

# KAPSTONE WOOD PURCHASE AND SERVICE AGREEMENT

**Buyer** owns and operates wood products, pulp and paper facilities throughout the United States.

**Buyer** utilizes Wood (hereinafter defined) in the manufacturing of wood, pulp and paper products.

**Buyer** is the owner of certain land, timber and/or has timber cutting rights.

**Seller** is engaged in the business of cutting, converting and/or transporting Wood.

**Seller** has available all necessary equipment and labor to perform such services.

**Seller** undertakes and agrees to sell, deliver, cut, convert, and/or transport to Buyer or other designated destinations, and Buyer undertakes and agrees to purchase and/or accept from Seller, those certain quantities of pulpwood, saw timber, in-wood chips, residual chips, chip mill chips, fiber fuel, poles, piling or other forest products (herein called "Wood") as are more particularly set forth below.

The parties therefore agree as follows:

1. **Scope of Work:** Over the term of this Agreement, Buyer covenants and agrees to order and accept from Seller, and Seller covenants and agrees to sell and deliver and/or Seller agrees to cut, convert and/or transport Wood to Buyer at the designated point or points, for the price listed, at the times provided, and for the volumes and species of Wood as specified on the Purchase Order(s) (defined in Section 2.)

When Seller is transporting Wood, pursuant to this Agreement, Seller agrees to furnish a sufficient number of safe and operationally sound tractors, trailers, and other transportation equipment of sufficient capacity, together with licensed, and insured, competent drivers unless delivery is by rail. Sellers shipping by rail should schedule adequate rail cars to meet weekly shipping requirements.

2. **Price:** Buyer shall pay Seller according to the prices listed in the Purchase Order(s) for all Wood delivered, and/or cut, converted and/or transported by Seller. The prices in the Purchase Order shall be subject to change upon notification from the Buyer, by issuing an amended or new Purchase Order. The purchase order is the document submitted by Buyer to Seller and together with this Agreement, any addenda, and any exhibits thereto, shall contain all of the terms required for the purchase and sale of Wood pursuant to this Agreement ("Purchase Order").

3. **Order Management:** When Buyer desires to purchase, or have Seller cut, convert, or transport Wood, it shall initiate a Purchase Order specifying the species, product, volume, delivery points and rates, if applicable, and other specifications for deliveries to be made pursuant to the Purchase Order. Buyer shall have the option to refuse to accept delivery from Seller of all Wood, or a portion thereof, that does not meet Buyer's specifications. Seller acknowledges that it is fully aware that specifications for each Delivery Point are subject to frequent changes and agrees that it will be responsible for obtaining and acquainting itself with the applicable specifications.

4. **Reload:** In the event Buyer rejects any or all Wood not meeting Buyer's specifications, Buyer may reload, or cause to be reloaded the rejected Wood onto Seller's trailer. Seller shall remove and dispose of, any rejected Wood at Seller's sole cost, risk and expense. Seller shall be responsible and accountable for the cost, risk and expense of such removal, transportation and disposal of the rejected Wood.

5. **Timber Delivery Monitoring System Guidelines:** To assist in timber security and accounting if Seller is cutting and converting on land for which Buyer has cutting rights, then Seller hereby agrees to:

- (A) Buyer will initially provide Seller with load report forms and/or trip tickets and enough preprinted gate passes for each haul truck operating on this sale. Gate passes will reflect pertinent contract information.
- (B) Seller will provide gate passes to delivery trucks designated to deliver under this Agreement. Upon arrival at the receiving facility, hauler shall provide a gate pass to scaler. Failure to provide such gate pass shall give Buyer the right to refuse acceptance of the load.
- (C) Seller shall maintain a load report form or trip ticket on the sale area at all times during active cutting or hauling and such load report form or trip ticket shall be available to Buyer for inspection. Each trailer load of wood shall be recorded on the load report form and the trip ticket before the trailer leaves the site, and each recording shall include the load number, time, trailer number, species, product, destination, and truck driver. When using trip tickets, Stub B of the next numbered trip ticket will be torn from the ticket book and stapled to the lower-driver's side-front of the load. Upon returning to the loading site, the scale ticket number of the load shall be added to the load report form for that load. Each load report form must be signed and dated.
- (D) Seller shall submit on a weekly basis the loading reports, the trip tickets and the scale tickets for each load of wood delivered to non-KapStone markets, pursuant to the terms of this Agreement.

