

TILHILL FORESTRY LIMITED

Contractor Conditions of Contract



Interpretation

1 In these Terms and Conditions (hereinafter referred to as "these Terms") words denoting the singular shall be deemed to include the plural and vice-versa, references to any gender shall be deemed to include all other genders, references to any statute or statutory provision shall be deemed to cover any amendment, replacement or re-enactment of the same in force from time to time and the following words and expressions shall have the meanings set opposite them:

"Client" means the client of Tilhill (if any) for whom the Contractor is to carry out the Work as sub-contractor on behalf of Tilhill;

"Contract" means the contract between Tilhill and the Contractor for the carrying out of the Work in accordance with these Terms and the Contract Documents;

"Contract Documents" means the Order and all documents attached thereto or referred to therein (as the same may be varied in accordance with Clause 4);

"Contractor" means the person, firm or company to whom the Order is issued and includes the permitted sub-contractors and assignees thereof and the employees of any of the foregoing;

"Contract Period" means the period within which the Work is to be carried out, as detailed in the Order;

"Contract Price" means the price payable by Tilhill to the Contractor for carrying out the Work as detailed in the Order;

"Data Protection Law" means all applicable data protection and privacy legislation in force from time to time in the United Kingdom, including the UK GDPR (as defined in section 3(10) of the Data Protection Act 2018); the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI2003 N. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which may apply to a party relating to the use of Personal Data (as defined by the UK GDPR).

"Employees" means all and any persons employed by the Contractor to carry out the Work;

"Employment Laws" means all laws (including United Kingdom laws (including those propagated by devolved powers), statutes and subordinate legislation; regulations, orders, codes of practice, guidance notes and the like, common law, local laws and bye-laws) concerning the employment of employees, workers, and/or contractors;

"Environmental Laws" means all laws (including United Kingdom laws (including those propagated by devolved powers) statutes and subordinate

legislation; regulations, orders, codes of practice, guidance notes and the like, common law, local laws and bye-laws) concerning the protection of the environment and/or the conservation or preservation of the countryside, trees, plants, birds, wildlife, flora, fauna or other natural resources;

"Order" means the completed "Tilhill Contractor Instruction Order" signed on behalf of Tilhill and by or on behalf of the Contractor whereby Tilhill has requested, and the Contractor has agreed, to carry out the Work;

"Machinery Data" means all crop, product and GPS data recorded on any machinery working on a Tilhill contract site.

"Safety Legislation" means the Health and Safety at Work etc Act 1974 and all other legislation concerning health and safety matters and all regulations or orders made under the foregoing and all relevant codes of practice, guidance notes and the like issued by government agencies;

"Site" means the location or locations at which the Work is to be carried out, as detailed in the Order;

"Specification" means all specifications, drawings, bills of quantities, descriptions and instructions relating to the Work contained or referred to in the Contract Documents;

"Tilhill" means Tilhill Forestry Limited trading as Tilhill; and

"Work" means the work to be carried out by the Contractor on behalf of Tilhill as detailed in the Contract Documents.

The Contract

2 All work which the Contractor agrees from time to time to carry out on behalf of Tilhill will be subject to these Terms save where expressly varied in writing by Tilhill.

3 The Contractor warrants to Tilhill that it will carry out the Work, using all due care and skill, in accordance with these Terms, the Specification and best industry practice and within the Contract Period.

4 Any addition, omission or variation to the Contract Documents or to any of the original quantities, specifications or drawings in the Specification must be covered by a contract variation order issued by Tilhill to the Contractor.

5 The Contract shall not be assigned or sub-contracted in whole or in part by the Contractor to any other party without the prior written consent of Tilhill.

