



# The Woodland Workbook

## Business Management



# Contracts for Woodland Owners and Christmas Tree Growers

W. A. Mukatis and C. F. Sutherland

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Owners of small woodlands and Christmas tree growers increasingly find themselves in contractual situations that can end up in costly and time-consuming attempts at personal negotiations and court battles. They might have avoided these complications if they'd known more about the basic law, and understood it better, before they became legally bound by a written or an oral contract.

This publication provides some basic principles of contract law, illustrated with examples to help you better understand the legal consequences, if you should become involved in a contract relating to timber or Christmas tree production.

While we're not trying to make you a lawyer, we do hope to provide significant insights into contract principles as these apply to the planting, growing, maintaining, harvesting, and selling of timber and Christmas trees—and to help you recognize potential problems before you're legally bound by a contract (written or oral).

A contract can be defined this way: It's an agreement containing a promise or set of promises that two parties agree to in such a way that the law does two things: (1) The law recognizes, in some way, that performing these promises is a duty. (2) The law provides a remedy if one or both parties breaches (breaks) these promises.

What do these promises look like, and what might happen if a provision in the contract is not well drafted?

In a 1972 Oregon case, *Timber Access Industries v. U.S. Plywood*, poor drafting of two provisions resulted

W. Alfred Mukatis is assistant professor of business law, and Charles F. Sutherland is associate professor emeritus of forest management, Oregon State University.

in a lawsuit. The two parties disagreed over exactly what the promises and duties were under the contract. These are the two provisions:

“4.1 Seller [Timber Access Industries] shall log the Timber Sale and deliver approximately 6 M M.b.f. of logs as covered by this agreement between May 2, 1966, and November 30, 1966.

“4.2 In no event shall Purchaser [U.S. Plywood] be required to buy logs after November 30, 1966 in excess of the 6 M M.b.f.”

Before the contract had been completed, the log market weakened and the price went down. On November 23, 1966, the buyer (U.S. Plywood) wrote a letter to the seller stating that it would not accept any more logs after November 30.

By November 30, only 4,185,910 board feet of logs had been delivered, and U.S. Plywood refused to buy any more. Timber Access Industries sued, and the jury ruled in its favor.

U.S. Plywood appealed. One of its arguments was that the evidence at trial clearly showed that the intent

was that no logs would be accepted after November 30 and that the issue shouldn't have been submitted to the jury.

The court, on appeal, said that provisions 4.1 and 4.2 were inconsistent and ambiguous, and that the evidence at trial was not clear-cut enough about the intent of the parties for the judge to decide in U.S. Plywood's favor; therefore, it was correct to let the jury decide.

A simple modification of paragraph 4.2 at the time the contract was written could have prevented the ambiguity, and it probably could have avoided the time-consuming and expensive trial and appeal. The language of the contract could have been, “Notwithstanding anything to the contrary, in no event shall Purchaser be required to buy logs after November 30, 1966.”

Then it would have been much clearer that the buyer wasn't under any obligation to purchase logs after November 30—and much less likely that the issue would have gone to court.

## Unilateral and bilateral—an important distinction

Contracts may be classed as either unilateral or bilateral. Unilateral contracts are exchanges of an act for a promise.

### Example 1

Linda, a log buyer for a mill, offers (promises) to pay Wilbur, a woodland owner, \$200 per MBF for logs delivered at the mill. Linda has made an offer (that is, a promise) for a unilateral contract with Wilbur. When Wilbur delivers the logs, he has, by his act, simultaneously formed the contract and performed his duty under it. Linda is then obligated to perform her duty—that is, to pay Wilbur.

Unlike the unilateral contract, a bilateral contract is an exchange of a promise for a promise. For example, sales contracts for standing timber (stumpage), whether for public or private sales, are usually bilateral contracts.

### Example 2

Ollie, a timber owner, promises to sell a quantity of timber at a designated price to Babs, a buyer. In return, Babs promises to pay that price for the timber at some later, specified date. Ollie's promise is the offer, and Babs's is the acceptance. Upon acceptance, a contract is formed under which both parties have a duty to perform in the future.

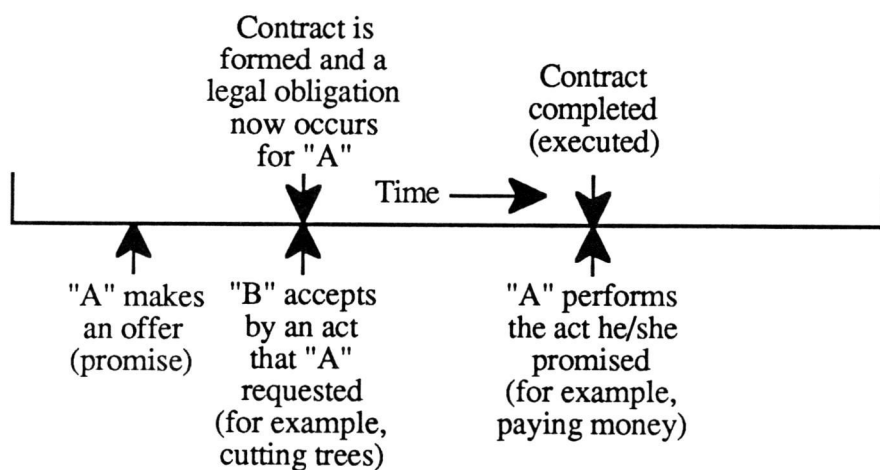
Figure 1 illustrates the basic differences in the timing of the steps in the two types of contracts.

Note that the wording of the offer can change its form from a unilateral to a bilateral contract or vice versa. In example 1, the offer for a unilateral contract requesting the act of delivering logs at the mill could be changed to an offer for a bilateral contract if the log buyer requests a promise to deliver a certain log volume, by grade, by a specified delivery date. The acceptance would occur when Ollie *promises* to deliver, *not* when he *delivers*.

If a contract's wording doesn't make clear whether it's unilateral or bilateral, courts will almost always rule it to be bilateral. The critical difference is that the timber owner (Ollie in example 2) may think the offer is for a unilateral contract and not legally binding before delivery.

However, if the court rules that it's a bilateral contract, then the timber owner has promised to deliver and is bound to do so from the time of the promise. Failure to deliver will usually result in a breach of the contract. If that happens, the timber buyer can sue if he or she can't obtain logs from another source as cheaply as from the original.

### Unilateral contract



### Bilateral contract

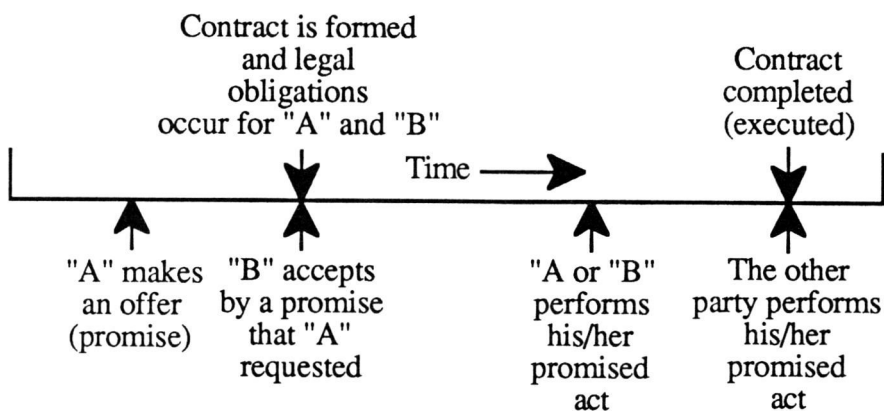


Figure 1.—Comparison of timing for a unilateral and a bilateral contract. In the bilateral contract, note that the two performances may occur simultaneously. For instance, where

"A" is buying real estate from "B," "A" may hand "B" the money while "B" hands "A" the deed.

## Four basic requirements

The courts require a minimum of four elements for a contract to be recognized as valid:

1. *Agreement*—an offer by one party (the offeror) and an acceptance of the offer by the other party (the offeree).
2. *Capacity*—the legal competency to be a party to a contract.
3. *Consideration*—technically, the giving of each promise for the other promise in a bilateral contract, or a promise for an act and an act for a promise in a unilateral contract.
4. *Legality of purpose*.

Figure 2 illustrates the four basic elements for offeror and offeree to arrive at a valid contract. We'll examine now the essential components of each of these elements.

### Agreement (offer and acceptance)

The agreement among parties consists of two parts, the offer by one party and the acceptance of the offer by the other. The next three sections cover, first, making the offer; second (because it can easily happen next), terminating the offer; and third, accepting the offer.