6. **Stumpage Harvesting Guidelines:** Seller agrees to abide by the following requirements:

- (A) All Wood delivered under this Agreement shall be cut (1) so as to realize the greatest volume of merchantable forest products and (2) as close to the ground as practicable.
- (B) Seller shall have reasonable rights of ingress and egress to the Wood for the purpose of carrying on operations hereunder. No roads shall be constructed without the permission of Buyer.
- (C) In the performance of this Agreement, Seller, shall comply with sound logging practices, specifically including, but not limited to, the prevention of damage to trees not designated for cutting, the prevention and suppression of forest fires, the removal of all danger trees if required by law, the keeping of roads, ditches, firebreaks, property lines, running streams, free of tree tops and other logging debris, and the repairing of fences, ditches

and other improvements that may become damaged by such operation. If the repairs are not made or the debris is not removed and cleared promptly after notice from Buyer, Seller shall be liable to Buyer for any expense incurred in making repairs or removing debris.

- (D) When Seller is cutting and or converting Wood on property owned by Buyer or on property where Buyer has cutting rights then, Buyer shall have the right to inspect Seller's operations hereunder for the sole purpose of determining whether or not such operations are being conducted in accordance with the terms and conditions of this Agreement. In the event it is found by Buyer that such operations are not being so conducted, Buyer shall notify Seller in writing, specifying the particulars wherein Seller is not in compliance herewith. Upon receipt of such notice, Seller shall, within twenty-four (24) hours thereafter, correct its operations so that same will comply with the terms and provisions hereof. If the Seller fails or refuses after such notice and within the time stated to remedy its operations and to conform to the terms and provisions hereof, then Buyer, in addition to any other legal or equitable remedies, may, at its option, immediately suspend Seller's operations until Seller is in compliance or terminate this Agreement.
- (E) When Seller is cutting and/or converting Wood on property owned by Buyer or on property where Buyer has cutting rights then, Buyer reserves the right to temporarily halt Seller's operations hereunder, if excessive rutting or damage to the Land will occur. If Buyer has to suspend operations pursuant to this Section, this Agreement may be extended by the number of days of the suspension of work, so long as such extension is within the time allowed for Buyer to cut pursuant to an agreement with the timber owner, if applicable.

**7. Payment:** Buyer shall pay Seller according to the prices listed in the Purchase Order for all Wood, sold, delivered, cut, converted and/or transported by Seller. Payments by Buyer to Seller shall be made weekly on the basis of the scale or weight tickets described in Section 9.

**8. Set Off:** Seller hereby specifically agrees that Buyer may at any time apply any payment due Seller, or Seller's parent company, subsidiary or other affiliate, hereunder to any other debt or sum that Seller, or Seller's parent company, subsidiary or other affiliate, may owe to Buyer, or Buyer's subsidiary or other affiliate. This right of set-off shall be without prejudice and in addition to any other right of set-off, lien or other entitlement to which Buyer might be allowed, whether by contract, in law or in equity. Buyer agrees to advise Seller in writing ten (10) days prior to applying its rights of set-off hereunder. The term "affiliate" as used herein shall include any entity that controls, is controlled by, or is under common control with the named party.

**9. Scaling and Weighing:** All Wood delivered hereunder by Seller shall be scaled or weighed by Buyer, or its designee, upon delivery at the specified delivery points, which data shall be recorded by the scaler (or weigher) on scale or weight tickets and a copy of each ticket shall be given to Seller or Seller's designated representative. Each load of Wood delivered to Buyer or its designee must be identified by giving the scaler or weigher at the specified delivery point the gate pass which includes the Purchase Order information. Additional information required by the parties or by state laws shall also be included on the scale ticket. Buyer reserves the right to use average net weights for truck and/or rail tickets when scales are not operating properly.

