law, attorney fees and all other costs and expenses incurred in connection therewith.

20. SELLER represents that there are no threatened or endangered species of fish, wildlife or plants or habitat therefore on any of the land subject to the best of SELLER'S knowledge. If any restrictions by law or governmental regulation or if any action or threatened action from a state, federal or local government agency prevents Purchaser from cutting or removing the timber purchased hereunder, Seller hereby agrees to reimburse Purchaser for the volume that is standing on the tract as a result of such regulation, action or threatened action. Said volume to be determined by joint cruise conducted by Seller and Purchaser.
21. Prior to each commencement of operations under this timber contract, Purchaser shall notify the Seller prior to the commencement of operations. Seller's telephone number is (Phone number).
22. No line trees, boundary trees, witness trees or corner trees shall be cut and removed by Purchaser. Concrete corner markers, other corner markers, and line markers or line markings located on or adjacent to the property shall not be disturbed in any manner by the operations of the Purchaser. In the event any such markers or markings are disturbed by the Purchaser, the Purchaser shall pay all costs reasonably incurred by the Seller in replacing the same, including any survey fees incurred by the Seller.
23. This contract constitutes the entire understanding between the parties hereto with respect to the subject matter of the contract, and supersedes all prior agreements, options, and understandings between the parties hereto with respect to such subject matter.
24. Seller directs Purchaser to make payment by check to (Seller's Name) and such payments shall satisfy all of Seller's obligation to make payment for the timber purchased hereunder.

IN WITNESS WHEREOF, this contract is executed by the undersigned parties hereto on this ____ day of _____, _____.

SELLER: _____

PURCHASER: _____

Acknowledgement

<p>STATE OF _____))SS COUNTY OF _____)</p> <p>On this day the Seller(s) personally appeared before me the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, _____, and stated that they had executed this instrument for the consideration and purposes therein mentioned and set forth.</p> <p>WITNESS my hand and official seal this ____ day of _____, _____.</p> <p>My Commission Expires: _____.</p> <p style="text-align: right;">Notary Public _____</p>

ACKNOWLEDGMENT: The standard language herein that is common to all contracts was drafted by William C. Siegel, Timber Tax Consultant, Attorney at Law, 9110 Hermitage Place, River Ridge, LA 70123. The contract was prepared and completed by (User's Name). Any error is the sole responsibility of (User's Name).