Status of Contractor

6 The Contractor is an independent contractor and nothing in these Terms or the Contract Documents shall render the Contractor an employee, agent or partner of Tilhill and the Contractor shall not hold itself out as such. The Contractor shall not have

any right or power to bind Tilhill to any obligation. In particular, the Contractor shall not discuss any rates or variations to Tilhill's contract with the Client. In the event of any oral or written order or other communication being received from the Client by the Contractor, it must be reported/forwarded to Tilhill immediately. The Contractor shall not accept any work on their own behalf from the Client or any other client of Tilhill whilst under contract with Tilhill.

7 The Contractor will be responsible for all Income Tax and National Insurance contributions on payments made by Tilhill to the Contractor and/or payments made by the Contractor to the Employees and for VAT on all taxable supplies made by or to the Contractor in carrying out the Work. For work 'on construction sites', unless the Contractor produces a valid Exemption Certificate Tilhill will be required by law to deduct the tax ruling at the time from payments made under the Contract in respect of labour on behalf of the Inland Revenue.

8 The Contractor shall indemnify Tilhill in respect of any claim which may be made against Tilhill resulting from the Contractor's failure or delay in paying any amount of Income Tax, National Insurance or VAT.

9 The Contractor will be responsible for complying with all applicable Employment Laws in relation to the Employees and shall indemnify Tilhill from all and any claims made against Tilhill arising from the employment of the Employees.

10 Time shall be the essence of the Contract. The Contractor shall, at their own expense, make all necessary arrangements for additional labour and machinery/equipment should progress fall behind the programme agreed with Tilhill or should the resource originally intended for the Work become unavailable for any reason.

Outsourcing Agreement

11 Where the Contractor's Work is harvesting for Tilhill on a standing sale site. Tilhill maintains control of the standing sale site through supervision by the Forest Works Manager or their deputy and the legal ownership of the felled products throughout the process and will not relinquish legal ownership or control of the felled products. The Contractor shall ensure the following:

- i. At no point must any of the products from Tilhill contracts will be mixed with any other products from another source.
- ii. No work shall be subcontracted related to the products without prior agreement.
- iii. The products shall always be fully traceable while in the care of the Contractor.
- iv. Tilhill shall be informed in the event of any damage or loss of the product to enable Tilhill to account for or replace the product if they see fit.

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- v. Records of traceability shall be made available on request. (Such records could include machinery prints, Self Bill Invoices (SBLs), delivery notes, weight tickets and work instructions as examples.)
- vi. Records shall be made available to Tilhill authorised third party auditors on request.
- vii. No chain of custody trademarks, claims or statements will be made by the outsourcer other than any relating to its own registrations.

12 The Contractor shall inform Tilhill within a period of 10 business days if they are included in the list of organisations that are disassociated from FSC, and therefore subsequently ineligible to provide outsourcing services to FSC-Certified organisations.

Payment of Contract Price

13 All stages of Work are to be passed as satisfactory by Tilhill before commencement of subsequent stages.

- 14 (a) No Work shall be paid for by Tilhill until such Work has been completed to Tilhill's satisfaction. Tilhill shall be entitled to retain 10% of the value of interim payments until satisfactory completion of the whole Work. On discovery of any overpayment the Contractor shall immediately refund such payment in full.
- (b) Payment of the Contract Price will be subject to receipt of pay advices certified as correct by Tilhill's representatives.
- (c) Payment of invoice will be made by Tilhill on a Net Monthly basis.

Carrying out of the Work

- 15 Tilhill will at its own cost make all necessary arrangements to enable the Contractor, their Employees and all persons duly authorised by the Contractor, to begin the Work on the dates and in the manner prescribed and will give to them such instructions as may be required. Tilhill will not accept any responsibility for delays outside its control.
- 16 The Contractor shall indemnify Tilhill against any loss, damage or costs which Tilhill may suffer or incur as a result of any failure by the Contractor to carry out the Work in accordance with the Contract. Without prejudice to the foregoing:
- (a) Tilhill reserves the right to charge the Contractor for any loss incurred by Tilhill as a result of Work produced below the standard required; and
 - (b) Tilhill reserves the right to reject any timber products resulting from the Work which are not up to the required standard. In the event of a customer of Tilhill rejecting the whole or part of such timber products, the extra haulage costs and any reduction in the sale value of the rejected timber products will be met by the Contractor. Any acceptance of reject produce will

be at the sole discretion of Tilhill and at such payment rates as may be agreed by Tilhill's representatives.