**10. Size, Weight and Safety Requirements:** If Seller is transporting Wood under this Agreement, Seller agrees to strictly obey all size, weight and safety requirements in the states which Seller operates. Regardless of whether loading is to be completed by Buyer or Seller, Seller agrees to be solely responsible for all penalties, fines or judgments assessed because of any size, weight or safety violations.

**11. Misidentified Wood:** Upon request, Seller shall furnish to Buyer a general location map and a tract map sufficient to delineate harvest boundaries. If Buyer establishes that Seller has delivered Wood under this Agreement from a different tract, processing location or a zone different from the one reported by Seller described on the Purchase Order, then, at Buyer's sole option, all or a part of the Wood delivered under this Agreement during the preceding four (4) weeks shall be deemed to have been delivered from that different tract, processing location or zone. If this occurs, Seller shall pay as liquidated damages to Buyer for the volume of Wood delivered during the time period described above, the difference between the price for the reported zone and the zone price for the area from which the Wood was deemed to be delivered or, in the case of a tract price or location price, Seller shall pay Buyer five (5%) percent of the delivered price. This remedy shall be in addition to any other remedies permitted herein or by law, including Buyer's right to immediately terminate this Agreement as well as any other agreement Buyer may have with Seller.

**12. Insurance:** Without limiting its liability hereunder, Seller shall procure and maintain at its sole expense, the following insurance and furnish Buyer will certificates of insurance as evidence thereof:

- (a) Workers' compensation insurance providing coverage in compliance with laws of the State in which any part of the work is to be performed, and Employer's Liability (Coverage B) in the minimum amount of \$100,000 Each Accident/\$100,000 Each Employee-Disease/\$100,000 Policy Limit Defense.
- (b) Commercial General Liability Insurance, and, if necessary, Excess Liability Insurance, written on an occurrence basis with the following minimum limits of liability: General Aggregate: \$1 million; each occurrence \$1 million.
- (c) Automobile Liability Insurance with the following minimum limits: \$1 million Combined Single Limit of insurance. Seller's shipping exclusively by rail are exempt from the requirement to maintain automobile liability insurance.

The Buyer shall be named as an additional insured on coverage against claims under the Commercial General Liability policy which shall provide primary and non-contributory with respect to any applicable insurance maintained by Seller. Seller shall secure a waiver of subrogation rights from its Workers Compensation carrier in favor of Buyer.

Each subcontractor must be covered by insurance of the same character and in the same amounts as required of Seller pursuant to this Agreement.

Seller further represents and warrants that (a) Seller has provided a complete, true and accurate schedule of all vehicles used in the business to Seller's insurance agent/broker/company; (b) Seller has discussed with insurance company/agent/broker and/or has carefully reviewed the terms of all insurance policies in regard to the requirements for reporting and paying premiums on additions of vehicles during the policy period, and certify that these requirements will be fully complied with at all times; and (c) Seller grants permission to Buyer on the basis of this document alone, to obtain from insurance company/agent/broker at any time a certified copy of Seller's schedule of insured vehicles.

Should Seller elect not to include the owner(s), partners and/or executive officers of Seller in Worker's Compensation Insurance, in consideration for Buyer accepting such coverage, Seller further represents and warrants that (a) Seller is an independent contractor and each owner, partner and/or executive officer of Seller is not an employee(s) of Buyer, and has no right to claim any benefits, including workers compensation benefits, under any Buyer plan, policy, or coverage; and (b) Seller acknowledges that (s)he may purchase a Worker's Compensation plan, insurance or otherwise, insuring any of the owners, partners and/or executive officers but has elected not to do so as allowed by law and assume all risks as a result of this decision.