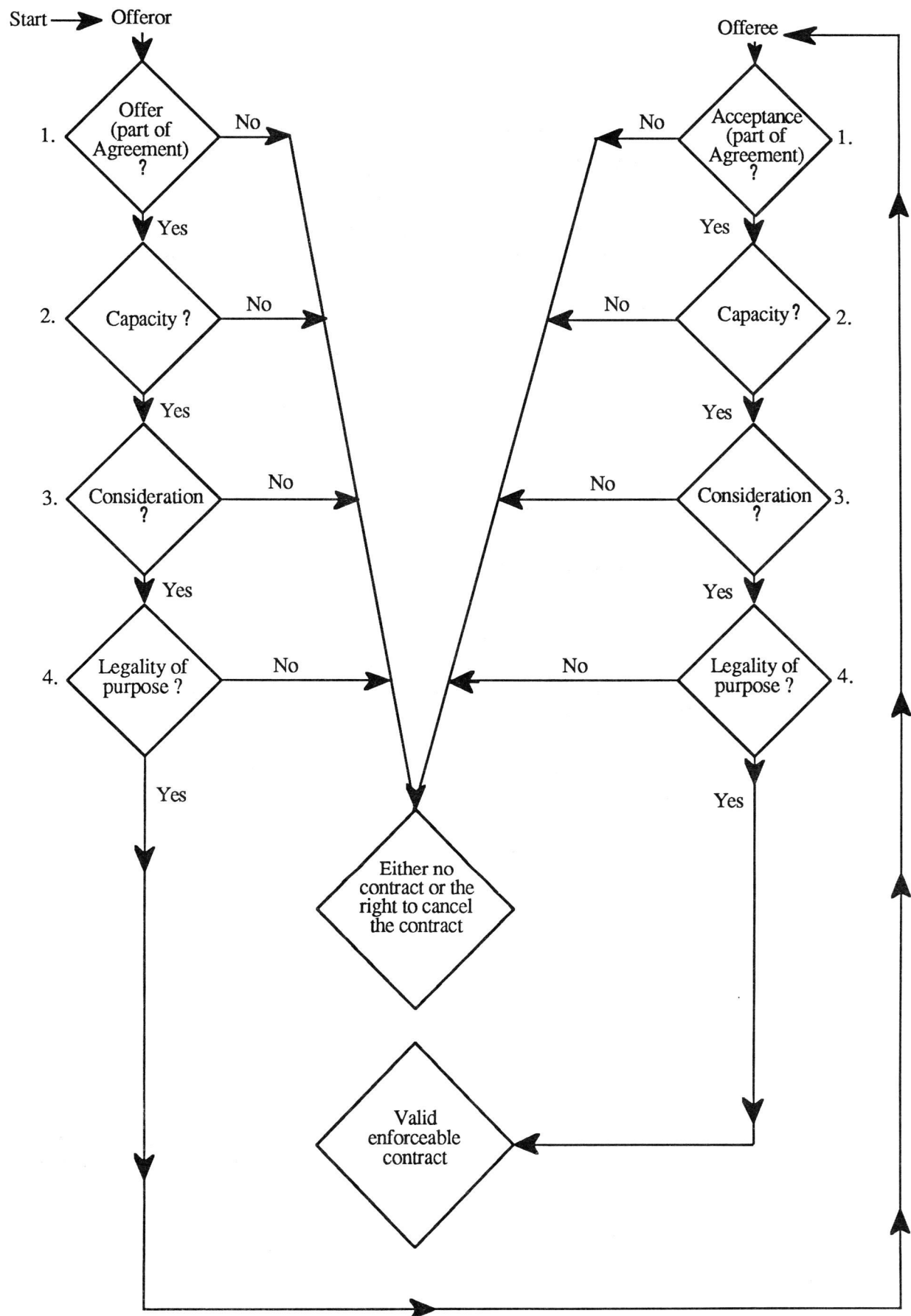


Figure 2.—Four elements of a valid contract



## Making the offer

To have a valid offer, three conditions must be present: proper communication of the offer; clear intent to make the contract; and terms that are definite and certain.

**Proper communication.** The party making the offer (the offeror) must communicate it to the intended recipient (the offeree). The offer is not effective until the offeree receives it. (This is important because an acceptance by the offeree is sometimes effective before the offeror receives it.)

If an offeree isn't aware of an offer, no contract can be created.

### Example 3

In prior years, Charles, a Christmas tree grower, regularly contracted with Conrad, a contractor, to shear trees. Charles plans to hire Conrad next year, and he mails an offer to that effect. If the letter is lost in the mail, no contract can be formed from that offer, and Conrad has no obligation to shear the trees. If Conrad, not knowing of the mailed offer, phones Charles to ask if Charles wants his trees sheared, the roles are reversed. Conrad is making the offer, and Charles (now the offeree) can either accept or reject it.

**Intent to contract.** This is the second condition. If all the basic elements of a contract have been met, and if woodland owners later maintain that they didn't really intend to make a contract, they'd probably find that a court would enforce the contract if the offer was accepted.

The test of intent rests on whether a reasonable third party would assume, knowing what the offeree knows and from the surrounding circumstances, that the offeror intended to form a contract.

### Example 4

For some past transaction, Jill, a woodland owner, is angry with Wendy, a log buyer. Intending to get even, Jill offers to sell logs for 90% of the lowest price Wendy can get anywhere else. Wendy accepts, showing proof of the lowest price available elsewhere for similar logs. Jill then cancels the acceptance, claiming she didn't really intend to make a contract. If a third party would consider the price reasonable, Jill could be held to the contract.

Advertisements to buy logs in the newspaper or other media are generally not considered to contain the intent to form a contract—rather, they're invitations to recipients to make an offer.

However, if the ad specifies the price the buyer will pay by some unit of measure, and limits the intended offerees with such language as "first come, first served," then intent to make an offer probably exists.

Government timber sales are usually by auction. In general, an auction sale isn't evidence of intent to make an offer. Most auctions are invitations to members of the audience to make offers until the auctioneer (the seller or the seller's agent) accepts or rejects a bid.

However, if the auction sale is advertised as being "without reserve," intent to make an offer exists, and the goods must be sold to the highest bidder.

**Definite and certain terms.** Under this third condition for a bona fide offer, a contract for delivery of logs to a mill would include the price to be paid for the logs by quality (log grades or log run), the quantity to be delivered, the point and date of delivery, and the timing and method of payment.

However, in a sale of goods (and logs are goods), even without price or delivery terms, a court can find that a contract exists because there was intent to contract, and the court can set such terms. Therefore, it's important to discuss these terms and agree on them beforehand, to avoid any misunderstanding—and possibly a legal action in which the court decides what some of your terms should be.

## Terminating the offer

An offer may be terminated by several means as shown in figure 3. Before acceptance, either of the parties may terminate the offer. In example 5, the offeree terminates the offer by rejecting it.

### Example 5

Willie, a woodland owner, offers to sell timber to a mill for \$100 per MBF. The mill rejects the offer, and it's terminated. However, the roles of offeror and offeree may then be reversed: If the mill makes a counteroffer of \$90 per MBF, Willie may accept or reject it.

An offeror—for example, a woodland owner offering timber for sale—can terminate the offer by withdrawing before the intended buyer has accepted. Note that the withdrawal (usually referred to as revocation) is only effective at the time it's communicated to the intended buyer (the offeree).

The major exception is where an actual offer is made to a large number of persons through some means of public communication like a newspaper. Here a termination of the offer may occur through the same means as the offer, even if it's not actually communicated to each offeree. In other words, an offer in the newspaper can be withdrawn in the newspaper, even if some intended offerees who saw the offer didn't see the withdrawal.

It's best to withdraw an offer by some quick means of communication like the phone because the withdrawal becomes effective when it's received. As an added protection, mail the offeree a note confirming the cancellation and include the time and date of your phone call.

Save a copy of the note and obtain written receipts from the post office of the time and date of the mailing and of receipt of the withdrawal by the buyer. Ask for certified or registered mail, with a return receipt (this could be important evidence if a dispute goes to trial).

If a woodland owner makes an offer to sell timber, the offer should include a clearly stated time limit such as "10 days from March 3" or "by March 13," but not "10 days from this offer" or some other poorly defined time for the acceptance of the offer. Otherwise, a legal problem could develop over the exact time limit for acceptance.