17 Any materials found on the Site or which are reclaimed during the Work remain the property of Tilhill and are not for the Contractor to dispose of unless otherwise agreed in writing.

Access to Site

18 Access to and from the Site shall be along the routes notified to the Contractor and the Contractor shall be deemed to have fully satisfied themselves before using the same as to the load-carrying capacity of all routes (including in particular any bridges and culverts forming part of such routes) authorised by Tilhill and the use of such routes shall be at the Contractor's own risk in all things, it being expressly declared by the Contractor that Tilhill shall not be deemed or held responsible for any damage or injury however caused arising out of the Contractor's use of such routes.

Plant, Machinery and Equipment

- 19 The contractor and their employees or subcontractors shall, upon request and at no charge, allow Tilhill unlimited access, either remotely or physically, to the Machinery Data. The contractor shall ensure that all harvesting machines are capable of being remotely accessed by Tilhill and have an activated GPS system.
- 20 The contractor and their employees or subcontractors shall ensure any Machinery Data is shared in accordance with Data Protection Law where applicable.
- 21 The Contractor will ensure that all plant and equipment used by the Contractor in carrying out the Work will be maintained in good order and will comply, and be used in accordance, with all applicable Safety Legislation.
- 22 No equipment or machinery used by the Contractor in carrying out the Work shall be operated other than by a trained operator or by a person under training and only then when being personally supervised by a trained operator or appropriate registered training instructor. The Contractor must be in possession of a current Certificate of Competence valid for equipment or machinery used by the Contractor.
- 23 The Contractor shall be responsible for any Tilhill owned or hired plant or equipment with which they are provided and any damage caused through negligence or incompetence by the Contractor or their employees will be charged in full, as will the cost of any materials that in the opinion of Tilhill have been wasted.

Environmental Protection

24 The Contractor will be responsible for complying with all applicable Environmental Laws in carrying out the Work.

25 The Contractor must not cause or permit any hazardous, poisonous or explosive matter or substance to be discharged into Controlled Waters or into drains or sewers unless such discharges have been authorised by an appropriate authority and details disclosed to Tilhill and authorised by it. This includes oil, diesel, woody debris, waste effluent or sediment release. Controlled Waters are defined by Section 104 Water Resources Act 1991 and/or Section 30A Control of Pollution Act 1974 and include rivers, streams, drainage ditches, ponds, pools, lochs and groundwater.

26 Fires shall be lit by the Contractor only at the times and places agreed by Tilhill's officer in the area in which the Work is proceeding. Any fire so lit shall be left in a safe condition at the end of the working day.

27 The Contractor must only dispose of Controlled Waste (as defined by Section 75 Environmental Protection Act 1990) arising from the Work in accordance with the Section 34 Environmental Protection Act 1990 waste management duty of care and associated codes of practice. On request, the Contractor shall provide Tilhill with such documentary evidence as it may require in order to show that the duty of care has been complied with at all times during the Contract.

28 The Contractor shall not cause or permit to be brought onto the Site any highly flammable, poisonous, explosive or other substance which could cause harm to human health or the environment unless its intended storage and use has been the subject of risk assessment conducted pursuant to Clause 30 below, Tilhill has consented in writing to the presence and use of a specific volume of the substance (following discussion of the results of the risk assessment) and (where necessary) the Contractor has obtained all necessary statutory authorisations for the storage or use of the substance and has complied with all relevant Environmental Laws and also with the conditions of any such authorisation.

29 Any damage caused by the Contractor's operations to standing timber, drains, walls, fences, buildings or other structures shall be notified to the landowner, Tilhill and any other relevant person without delay.