13. **Indemnity:** Seller agrees to defend, indemnify, reimburse and hold Buyer and Buyer's parent, officers, directors managers, employees and agents (collectively, the "Buyer Indemnitees") harmless from and against any and all claims, losses, demands, liens, causes of action or suits, judgments, fines, assessments, liabilities, damages and injuries (including death) of whatever kind or nature (collectively "Losses"), including to all persons or property, arising out of, on account of, or as a result of, directly or indirectly, Seller's or its subcontractors' operations, performance or nonperformance under this Agreement, whether or not caused or alleged to have been caused, in part, by the negligence of Buyer. Notwithstanding the foregoing, Seller's obligations set forth in the preceding sentences of this Section shall not apply with respect to Losses arising solely out of the negligence of the Buyer. Seller hereby waives as against Buyer any immunity from suit afforded by applicable workers compensation laws.

At the request of any Buyer Indemnitee, Seller shall afford to Buyer Indemnitees at Seller's expense, a complete defense of any such claim, demand, cause of action or suit; and (whether or not Seller undertakes said defense) Seller shall bear all attorneys' fees, costs of preparation and maintenance of the defense, all court costs and expert, discovery and investigative fees, and any associated appeal costs, to the end that Buyer Indemnitees shall incur no cost whatsoever as a result of such claim, demand, cause of action or suit, or ensuring compliance with this indemnity provision. Buyer Indemnitees expressly reserves the right to be represented by counsel of their own selection, at Seller's expense. The exercise of Buyer Indemnitees' right to select their own attorneys will in no way detract from or release Seller from Seller's obligation to indemnify and hold Buyer Indemnitees harmless hereunder.

Seller's obligations contained in this Section shall survive the expiration or earlier termination of this Agreement.

14. **Assignments:** Seller shall not transfer or assign its rights or obligations under this Agreement without the prior written approval of Buyer, which approval Buyer may withhold in its sole discretion. If Buyer approves the assignment of this Agreement, Seller shall remain liable for the liabilities and obligations herein.

15. **Independent Contractor Status:** No relationship of employer-employee or master and servant is intended, nor shall it be construed, to exist between Seller and Buyer, or between Buyer and any servant, agent, employee and/or supplier of Seller. Seller shall select and pay its own servants, agents, employees and/or suppliers and neither Seller nor its servants, agents, employees, or suppliers shall be subject to any orders, supervision or control of Buyer.

16. **Attorneys' Fees and Costs:** In the event that any suit, action or other proceeding is instituted by either of the parties hereto to enforce or interpret any of the terms or provisions of this Agreement, the prevailing party shall be entitled to reimbursement from the other party for its reasonable attorneys' fees, court costs and litigation expenses therein, as well as in connection with any appeal from such suit, action or other proceedings.

17. **Warranty and Taxes:** Seller fully warrants title and merchantability of all Wood to be sold under this Agreement. Seller further agrees to pay, or cause to be paid, all severance taxes or other levies upon or incident to the production and delivery of Wood hereunder which will or may constitute a lien thereon or on any products manufactured therefrom. This Section is not applicable when Seller is cutting and converting Wood on land which Buyer has cutting rights.

18. **Termination:** Either party shall have the right to terminate this Agreement without cause upon thirty (30) days written notice. Buyer shall only pay for work performed by Seller to the satisfaction of Buyer and through the termination date

19. **Compliance with Laws, Rules and Regulations:** All goods and services covered by this Agreement must be produced or performed in accordance with applicable federal, state, and local laws, regulations, rules and orders, including those dealing with slavery, human trafficking, child welfare, equal employment opportunity and the protection of the environment. Therefore, during its performance under this Agreement, unless exempt, Seller agrees to abide by the provisions of the following as applicable, which are incorporated herein by reference: 29 C.F.R. 470, 29 C.F.R. Part 471, 41 C.F.R. 60-1.4(a), 60-300.5(a), 60-300.44, 60-741.5(a), Executive Orders 11246 and 13465, and Appendix A to Subpart A of Executive Order 13496. Contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation

prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Seller certifies its work under this Order complies with §§ 6, 7 & 12 of the Fair Labor Standards Act and related U.S. Dept. of Labor regulations. If Seller provides any product incorporating wood, plants, or derivatives thereof, Seller complies with the Lacey Act, 16 U.S.C. 3371 et seq. Seller agrees to certify and re-certify compliance with this section from time to time as any party enforcing the laws may require of Buyer or Seller.