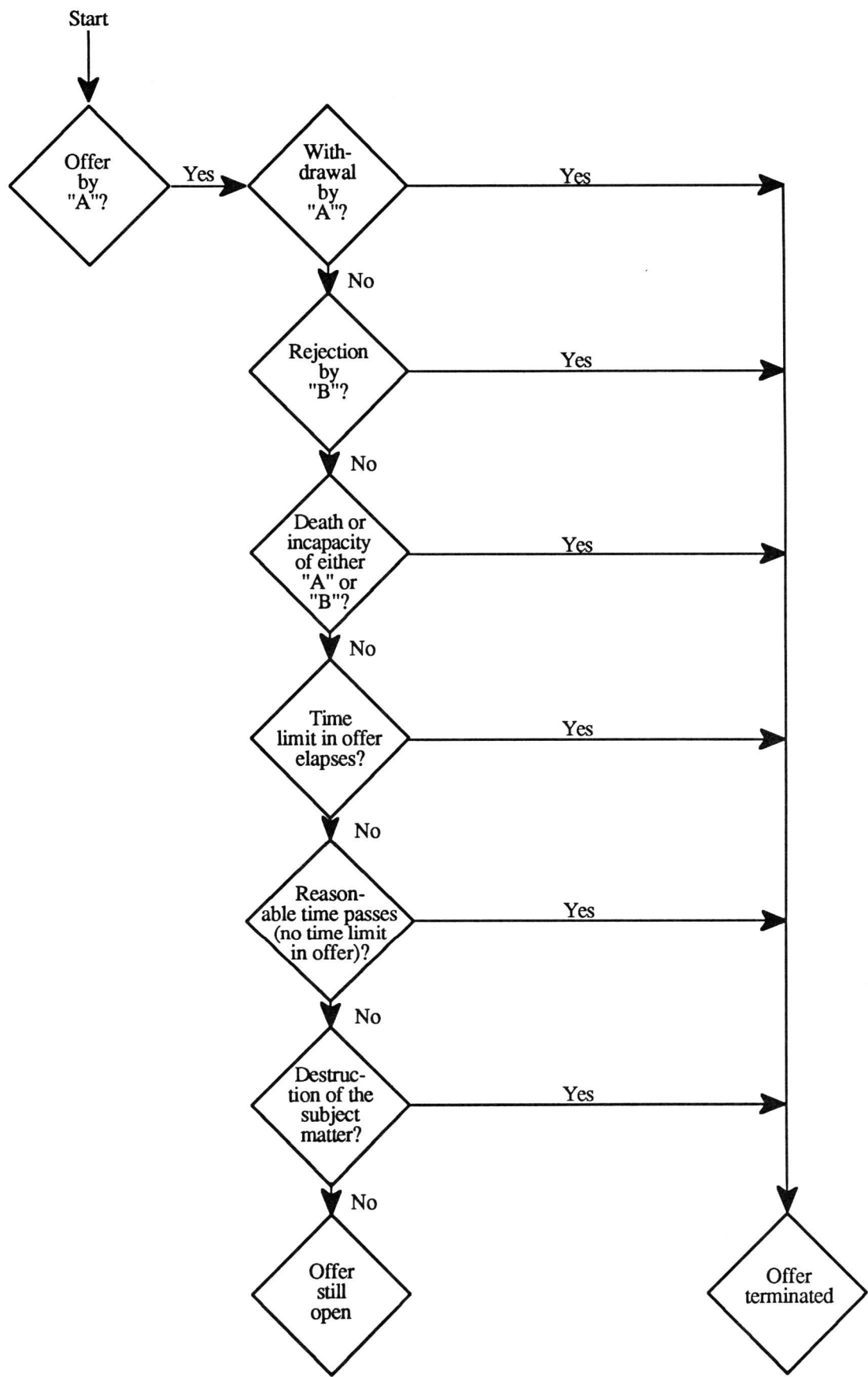


Figure 3.—Methods of terminating an offer before acceptance

If no time limit is included, a different legal problem could develop. In such situations, courts have held that a “reasonable” time limit prevails. This is a somewhat subjective standard; it could depend on the product offered for sale, the custom in the market, and (if necessary) a court’s opinion of a “reasonable” time period.

Avoid interpretation problems by including a clearly stated termination deadline in your offer. You can always revise it later.

In some circumstances, an offer is automatically terminated by “operation of law.” For example, if either party to the offer dies *before* acceptance, the offer is automatically terminated without communication to the other party.

If either the offeror or offeree dies *after* acceptance of the offer, the estate of the deceased party must assume responsibility for fulfilling the terms of the contract (whether for goods or services) if the goods or services are not special and if the contract can be performed by others.

For instance, if you hire a famous artist to paint your portrait and either of you dies, the contract is terminated because of that artist’s unique talent and the personal nature of the contract. But if you contract for 100 MBF of no. 2 logs and either the supplier or you dies, the executor of the estate must comply with the contract.

If the “subject matter of the contract” is destroyed before acceptance by means over which neither party had control (for example, timber destroyed by fire or other agent), no contract is formed.

If the subject matter is destroyed after the contract is made, a contract exists; but the rules are complicated as to who bears the loss.

To avoid problems, it’s best for the seller to maintain insurance coverage until any products are in the hands of the purchaser (and longer, if possible, where the goods are not paid for), and for the purchaser to have insurance coverage at the time the contract is formed, even though no goods have yet changed hands.

### Accepting the offer

For bilateral contracts, acceptance of an offer must be made by any legal means required in the offer. For example, if the offer of a sale of timber by a woodland owner requires acceptance by mail, no other means is acceptable.

If the offer doesn’t specify a required means of acceptance, it’s safest to use the same means to communicate the acceptance that the woodland owner used for the offer.

If the offer was made by mail, accept it by mail. If it was made by phone, reply by phone but confirm by letter. As we mentioned previously (“Terminating the offer,” page 5), withdrawal of an offer is usually not effective until it’s received by the offeree.

However, acceptance of an offer by the offeree is usually effective when dispatched if it’s sent by the same means of communication as the offer. This is important because whether or not an offer is cancelled depends on whether the offeree *received* the withdrawal before *sending* an acceptance.

### Example 6

Alphonse mails an offer to Carla to have Carla prune the lower limbs of his Christmas trees for \$500. The offer states that Carla must accept within 10 days from the date of the letter, which is June 6th. Carla receives the letter on June 8th. On June 10th, Alphonse decides to withdraw the offer because he has found someone else who’ll do it for \$400. He attempts to withdraw the offer quickly by sending a telegram. Meanwhile, Carla has decided to accept, and she drops a letter in the mailbox one hour before she receives the telegram. A contract has been formed, and Alphonse must either perform or breach the contract and pay Carla for any damages incurred if she couldn’t get other work paying as well during that period. In some cases, Alphonse might have to pay even if Carla finds other work paying as well during that period.

Note that Carla may have difficulty proving she sent the letter of acceptance before she received the telegram. She can testify to it under oath; if a jury believes her, she’ll win. It’s to Carla’s advantage to send the letter “certified mail, return receipt requested” and to ask the postal clerk to write the time on the receipt. Then she’ll have a good record of the time it was sent.

For the occasional unilateral contract for services such as shearing Christmas trees, the offer to pay is “accepted” when the offeree finishes shearing the trees. For example, if a Christmas tree grower asks a shearer to shear his (her) trees and the shearer says, “I don’t know if I’ll have time, but if I find time, I’ll do it,” the offer is for a unilateral contract.

The shearer has made no promise, but acceptance occurs when the shearing is completed. No formal communication of intent to accept the terms of the offer is required.

Because acceptance of an offer under a unilateral contract means completing the act required by the offer, the offer can’t be cancelled once the act is completed—even though the grower doesn’t know the shearing has occurred.

If the act (like shearing Christmas trees) is partially completed, some states allow the offeror to withdraw the offer, but he or she must pay for the work completed—in this example, the trees already sheared. Other states don’t allow withdrawal after the job is started until the offeree is given a reasonable time to complete the task. The one relevant case suggests that Oregon takes the latter position.

As a good business practice, it’s better to restate the offer as an offer for a bilateral contract. In this situation, the Christmas tree owner should get the shearer’s commitment (promise) to shear for the owner’s promise to pay.

### Capacity

The second element necessary for a valid contract is capacity. Very young children and those who have been held insane by a court of law have no “capacity.” They can neither enter into a contract nor be held liable for fulfilling their part of the bargain.

In Oregon, older minors (who are still under 18 years of age and unmarried) can enter into contracts, but they can choose not to fulfill the contracts even if they signed written agreements.

Woodland owners who hire young contractors to shear or prune Christmas trees or perform other contractual work should verify the age of the contractor before signing the contract. Otherwise, the minor can avoid the consequences of not fulfilling the contract by communicating an intent to cancel the contract.

Even when an underage contractor signs a statement certifying that he or she is 18 years of age or older—but later refuses to begin performance under the contract while still a minor (sometimes even after becoming an adult)—the minor can usually cancel the contract without consequences to him- or herself.

If the underage contractor signs the contract, begins work, and then refuses to finish, losses may be recoverable in some circumstances. The woodland owner can obtain protection by having an adult and minor cosign the contract as an obligation of both. The clause would probably be stated this way: “We [adult’s name] and [minor’s name] jointly and severally promise to carry out the obligations....”

## Consideration

For a bilateral contract (an exchange of a promise for a promise), each promise is “consideration” in the legal sense for the other promise—the third requirement for a valid contract. Example 7 illustrates what consideration means.

### Example 7

Wanda, a woodland owner, visits Larry, a log buyer, and decides that the current log prices Larry offers are satisfactory. Larry’s promise to buy a quantity of logs at the stated price is his promise. Wanda’s agreement to sell a specified quantity of her logs is her promise.