30 The Contractor shall be responsible for and shall make compensation for or reinstate and make good all injuries or damage of whatever nature arising out of or caused directly or indirectly by the execution of the Work and shall keep Tilhill, the Client and all other relevant parties indemnified in respect of all actions claims and demands made in respect of any such injuries or damage.

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Insurance

31 It is the Contractor's responsibility to ensure that they are fully insured against all loss or damage or injury to persons or property from whatever cause arising (other than the excepted risks) in carrying out the Work and/or for which they are responsible under the Contract. The "excepted risks" are riot, war, invasion, act of foreign hostilities and civil war.

Minimum level of cover will include:

- (i) Employers Liability Insurance £5 million; and
- (ii) Public Liability Insurance from £2 million (£5 million where plant and machinery are operated).

32 The Contractor shall on demand produce to Tilhill such insurance policies together with the receipts for the current premiums as are required by Clause 31 of these Terms.

Health and Safety

33 The Contractor shall ensure that they comply with all applicable Safety Legislation in carrying out the Work and shall observe all site requirements of Tilhill or of any main contractor to which Tilhill may contract. The Contractor confirms that they have seen, and will adhere to:

- (a) the Health and Safety policy operated by Tilhill;
- (b) codes of practice issued from time to time by Tilhill; and
- (c) all other codes of practice relevant to the Work (including the Forest Industry Safety Accord (FISA) guides (formerly AFAG) referred to at 38 below).

34 Prior to commencing any work at the Site, the Contractor must carry out a suitable and sufficient risk assessment of each and every activity proposed to be carried on at the Site. The Contractor should then commence work, or instruct their Employees and/or subcontractors to commence work, only in accordance with a plan of preventative and protective measures to eliminate or minimise, so far as is reasonably practicable, all risks to themselves, the Site and all other persons who may be affected by such risks.

35 The Contractor shall be required to have a written safety policy where required by law, or in any event if the Contractor or their subcontractors shall provide 5 or more workers to work at the Site, and shall discuss their safety policy and the result of risk assessments carried out with Tilhill's representative, and so far as is reasonable and practicable shall conform with any Code of Safe Working Practice for the particular operation.

36 Tilhill reserves the right to inspect and check on safety. Any breach by the Contractor of their obligations under Clauses 33, 34 and 35 shall be regarded

as a serious breach entitling Tilhill to stop the Work and bring in another contractor to complete the Work. Should this occur Tilhill reserves the right to claim from the Contractor any and all additional costs incurred.

37 Any accident or dangerous occurrence occurring to the Contractor or their Employees or sub-contractors or members of the public while working for Tilhill must be reported to Tilhill's Health & Safety representative. Compliance with the Reporting Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) shall be the responsibility of the Contractor.

38 The Contractor will be expected to be fully competent to perform the Work in safety. To assist contractors to achieve the required safety standards FISA has produced a number of safety guides. Copies of these guides are obtainable from Tilhill and the Contractor shall be deemed to be aware of their contents whether they have read them or not.

39 The Contractor will inform Tilhill as soon as possible but within 24 hours of any new or additional hazard affecting the Site, and will immediately adjust work methods as required.

40 Any officer or manager authorised by Tilhill shall have the right with reasonable justification to order the Contractor to stop work at any time subject to:

- (a) immediate notification to the Contractor's address; and
- (b) agreeing such extension to the Contract Period as may be proportionate to such stoppage or delay.

Fundamental Rights at Work

41 The Contractor shall agree to the ILO Declaration on Fundamental Principles and Rights at Work in carrying out the Work. The ILO Convention commits to respect and promote principles and rights in: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

General

42 All disputes between Tilhill and the Contractor with respect to any matter or thing arising out of or relating to the Contract shall, after written notice by one party to the other, be referred to a single arbitrator agreed for the purpose, or, in default of such agreement, to be appointed by the President for the time being of the Chartered Institute of Arbitrators.