20. **Electronic Transactions:** BUYER and SELLER agree that, at their option, they may facilitate the transactions contemplated by this Agreement by electronically transmitting and receiving data. For the mutual benefit of the parties, it is agreed that all such electronically transmitted data shall be legally valid and enforceable.

21. **Notices:** Any notices sent by the parties to this Agreement shall be in writing and sent by, either hand delivery, nationally recognized overnight courier service, regular U.S. Mail, certified mail, (postage prepaid), facsimile transmission, or electronic mail directed to the street address, facsimile number, or electronic mail address listed on file, or to such other address as the parties may designate in writing. For purposes of this Agreement, such notices shall be deemed to have been received as follows: (A) if sent by regular mail, hand delivery, courier or facsimile, when sent; (B) if by certified mail, upon the earlier of actual receipt, or when deposited in U.S. Mail; and, (C) if sent by electronic mail, upon the earlier of: (i) the entrance of such electronic notice in the information processing system designated by the recipient's electronic mailing address, or (ii) two business days after the electronic mail enters an information processing system outside the control of the sender.

22. **Force Majeure:** In the event that either Buyer or Seller shall be prevented from performing its respective obligations hereunder by reason of fire, floods, riots, civil commotion, war, labor strikes or work stoppages, contingencies of transportation, mill shutdowns for any reason, embargoes or an Act of God any cause or causes (whether or not of a similar nature) beyond the reasonable control of the parties or either of them, such party shall not be held in breach hereof, but shall be excused for such nonperformance to the extent and during such time that such conditions or causes exist; provided, however, that if such nonperformance shall continue for a period in excess of ninety (90) consecutive days, the other party shall have the right to immediately terminate this Agreement.

23. **Buyer's Equipment:** Should Buyer permit Seller to use any of Buyer's equipment, tools or facilities, such use will be gratuitous, and Seller hereby waives, releases, and renounces all claims relating thereto, whether for personal injury, occupational sickness or disease, death, physical damage to property, or loss of use thereof, and whether based on the condition thereof or any negligence, strict liability or other fault of Buyer, its employees and/or agents.

24. **Default/Remedy:** If either party defaults in its payment or obligation under this Agreement, the non-defaulting party shall have the right to pursue any remedies available in a court of law. In addition, if either party defaults under this Agreement, the other party shall have the option to immediately terminate any other Agreement between the parties.

25. **Succession:** Wherever the word Seller or Buyer occurs in this Agreement, it shall be held to bind and inure to the benefit of the heirs, legal representatives, successors and, when assignable pursuant to Section 13, to the assigns of Seller or the successors and assigns of Buyer, as the case may be.

26. **Confidentiality:** Seller agrees to maintain the confidentiality of Buyer's confidential and proprietary information, including the terms of this Agreement, and the details of the transactions entered into under the terms of this Agreement.

27. **Severability:** If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law and said invalid or unenforceable term or provision shall be substituted by a term or provision as near in substance as may be valid and enforceable.

28. **Governing Law:** The law of the state where the Wood is harvested.

29. **Complete Contract:** This Agreement, all Purchase Orders and/or addenda, including any schedules or exhibits thereto, shall constitute the entire contractual relationship between the parties relating to the purchase, cutting, converting or transporting of Wood from Seller ("Contract"). This Agreement shall supersede all previous negotiations, agreements and representations between Seller and Buyer pertaining to the subject matter of this Agreement.

30. **Waiver:** Any waiver of strict compliance with any provisions of this Agreement shall not be deemed a waiver of any other provisions not so waived, or of Buyer's right to insist on strict compliance thereafter.