Wanda’s promise is an acceptance that completes the requirement of a promise for a promise—each has given consideration needed for a valid bilateral contract.

Whether the consideration exchanged is adequate is not a factor that determines the contract’s validity. If a seller, for example, agrees to sell logs delivered at the mill for \$100 per MBF and then discovers that the current price is \$120 per MBF, the seller is bound by the contract price of \$100 per MBF.

If a buyer promises to pay \$600 per acre for forest land in a written contract and then discovers that the going market price is \$400 per acre, the buyer must pay \$600 per acre for the land, assuming the contract is valid in other respects. An oral contract for the sale of land is rarely enforceable (see “Written contracts—how important are they?” page 9).

If one party has misrepresented any of the contract’s terms or has brought excessive pressure on the other party to enter the contract, the validity of the contract may be challenged. Misrepresentation could constitute legal fraud; excessive pressure could be legal duress.

In either case, the “victim” might be able to sue for cancellation of the contract or compensation for any damages caused by the fraud or duress. Even if the

misrepresentation was innocent, the victim might be able to sue for cancellation.

For bilateral contracts, there’s a separation in time between the exchange of promises and the actual performance of what was promised. In example 7, the promises to deliver and to pay for logs constitute consideration.

If the woodland owner fails to deliver the logs, performance is lacking; but consideration has been exchanged, and the contract continues to be valid. In this situation, failure to deliver the logs breaches the contract, and the breaching party can be sued and made to pay damages to the other party.

In a contract for *service*, once consideration is exchanged (a promise for a promise or a promise for an act) and a valid contract is made, neither party may change the terms of a service contract without (a) obtaining the other party’s consent and (b) giving additional consideration.

### Example 8

Barney, a tree cutter, contracted to harvest Christmas trees for 25¢ per tree for Charlotte. But after harvesting began and other contractors were difficult to find, he insisted on 30¢ per tree. If Charlotte agreed but later refused to pay the extra 5¢ per tree and Barney sued for it, courts would rule that Charlotte is only liable for 25¢ per tree, even though she agreed to pay more. In this case, Barney continued to do the same work promised in the original contract. There was no additional consideration offered by Barney to match the additional price of 5¢ agreed to by Charlotte. As a result, only the original contract is enforceable.

However, in a contract for the sale of *goods* (for example, timber or logs), the terms may be changed without additional consideration so long as both parties consent to the change.

### Example 9

Charlotte offers to sell to Barney the Christmas trees he has cut if he’ll promise to pay \$6.00 per tree at some later, agreed-on date. Barney accepts by promising to pay the \$6.00 per tree. Later, when Barney comes to pick up the trees, Charlotte says she needs to get \$6.50 per tree, and Barney agrees to the additional 50¢. The changed contract for the sale of goods is enforceable if both parties consent, even without additional consideration. If, instead, Barney had refused to agree to pay the additional money, only the original price (\$6.00 per tree) would have been enforceable. The change in terms may be the kind that requires a *written* modified contract.

## Legality of purpose

A contract is not enforceable if it violates local, State, or Federal law. For example, if State law prohibits hauling logs on Saturday and Sunday, the log buyer can’t require log delivery on those days.

Many States, including Oregon, have had laws limiting the rate of interest used in contracts, including loans for the purchase of equipment, land, and timber.



Since 1981, Oregon has no limit on interest rates charged by banks, savings and loan institutions, and credit unions. However, the law requires many other lenders to have a license before they have complete freedom to set an interest rate on loans of \$50,000 or less.

Oregon depends instead on the money markets to set the interest rates used in business. But the legislature may change this if inflation stabilizes.

Wherever the law sets a maximum interest rate and the interest in a contract is above that legal rate, all interest (in some States, even the principal) may be forfeited. In Oregon, the interest is forfeited.

A contract may be valid at the time it's agreed to but become unenforceable if one party declares bankruptcy. Thus, a woodland owner who sells logs to a mill under a contract may not be able to collect on the contract if the mill declares bankruptcy. Instead, the woodland owner will have to make a claim in the bankruptcy action, and this often leads to recovering only a small fraction of any amount still owed under the contract.

The best protection is not to give up title or possession of the logs until you're paid in cash or with a certified check. A second—but much poorer—alternative is to retain a security interest on the logs (like a mortgage on real estate) until you're paid.

With a security interest, there's a slim possibility that you can obtain some protection outside the bankruptcy. If your logs have not been sold by the mill and can be identified (by a log stamp, for example), it may be possible to repossess them. However, the procedure for obtaining a security interest and repossession is very complicated. Don't try it unless you completely understand the procedures involved and have proper legal counseling. Otherwise, as reposessor, you may be sued yourself!

(A discussion of these procedures is beyond the scope of this publication. We mention them here only to point out that, in a few cases, repossession may be feasible with proper legal counseling.)

## Other important contract terms

We're writing here about contracts for the sale of forest products (primarily standing timber, logs, and Christmas trees) and contracts for service (reforestation, precommercial thinning, shearing, etc.).

Any contract that contains the four basic elements—agreement, capacity, consideration, and legality—may be a valid, enforceable contract; but it may not be a complete contract. Other important elements may be needed to avoid misinterpretation during the performance of a sale or service. Table 1 lists some of these.

The content of contracts will vary depending upon the nature of the sales transaction or the kind of service provided. Some of the items listed in table 1 won't apply to specific contracts, and other items not listed may be essential.

Experienced woodland owners and forestry consultants strongly recommend that the parties to a contract choose a lawyer or lawyers experienced in the problems associated with the forest products industry to write a contract for the sale and purchase of forest products or for the hire of services.

Ask other woodland owners for the names of lawyers who have written such contracts and who have satisfactorily demonstrated their experience in this area.

The cost of a well-written contract will vary depending on the complexity of the sale or service. But hiring a lawyer who already has this expertise to write a clear, concise contract may save you time, money, and a great amount of frustration.

## Written contracts—how important are they?

Occasionally, a participant in a verbal contract will attempt to have the contract canceled based on the Statute of Frauds. This statute derives from an act of the British Parliament passed in 1677 to eliminate fraud associated with oral agreements.

All States, including Oregon, have adopted a form of this statute to govern the use of written and oral contracts. In many cases, contracts must be in writing to be enforceable. But the written contract may be enforceable even if it does not contain all the terms intended by the parties. As long as enough basic terms *were* written down, and the party against whom it is being enforced *did sign* it, the other party can enforce the contract in a court.

Among the contracts that must be in writing to be enforceable, three kinds apply to many forestry transactions:

1. Contracts for the sale of real property or an interest in real property. "Real property" includes bare land and land along with property permanently fixed to the land such as buildings. "An interest" in real property includes leases for land or buildings for more than a year, and easements. (An easement is an appropriately written permission for another person to go on the land for a specific purpose, such as access to other property.)
2. Contracts that can't be performed within one year from the date of making the contract (not from the date of beginning of performance).
3. Contracts for the sale of goods for \$500 or more—for example, logs sold for a contract price of \$500 or more. In most States, including Oregon, even standing timber to be cut by the buyer is

Table 1.—A checklist of elements that may be needed in a sales or service contract for a woodland operation

Item	Sales contract	Service contract
Location	A legal land description should be included for every sale of standing trees (stumpage). Include a portion of a map outlining sale areas, following natural or survey boundaries. Mark these clearly and tag them on the area proposed for harvest. Include the method of marking the boundaries in the contract.	Include the same information, if location is important for fulfilling the service contract.
Term of the contract	State clearly the beginning and ending dates for the agreement. Provide a means for granting extensions, if unseasonable weather makes it too difficult to log or if logging would harm the property too much.	Include the ending date for completing the contract. Allow for extensions for unanticipated problems.
Operation on the property	Include a clause to either suspend or terminate the operation when the seller alone determines that there is a failure to follow the terms of the contract. This is a very important clause.	A similar clause is needed in a service contract, to permit the buyer of the service to suspend or terminate the operation when the buyer alone determines that contract terms are not being followed.
Equipment permitted	Limit the kind of equipment used on the property according to the environmental conditions that affect the operations (slope, soil moisture, etc.).	For some service contracts (say, road building) similar clauses may be needed.
Protection of the watershed	Require that the rules of the Oregon Forest Practices Act (FPA) and all other laws be followed.	Require that the rules of the FPA and all other laws be followed.
Protection of the residual stand	<p>Require trees to be felled in the direction of skidding to the landing. Emphasize the importance of caring for “leave” trees, either in falling or in skidding.</p> <p>For a thinning or other silvicultural system requiring “leave” trees, establish penalties for cutting unmarked trees.</p> <p>Describe how trees are marked—for cutting, for the residual stand, or for the boundaries of a clearcut.</p>	<p>For some types of contracts (for example, for brush control using herbicides), specifications for reducing damage to the residual stand are important.</p> <p>For precommercial thinning, specify the spacing of “leave” trees.</p>
Slash disposal	Include specifications for slash disposal from timber harvest.	If slash is produced in a service operation (such as road building), include specifications for slash disposal.
Roads, landings, bridges, culverts	<p>Specify location, construction standards, and maintenance of roads, landings, bridges, and culverts. Prepare these specifications in terms of future as well as present management objectives.</p> <p>Buyer should be required to repair damage to existing fences, bridges, and roads—or pay damages.</p>	Include the same kind of information if applicable.
Rights of way	Establish whether the buyer or seller is responsible for obtaining, paying for, and maintaining rights of way needed to harvest the seller’s timber.	Contract should specify the party responsible for obtaining, paying for, and maintaining rights of way needed to complete service contracts.