43 The Contract may be summarily determined by Tilhill if the Contractor:
(a) wholly suspends the Work before completion without reasonable cause, or

- (b) fails to proceed with the Work with reasonable diligence, or
- (c) refuses or neglects to comply with the instructions given to them by Tilhill, or
- (d) ceases to trade or commits any act of bankruptcy or enters into liquidation, receivership or administration or
- (e) materially breaches or fails to conform with any of these Terms or with any Contract Document.

In any such case, another contractor may be employed and paid to complete the Work and the cost of such completion shall be deducted from the Contract Price when determining the amount to be paid to the Contractor.

44 Tilhill shall have the right to cancel, suspend or reduce the Contract if the carrying out of the Work is prevented, hindered or delayed through any circumstances beyond its control, including but not limited to strikes, lock-outs, accidents, war, fire, unavailability of power at the manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw material from normal sources of supply.

45 The Contract shall be governed by and construed according to the law applicable in the Country within the United Kingdom in which the office of Tilhill which issued the Order is situated.

Data Protection

46 In this clause [46], the terms 'controller', 'processor', 'data subject', 'personal data', 'personal data breach', 'processing' and 'appropriate technical and organisational measures' shall have the meaning given to them under Data Protection Law.

47 Both parties will comply with all applicable requirements of the Data Protection Laws. This clause [47] is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Laws.

48 The parties acknowledge that for the purposes of Data Protection Law:

- (a) in respect of the Machinery Data, both parties shall be independent controllers of the Machinery Data and shall comply with all obligations imposed on a controller under Data Protection Law in respect of the Machinery Data;
- (b) in respect of all other personal data shared under the Contract, Tilhill is the controller and the Contractor is the processor.

49 Without prejudice to the generality of clause [46], the Contractor shall, in relation to any personal data processed in connection with the performance by the Contractor of its obligations under the Contract:

- (a) process that personal data only on the documented written instructions of Tilhill, unless the Contractor is required by law to otherwise process

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- that personal data (in which case the Contractor shall, unless prohibited under law, promptly notify Tilhill of this before performing the processing);
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the UK unless the prior written consent of Tilhill has been obtained and the following conditions are fulfilled:
- (i) the Contractor or Tilhill has provided appropriate safeguards in relation to the transfer;
- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) the Contractor complies with its obligations under Data Protection Law by providing an adequate level of protection to any personal data that is transferred; and
- (iv) the Contractor complies with reasonable instructions notified to it in advance by Tilhill with respect to the processing of the personal data;
- (e) assist Tilhill in responding to any request from a data subject and in ensuring compliance with its obligations under Data Protection

Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify Tilhill without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of Tilhill, delete or return personal data and copies thereof to Tilhill on termination of the Contract unless required by law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause [49].
- 50 The Contractor shall not appoint any third party processor under the Contractor without the express written consent of Tilhill. Where Tilhill does provide consent to the Contractor's use of a third party processor, the Contractor shall enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in clause [49] and in either case which reflects and will continue to reflect the requirements of Data Protection Law. As between Tilhill and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause [50].

Confidentiality

- 51 Each party undertakes that it shall not disclose to any person any confidential information concerning the business,

affairs, customers, clients or suppliers of the other party, except as permitted by clause [52]. In particular, the Contractor shall not disclose to any person any confidential information concerning the Site or Tilhill's properties, except as permitted by clause [52].

- 52 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause [52]; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 53 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

DECLARATION

- I confirm that I understand Tilhill does not provide insurance to me/my business in respect of any business risk.
- I confirm my understanding and acceptance of the Tilhill Contractor Conditions of Contract provided above.
- I confirm that I carry out work for other clients and do not work exclusively for Tilhill.

Signature: _____

Name: _____

Position: _____

Business name: _____

Email: _____

Telephone: _____

Date of completion: _____