Table 1.—A checklist of elements that may be needed in a sales or service contract for a woodland operation (continued)

Item	Sales contract	Service contract
Forest protection	<p>In Oregon, the logging operator is responsible for meeting State forest fire regulations. However, the landowner may require additional measures, if needed. If extra hazard is found, the potential exists on any harvest operation or precommercial thinning for abating the additional hazard by performing extra work on the site.</p> <p>The contract should assign responsibility for payment of fire-fighting costs and damages from fires caused by logging.</p> <p>If needed for fire risk reduction, specify the minimum height of snags to be felled.</p> <p>State whether the buyer or seller is responsible for obtaining and paying for permits and meeting local fire regulations.</p>	<p>Include provisions similar to those in a sales contract, if applicable.</p>
Risk reduction	<p>The contract should list the types and amounts of insurance required and indicate whether seller or buyer is responsible for carrying the insurance. Some kinds of insurance typically needed are:</p> <ul style="list-style-type: none"> <li>a. general liability and motor vehicle;</li> <li>b. loggers' excess property damage; and</li> <li>c. workers' compensation.</li> </ul> <p>To protect the seller, require the buyer to furnish proof of insurance and endorsements that require prior notice of any change or cancellation of the insurance.</p>	<p>Similar requirements apply to contracts for services.</p>
Taxes		
1. Local fire protection taxes or assessments	<p>The landowner is responsible for paying local protection taxes or assessments.</p>	<p>The landowner is responsible for paying local protection taxes or assessments.</p>
2. Severance tax and forest products harvest tax	<p>Under Oregon law, the owner of the forest product at the time of harvest pays these taxes. However, responsibility for paying these can be shifted to another party in the contract. If that party fails to pay the tax, responsibility for the tax reverts to the owner of the forest product at harvest.</p>	<p>Responsibility for paying these taxes is usually not applicable in a service contract unless merchantable timber is harvested (for example, in road construction).</p>
3. State and Federal payroll, income, and other taxes	<p>The contract should state that the buyer agrees to pay all taxes associated with his or her operation on the sale except those specifically exempted by the contract.</p>	<p>A clause similar to that suggested for the timber sales contract should be included in the contract for services.</p>
Standards for use of forest products or for services provided	<p>Include specifications for stump height and the minimum merchantable top diameter of the tree.</p>	<p>For Christmas trees, specifications for shearing and for pruning lower branches should be included.</p>
	<p>State the minimum percentage of sound wood to be removed and sold for saw logs and peelers.</p>	<p>For other services, include specifications and standards needed to insure satisfactory completion of the job.</p>
Method of payment	<p>State how and when the buyer will pay for the stumpage or logs or other forest product.</p>	<p>State how and when the contractor will be paid for his or her services.</p>
	<p>Provide a system for checking the quantity by log grade of product removed or delivered.</p>	<p>Include checks and controls to insure that the quantity and quality of the work is satisfactory.</p>



Table 1.—A checklist of elements that may be needed in a sales or service contract for a woodland operation (continued)

Item	Sales contract	Service contract
Other essential legal provisions		
1. Resolution of disputes	Provide for arbitration of disputes if you don't want court action. (Arbitration is usually cheaper and faster than a trial, and you can select an expert as the arbitrator.) Provide for the payment of reasonable arbitration fees to the prevailing party. Arbitration is usually—but not always—final.	Include a similar clause for service contracts.
2. Mutual attorneys' fees	Whether there's an arbitration clause or not, provide for the payment of reasonable attorneys' fees to the party prevailing in any suit or action for breach of contract.	Include the same clause in a service contract.
3. Access	Make certain that the buyer of forest products or lessor of forest land has the right to enter and work on the property, including the right to remove forest products sold under contract.	The contractor must have the right to enter and work on the property.
	The owner of the property retains the right to inspect the property and the operations on the property.	The buyer of the service retains the right to inspect the quality of the service performed.
4. Waiver of breaches	Include a clause that states that if the seller waives one breach or default of the contract, the waiver is not to be interpreted as giving permission for continued or future breach of the contract.	Include a similar clause for service contracts.
5. Liabilities	Require the buyer to keep all products harvested or timber purchased free from liens or attachments. <sup>a</sup> The timber seller should retain full title for timber and forest products produced from the sale, but not fully paid for under the contract's terms.	Require the contractor to keep all improvements to real property free from liens or attachments.
6. Orderly completion	Include a clause stating that the buyer must complete harvest on each designated area according to contract before moving to new areas and not remove his or her equipment from the property until the timber owner has inspected the job and given approval.	A similar clause may be needed requiring that services (for example, road building) be completed on one area before moving on to another.
7. Severability	Include a clause that provides that if one or more provisions in the contract are illegal, the rest of the contract is still enforceable.	Use a similar clause here.
8. Notice	Provide for notice of breach, stating how notice will be delivered.	Include a similar provision in service contracts.
Signatures	Place the seller's and buyer's names, legal addresses, and signatures at the end of the contract. If you have an agent, show the agent's name and address. Include the date and place where the agreement was executed.	Similar information is needed in contracts between a buyer and seller of a service.

<sup>a</sup> Liens and attachments are legal "holds" or "interests" that another may have in the property, even though he or she doesn't have title. In Oregon, two examples are a mortgage and a construction lien for doing work on the property.

classified as goods (not real property) in a timber sale contract without the land.

If a seller is to deliver logs within one year, an oral contract is enforceable, provided it's for less than \$500. On the other hand, if the contract requires logs to be delivered on a schedule extending beyond one year from the date the contract was made, or if the contract price is \$500 or more, the contract must be in writing.

Whether you can enforce an oral contract related to the one-year requirement depends on whether delivery of the product or performance of the service could have been completed in a year without breaching the contract. Whether it actually was completed within a year is immaterial.

#### Example 10

Carol orally contracts with Phil for Phil to build a road no later than 18 months from the date of the agreement. Clearly from the terms, the road can be built within a year without breaching the contract. Therefore, the Statute of Frauds doesn't apply, and the oral contract is enforceable. However, if the oral contract stated that

the road was to be completed 18 months after the date of the agreement, then the road couldn't be finished within the year without breaching the contract, and it's not enforceable.

All of these contracts that are required to be in writing have exceptions where an oral contract will still be enforceable. To use an exception, you may have to meet special requirements. Also, enforcement usually requires legal proceedings, which could be costly and time-consuming. Therefore, it's best to follow the general rule—put your contract in writing!

It's very important that a written contract be carefully drafted and clearly written. The objectives of each contract should be written in language as free of "legalese" as possible, clearly stating the means for reaching the objectives. Sometimes, "legalese" is necessary because earlier court cases have clarified what particular legal terms or phrases mean, and using them is one way to avoid misinterpretation.

If any part of the contract is not well-written (that is, if it's ambiguous), and the dispute reaches the courts, it's usually interpreted against the party who drew it up.

## Cancellation (rescission) of contracts

The usual causes for canceling contracts are fraud, innocent misrepresentation, mistake, duress, or undue influence.

We pointed out earlier (page 5) that intent to contract must exist before a valid contract is formed. In certain situations—such as fraud, mutual mistake, duress, undue influence, and even innocent misrepresentation—the courts hold that intent didn't exist and that one party (or in the case of mutual mistake, either party) may request that the contract be canceled.

A thorough explanation of all these situations is beyond the scope of this publication. However, the most common are probably fraud and innocent misrepresentation.

To prove fraud in a contract, the party claiming injury must show that the alleged defrauder made a misrepresentation of fact and that that person made the misrepresentation with the intent to deceive.

The victim must also show (1) that it was justifiable to rely on the alleged defrauder's misrepresentation and (2) that he or she suffered an injury (usually a money loss because the subject matter of the contract was worth less than represented).

If a seller of forest land knowingly misstates the number of acres of forest land in a tract or the volume of timber presently on the tract, the first test of fraud would be met. On the other hand, if these statements were merely statements of *opinion* and not statements of fact, the test of misrepresentation of fact would not have been met to prove fraud.

#### Example 11

Harold offers to sell his land to Maude for \$30,000. He tells Maude there are 30 acres, knowing full well that there are only 25. This occurs in the middle of winter when all the property markers are under several feet of snow. Maude, relying on the misrepresentation, purchases the tract. When she has the property surveyed in the spring and discovers the lesser acreage, she can sue for cancellation of the contract and return of any money she has paid, or she can keep the land and sue for damages to compensate her for the lesser acreage.

In addition to the compensatory damages, Maude can ask the court to award her punitive damages to punish the wrongdoer. In general, punitive damages can only be requested where the act complained of is intentional, not where it is negligent or innocent. If Harold had honestly said that he *thought* there were 30 acres, that would be his opinion and not a misrepresentation of fact.

Of course, Maude could have avoided the problem by careful drafting of the contract. If the purchase price had been on a per-acre basis, and if the contract called for surveying the property before a major portion of the purchase price was paid, a lawsuit could have been avoided.

The second test, proof of intent to deceive, is more difficult to establish. The plaintiff (victim) must prove that the person charged with fraud "knew or should have known" that the statement of fact was untrue when it was made.

Moreover, the victim of the alleged fraud must show justifiable reliance on the statement of fact when entering into the contract. Therefore, if the alleged defrauder's statement is easy to confirm, it would be wise for the victim to verify it—a court may say it wasn't reasonable to rely on that statement.

If the property had *not* been under snow, Maude could have probably have had it surveyed easily—then she wouldn't have had to rely on Harold's statements.

If the person who misrepresents the facts honestly and reasonably believes them to be true at the time of the transaction, the other party may sue for innocent misrepresentation and request the contract be canceled without award of damages.

If the court allows cancellation, both parties are returned to their positions before the contract was made: Maude would return the land to Harold; Harold would return any money that Maude had already paid.

## Remedies for breached contracts

Breach of contract is the failure, without a legally acceptable excuse, to perform any promise or to carry out any term of a contract.

Assuming that (at a minimum) the four basic requirements have been met and that a valid contract exists, what happens if the contract is breached?

Breached contracts may take numerous forms, depending upon the nature of the contract. For example, contracts for the sale of standing timber to be cut by the buyer might be breached by the following circumstances:

1. *On the part of the seller*
  - a. Seller refuses to mark trees for harvest (assuming the contract calls for designating harvest trees).
  - b. Seller prevents the buyer from entering the sale area.
  - c. Seller has someone else remove the trees before buyer arrives to claim them.
2. *On the part of the buyer*
  - a. Buyer or buyer's logger causes excessive damage to "leave" trees in violation of the terms of the contract.
  - b. Buyer fails to replant harvested areas according to the terms specified in the contract.
  - c. Buyer removes the trees and then pays less than the agreed price.

### Damages

What recourse does the buyer or seller have if the other party fails to keep a promise required by the contract? The injured party will often file a lawsuit and ask the court for compensatory damages. If the court finds that damages have occurred, it usually awards an amount calculated to replace the financial loss directly due to the breach of contract.

#### *Example 12*

Wilhelm, a buyer of Christmas trees, has made a contract with Sarah, a landowner, to purchase standing trees that he's supposed to cut and haul away. There are 2,000 trees being purchased at \$4.00 apiece. Wilhelm is unable to harvest the trees because Sarah received a better offer and refuses to let him on her property. Wilhelm replaces the trees from other sources, but the 2,000 trees cost him \$5.00 apiece. Wilhelm sues for the additional cost ( $\$5.00 - \$4.00 \text{ per tree} = \$1 \text{ per tree} \times 2,000 \text{ trees} = \$2,000 \text{ additional cost}$ ) required to place

him in his original position before Sarah breached the contract. Wilhelm wins in court; he receives a judgment for \$2,000 plus some incidental expenses (such as standard fees for witnesses and court costs).

Attorney fees aren't usually included in the award of court costs. Wilhelm could get an attorney fee added to the judgment if the contract provided that in case of a dispute, the party winning in court has the right to claim a reasonable attorney fee from the losing party.

If there's no such clause and no later agreement on the matter, he can't have an attorney fee added to the judgment. In either case, Wilhelm is obligated to pay his attorney. The court award is collected by finding assets owned by Sarah and having them legally taken to pay the judgment. But a judgment doesn't guarantee payment.

Some debtors do not have assets that are easy to find. And every debtor has the right to keep certain assets from a creditor. Currently in Oregon, the assets a debtor may keep from a creditor include up to \$1,450 in household furnishings and up to \$900 in wearing apparel, jewelry, and other personal items.

### Specific performance

If the product sold is unique (and so not replaceable with a similar product), the injured party might sue for specific performance. Suppose, for example, that the Christmas trees in the example above weren't replaceable because of exceptional height or unavailability of that particular species.

The buyer might ask the court for an order requiring specific performance—that is, requiring the seller to allow entry to cut the trees as promised in the contract.

### Injunction

Occasionally, one of the parties to a contract will ignore a contract provision that's essential to the successful completion of the agreement. In this case, the other party could apply for an injunction to stop the operation until the first party complies with the agreement.

Check again the situation in item 2a (page 14). If the contract requires due care in avoiding injury to trees reserved for future harvest, the seller may be able to obtain an injunction from the court that forbids the logger from continuing to harvest the timber until the logger agrees to specific logging practices that will reduce logging damage to an acceptable level.

However, it's often better to include a provision in the contract that allows the owner to stop the harvesting, based on his or her sole discretion that the buyer isn't complying with one or more terms in the contract.

## Oregon forest practices laws

In addition to the points we've covered in the previous sections, Oregon statutes relating to forest practices raise additional issues. The most important are the Oregon Forest Practices Act (FPA), the Eastern and Western Oregon Severance Tax Laws (ST), and Forest Products Harvest Tax Law (FPHT).

What is the effect of these laws on the contracts for sales and services that woodland owners make? Responsibility for meeting the requirements of the acts is divided among the owner of the forest land, the owner of the timber, and the logging operator.

Any combination of these roles carries the corresponding responsibilities that go with the roles:

**Owner of forest land.** Under FPA, the owner of the forest land must:

1. meet the requirements for stocking of trees on forest land after logging;
2. maintain logging roads over the long term or meet the requirements for vacating unused roads; and
3. make certain that the owner's contractors fulfill these requirements.

**Owner of timber.** Under ST and FPHT, the owner of timber must, when it is harvested:

1. pay the severance tax (currently 6½% in western Oregon, 5% in eastern Oregon), and
2. pay the forest products harvest tax.

**Logging operator.** Under FPA, the logging operator must:

1. notify the State forester of intent to operate on forest land and
2. meet the forest protection requirements as specified in the FPA rules for:
  - a. prevention and suppression of fire,
  - b. prevention of stream damage, and
  - c. prevention of damage to wildlife and aquatic habitat.

To reduce costs, the landowner, timber owner, or logging operator sometimes shifts the responsibility for requirements under the FPA, the ST, and the FPHT to one of the other parties.

For example, the landowner may shift the responsibility for reforestation to the timber buyer by including a clause in the timber sale contract requiring the buyer to meet or exceed the reforestation requirements. However, the landowner can't shift the *accountability* for meeting these requirements, or for paying either severance taxes or the forest products harvest tax.

For instance, if the contract between the landowner and the timber buyer or logging operator requires the timber buyer or operator to reforest a harvested area—but he or she fails to do so—the State forester can require the landowner to meet the reforestation standards of the FPA on the harvested area. In that event, a landowner who wanted to recover the cost of reforestation would have to sue the timber buyer or logging operator for breach of contract. Requiring a bond for reforestation affords more protection to the landowner in this case.

The expectations of the woodland owner for the timing of the receipt of income, the amount of timber harvested, and the stumpage value of timber harvested can all be affected by the provisions of the FPA and the regulations used to enforce it.

Starting and completion times for harvesting forest products can be affected by the FPA, which in turn affects the timing of receipt of income.

After the operator files a "Notification of Operations" at the local office of the Oregon Department of Forestry, a 15-day waiting period follows before operations can begin. This gives the State forester's local representative (the forest practices forester) time to examine the property and note special problems that the operation could create. Problems that might occur include slides caused by road construction in areas of high risk and damage to important wildlife habitat.

If, after examining the proposed harvest area, the forest practices forester finds special problems that the logging may cause, the forester can require special plans for these areas that state how logging will be conducted to eliminate resource damage. This may delay the operation and the eventual receipt of income.

The FPA may also affect the amount and value of the timber harvested. In some cases, the FPA requires that timber be left for stream protection or wildlife management. If this is the case, the volume harvested may not meet the owner's expectations.

Furthermore, if these forest practices increase the operator's logging costs, the price offered for the standing timber (stumpage) may be lower than if the practices weren't required.

It's important that the landowner, timber owner, and logging operator know the requirements of the FPA so that each may anticipate these problems. An understanding of the provisions of the Oregon Forest Practices Act can significantly influence not only the drafting of a contract but also the mutual satisfaction of all parties to the contract.



Before beginning negotiations for a forest operation—harvesting timber, reforestation, precommercial thinning, or some other project—study the act carefully and consult with a forest practices forester.

You can probably find a copy of the act in your public library. You can obtain brochures describing the act's requirements and the rules used to enforce it at the local office of the Oregon Department of Forestry, or

write to the Department at 2600 State St., Salem, OR 97310.

The local forest practices forester is an excellent source of information on the act and the regulations used to implement it. See also EC 1194, *Oregon's Forest Practice Rules* (single copy \$1.00 plus 25¢ postage; order from Bulletin Mailing Office, OSU, Corvallis, OR 97331-4202).

## How to develop a satisfactory contract

### Hire an experienced adviser

If you're an inexperienced woodland owner—and many woodland owners are—you may need to hire an experienced consulting forester. Absentee woodland owners should especially consider hiring experienced local consulting foresters to represent their interests in preparing an effective contract and supervising the operation to see that its terms are met.

Consulting foresters often have sample contracts that have worked well in similar situations for other woodland owners. Furthermore, the experienced consulting forester can recommend lawyers who've been successful in writing forestry contracts—particularly for owners of small woodland properties.

However, even if you get a sample contract from a consulting forester, have your lawyer review it before signing it.

Assuming that you've found a lawyer experienced in writing contracts for forest operations, what can you do to reduce legal costs and still develop a good contract? First, before consulting the lawyer, list the objectives you wish to achieve by the sale you intend to make or by the service you intend to hire.

Next, list the key elements you need to accomplish each objective. Review this list carefully with your lawyer, adding or subtracting items as you explain and discuss your objectives.

After your lawyer prepares a contract, review it carefully, comparing the contract with your objectives and list of key elements, including those in table 1. Note any points omitted from the contract or points that simply aren't clear because of the wording used in the contract. Review these points with your lawyer.

Then give the unsigned contract to the buyer of the forest product or contractor of the service. After the other party returns it (perhaps with suggestions), review any suggestions with your lawyer and prepare the final contract. Sign the contract and send it to your buyer or contractor for signature.

If you make repeated sales of timber or contract for the same services on different occasions, a previous contract used for these occasions may be satisfactory. Nevertheless, you should review your objectives for the new sale or service and make certain that the old contract meets your needs.

If experience shows that the old contract was unsatisfactory, consult your lawyer for changes needed

to improve it. Furthermore, laws may change, requiring new provisions in your contract.

### Good contracts are important

Because of the size of your forest property, you may have only one thinning, one final harvest, one reforestation, or one road-building project on your property in your lifetime. Therefore, it's very important to develop a contract that will insure the best results for managing your forest property.

If you keep the property in your family, your heirs will appreciate your good management. If you sell the property, your good management will increase its value.

### Should you use a sample contract?

The appendix, page 17, is a sample stumpage sale agreement provided by the Oregon Department of Forestry. It contains most of the points set out in table 1. Note, however, these three cautions:

1. The sample contract has no provision for notifying a contractor if the woodland owner feels the contractor is violating the contract or for other reasons. If you follow an appropriate notification procedure, it will furnish evidence that the contractor was aware of the violation, which could be important if a court case arises.
2. The sample agreement uses mill-delivered price to determine stumpage price (page 17). This method depends on the current price of logs, the logging costs, and the stumpage owner's objectives. In the example shown, the stumpage rate (percentage) increases as the mill-delivered price per MBF increases. Stumpage sellers should consult with other timber owners and other knowledgeable people to determine acceptable percentages for stumpage sales in their locality.
3. The "nonassignment" provision (page 19) should be more detailed. For instance, it could read, "This agreement shall not be assigned or subcontracted. Any assignment or subcontract is void and without any affect whatsoever."

Can you think of other provisions that might be required in your particular circumstances? Is the wording of the included provisions adequate? These are questions to ask—and that you must answer—when you help draft your contract.

You can obtain other sample contracts from the Oregon Department of Forestry, 2600 State St., Salem, OR 97310. They include:

1. *Timber Sale Contract: Scale Basis*
2. *Timber Sale Contract: Cash Basis*
3. *Planting Contract: Per-Tree Basis*
4. *Planting Contract: Per-Acre Basis*
5. *West-Side Precommercial Thinning Contract*
6. *East-Side Precommercial Thinning Contract*

These sample contracts are distributed by the service forestry section of the Oregon Department of Forestry to be used by nonindustrial forest landowners as a guide for developing contracts suitable for their specific needs.

Including the sample stumpage sale agreement and the list of other sample contracts in this publication in no way means that either or both of us recommends the use of any or all parts of any of the contracts. Our intent is rather to show you some of the terms that you might expect to find in a contract covering the sale of timber or management of forest property and to help you become familiar with the language used in these types of agreements.

Remember that each contract must be tailored to the individual needs of the parties involved, and that no sample agreement can be guaranteed to cover all situations or to be consistent with the often-changing principles of law.

## Appendix: Sample Stumpage Sale Agreement

OWNER'S NAME AND \_\_\_\_\_

Beginning Date: \_\_\_\_\_

Termination Date: \_\_\_\_\_

\_\_\_\_\_ being the owner of

Owner's name and address

certain timber on certain lands hereafter described and desiring to sell those certain described or designated trees, logs, or timber thereon subject to certain stipulations following, does bargain and agree with

\_\_\_\_\_, here-

inafter called Purchaser of \_\_\_\_\_,

Address

City

Zip Code

to sell designated trees and other timber for the following considerations:

The Stumpage rate per thousand board feet for conifer logs selling for less than \$200 per M FOB mill shall be 45% of Mill Delivered Price.

The Stumpage rate per thousand board feet for conifer logs selling for \$200 or more but less than \$300 per M FOB mill shall be 55% of the Mill Delivered Price.

The Stumpage rate per thousand board feet for conifer logs selling for \$300 or more per M FOB mill shall be 65% of the Mill Delivered Price.

Poles, Piling, & Export:

Alder & Maple:

Other:

All checks and scale

tickets shall be delivered to \_\_\_\_\_.

Owner's name and address

### Legal Land Description

### Marketing

Purchaser shall market his logs where he deems the best return may be had, to any of the following approved mills or markets or others to be agreed upon in writing from time to time, with instructions for stumpage money to be remitted directly to OWNER according to the foregoing schedule:

Mill	Address	Type of logs
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

### Timber

All the merchantable dead and down timber thereon. All merchantable live trees designated for cutting. All dead trees shall be felled, whether merchantable or not, if over 15 feet in height unless heavily shaded by young conifer trees. Map IS/IS NOT attached as Exhibit "A."

### Insurance Requirements

Before commencement of any operations under this Stumpage Sale Agreement, purchasers shall procure and thereafter during the term hereof and any extension hereof, continue to carry the following insurance:

**A. General Liability and Automobile:**

Public liability and property damage insurance in a responsible company with limits of not less than \$100,000 for injury to one person and \$300,000 for injury to two or more persons in one occurrence and \$25,000 property damage per occurrence, whether or not caused or contributed to by negligence of either purchaser or seller.

**B. Logger's Excess Property Damage:**

1. Automobile caused property damage insurance in a responsible company with excess limits of \$100,000 whether or not caused or contributed to by negligence of either purchaser or seller.
2. Other than automobile caused property damage insurance, including fire, whether or not caused or contributed to by negligence of either purchaser or seller shall be carried in the amount of \$100,000.

**C. Workers' Compensation:**

Workers' Compensation from the State Accident Insurance Fund or from a responsible private carrier shall be maintained. Purchasers shall be covered by equivalent insurance if purchaser is not a corporation. Private insurance shall provide the schedule of employee benefits required by law. Corporate purchasers shall provide such insurance for their officers and employees.

Certificates evidencing such insurance and bearing endorsements requiring ten days notice to seller prior to any change or cancellation shall be furnished to seller, prior to purchaser's commencement of operations, for all coverage required under A., B., and C. above.

## Fire Precaution, Hazard Abatement, and Fire Fighting

- A. Fire Precaution and Fighting Fires Attributable to Purchaser:** Purchaser agrees to use extreme caution with fire in any form including smoking, blasting, and internal combustion engines, to be bound by all applicable government regulations pertaining to fire, and particularly and in addition thereto during fire season to refrain from smoking and to prevent any of his employees or persons visiting his operation with his knowledge from smoking except when sitting down in a cleared, safe place. Also, when requested, to provide three open topped 50-gallon barrels of water with buckets at each landing being used. Purchaser also agrees to take prompt and effective action upon any fire burning uncontrolled on or adjacent to this operating area with all the facilities and workers of his crew.

Purchaser agrees to notify the \_\_\_\_\_

Forest Protective Assn. at \_\_\_\_\_

or at \_\_\_\_\_

as quickly as possible by phone or radio and to notify the OWNER. Fire equipment should be tested weekly.

- B. Fighting Fires NOT Attributable to Purchaser:** In respect to work on fires not originating on the operating area or attributable to Purchaser, OWNER agrees to underwrite the cost of work done at prevailing wage and machine rates providing OWNER is notified as quickly as may be practical in the event it becomes necessary to fight any fire, provided in any one year OWNER may expect up to \$500 worth of such work, if needed.

- C. Slash Burning:** Slash burning is not normally necessary after thinning and other partial cutting practices. Slash burning is occasionally a necessary or desirable part of final harvest cutting and forest rehabilitation projects. If any spot or broadcast slash burning is considered to be necessary or desirable, it will be done only with the advice and consent of OWNER with the permission and

cooperation of the local \_\_\_\_\_ Forest Protection Association and/or the local unit of the Oregon State Department of Forestry. Slash burning IS/IS NOT contemplated under this agreement.

- D. Hazard Abatement and Maintenance:** Purchaser agrees to perform certain work, on the land that is the subject of this agreement—such as salvaging semi-merchantable logs, brush scarification, falling hardwoods, treating hardwood stumps with proper chemicals, preparation of helicopter landing sites, stream clearance, construction of necessary bridges, culvert repairs and installation, road drainage, general road maintenance and sight distance improvement, falling of snags, construction of ponds and roads necessary for fire protection, razing old buildings, filling dry wells, and other activities which OWNER may request.

The foregoing represents a partial list of those tree farm cultural, road maintenance, fire prevention, and hazard reduction activities which OWNER may request Purchaser to perform or assist OWNER to perform as part of the Purchaser's obligations under this contract as an independent contractor, so long as the reasonable costs thereof do not exceed \$.50 per thousand board feet of the timber to be sold hereunder.

Anything hereinabove to the contrary notwithstanding, Purchaser's costs in connection with A, B, C & D above shall not be reimbursed by OWNER, it being understood that such costs were an element considered in arriving at the stumpage price for which the timber was sold under the terms of this agreement. Said work shall be performed by Purchaser as an independent contractor and not as an employee of OWNER. Once such work is requested, Purchaser shall be free to complete the work without the supervision of OWNER.



## General and Tax Liability

Purchasers agree to abide by all State and Federal Laws and regulations and to pay all taxes arising from their operation.

## Logging Methods

Logging shall be by tractor and/or tractor and arch. Land survey and corner monuments will be protected and preserved. The following guidelines are listed for logging methods:

1. Be sure where the OWNER'S timber is located. Avoid TRESPASS. Survey corners and any and all other property markers should be located. If there is any danger of these being destroyed, they should be marked with flagging or paint. They are expensive to relocate. Neighbor's fences should be protected. If bearing trees are old and defective and need cutting, contact OWNER for instructions.
2. Lay out roads and skidroads before cutting starts.
3. Fall trees angling TO and FROM skidroads so logs can be skidded directly without turning.
4. When building roads and skidroads, precede the bulldozer with a worker and power saw and cut windfalls to length, to be yarded out, not pushed through the reproduction. Avoid skinning roadside trees when "bulling through."
5. Cut low stumps: 2" above root swell for small trees, or a height not to exceed diameter of the stump for larger trees. Top diameter of top log to be 6"-8" ordinarily, and not to exceed 40 percent of DBH in any case.
6. Use fern patches, brush areas, and old roads for road locations. Avoid going through reproduction and small poles. Even one year old conifer reproduction is important.
7. Cut off large limbs before yarding to avoid swiping.
8. Keep skidroads to a minimum width.
9. Keep the landings to a minimum size.
10. When pruning, such as along roads, cut the limbs off FLUSH with the bole of the tree.
11. Pile debris at landings so that it can be burned without damage to the surrounding reproduction and/or timber.
12. Before moving out, check for logs left in the woods. Culls that probably will make shakes, posts, chips, etc., should be decked at roadside out of landing.
13. Cut all required snags currently. Fall all snags (regardless of size or height) that could reach roads or landings before using roads.
14. Operations on OWNER'S land will be confined to periods when erosion and soil compaction will not be accelerated (generally from April 1 to November 1).
15. Hazard reduction requires slash be lopped within two feet of the ground. At least 80 percent of the length of any unmerchantable logs left on the area should rest on the ground to facilitate rotting.

## Roads and Road Maintenance

**Road Building:** No new roads will be built on the operating area without prior approval by OWNER.

**Road Maintenance:** Purchaser or purchaser's contractor if the purchaser does not act as his own contractor will be required to maintain both rock and dirt roads in his operating area during this contract interval. When grading or blading OWNER'S road, dirt or rock should not be bladed off the road but instead should be bladed into a crown to build up the road. Dirt administration roads will not be used when they will rut with pick-up traffic.

No yarding will be done when mud flows ahead of the yarding vehicle. After use of any dirt road or cat trail, pitch outs will be required about every 100 to 200 feet. All roads will be kept open unless currently being used in the logging process, but even these will be clear at the end of every working day.

## Utilization

Ordinarily trees will be utilized of a length such that the top diameter is less than 40 percent of DBH. Material shall be removed which is 33-1/3 percent sound for sawlogs and other ordinary products, and which is 50 percent sound for peelers or other premium products. Logs and chunks containing more than \_\_\_\_\_ board feet net scale shall be considered merchantable.

## Method of Payment

Purchaser shall order all buyers of his logs or lumber to pay OWNER direct the stumpage money indicated in the first paragraph of this agreement. Payable on the first and fifteenth of each month for all logs delivered. All payments shall be based on net scale. Purchaser shall furnish OWNER by TIME AND DATE summary and compilation by species, grade, and buyer, together with delivery tickets for all logs removed the preceding week.

## Assignments

This agreement shall be non-assignable.

## Suspension

OWNER may at his option suspend operations under this agreement when, in his opinion, extremely hazardous fire weather exists, or if some provision of this contract is not carried out.

## Termination

This agreement shall terminate on \_\_\_\_\_ of the Year \_\_\_\_\_ unless cancelled sooner by either of the parties, provided that purchaser shall have the right of first refusal on a continuation of this agreement at that time subject to such price and other stipulations as OWNER shall at that time decide.

## Mutual Attorneys' Fees

In the event either of the parties institutes suit or action to procure any remedy for any breach hereof, the party prevailing shall recover from the other such sums

for attorneys' fees in such suit or action, and on any appeal therefrom, as the court shall adjudge to be reasonable.

## Waiver of Breaches

No waiver or any breach or default shall operate or be construed to constitute a waiver of any subsequent breach or default.

## Liabilities

Purchaser agrees to keep any and all logs and timber or other forest products subject to this agreement free from all liens or attachments while this agreement is in force. In the event of default, cancellation, forfeiture, or other termination of this contract, OWNER shall remain vested with full title to all timber, logs, or other forest products including lumber on the premises described, or to any not paid for according to the terms of this agreement.

## Orderly Completion

Purchaser agrees to prosecute the work outlined in this agreement promptly, diligently, and in an orderly manner, completing all such matters as snag falling, cutting sub-merchantable hardwoods, clean up of small logs, installation of pitch outs, preparation for slash burning, etc., for each small natural logging area or landing, before moving on to the next such small area or landing.



Extension Service, Oregon State University, Corvallis, O. E. Smith, director. This publication was produced and distributed in furtherance of the Acts of Congress of May 8 and June 30, 1914. Extension work is a cooperative program of Oregon State University, the U.S. Department of Agriculture, and Oregon counties.

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## Rights-of-Way Fees

A. Fronts on Public Road, No Right-of-Way involved.

B.

**Purchaser**

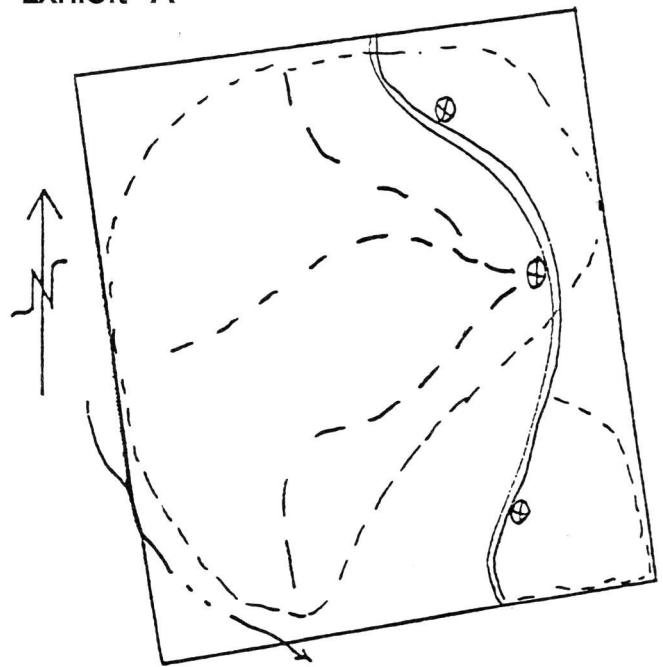
**Owner**

\_\_\_\_\_  
\_\_\_\_\_

(Date Signed)

Date Agreement Expires: \_\_\_\_\_

## Exhibit "A"



**Scale:**

**Legend** (complete legal description)

**Logging requirements** (special requirements listed here)