

Timber Supply Agreement between State Forests of NSW and Australian Silicon Operations Pty Limited

Following the resolution of the Legislative Council on 8 May 2002 to order the production of documents in the possession, custody or power of the Government relating to the Mogo Charcoal Plant, the Hon Ian Cohen MLC wrote to the Clerk of the Parliaments disputing the validity of the claims of privilege regarding certain documents.

Sir Lawrence Street was then appointed as the independent legal arbiter to "evaluate and report on the validity of the claims of privilege".

Section 11 of Sir Lawrence Street's report *Disputed Claims of Privilege Mogo Charcoal Plant - Report of Independent Legal Arbiter* dated 28 May 2002 relates to the denial of privilege for the Timber Supply Agreement, and is reproduced below.

11. State Forests.

There is a voluminous quantity of documents produced by State Forests and claimed to be privileged. It comprises the contents of Volumes numbered 2, 3 and 4.

There is a claim for legal professional privilege for a small section numbered 24 at the end of volume number 4. This comprises documents dealing with legal advice sought by State Forests from the Crown Solicitor. They fall within the scope of legal professional privilege and I am of the opinion that the objection relating to them is valid and should be upheld.

The balance of the documents produced by State Forests and claimed to be privileged comprise a Timber Supply Agreement entered into between State Forests, Australian Silicon Operations Pty Ltd and the State of NSW made on 31 January 2002 and a mass of historical and contextual documents in the files of State Forests relating to that Agreement. The Agreement is marked "Commercial in Confidence", and it contains a clause 47 imposing obligations of confidentiality on the parties.

In the claim for privilege State Forests describes the Agreement thus:

"The Agreement is for the regular supply of up to 200,000 tonnes of timber per year from State Forests' South Coast Region. Subject to ASO meeting their Conditions Precedent the Agreement will operate until 31 December 2020."

The claim for privilege quotes clause 47 (the confidentiality cause) and continues:

"It is submitted that the release for public inspection of the documents in respect of which privilege is claimed on the grounds of commercial in confidence will have serious adverse commercial implications for the State, State Forests and ASO including:

- disclosure to competitors of commercial sensitive matters such as the prices payable by ASO for raw materials used in the manufacture of silicon;
- Breach of contractual promises of confidentiality;
- Prejudice current and future contractual relationships between the Crown and the private sector;
- Cause loss of commercial advantage and competitiveness with the private sector.

A copy letter dated 10 May 02 in relation to such matters is attached."

The attachment is the letter (actually dated 13 May 2002) from Mr Peter Anderton I have referred to in paragraph 7 in this Report.

I have given full weight to the objections raised by State Forests and Mr Anderton. They are undoubtedly legitimate matters of concern and, if there were no countervailing considerations, they could well support a valid claim for privilege. But there are powerful countervailing considerations against which they must be balanced. The question to be addressed in determining whether the claim for privilege should be upheld is whether the public interest in disclosure outweighs the considerations supporting non-disclosure including the express contractual commitment of confidentiality made by the State and by State Forests in the formal Agreement. It was undoubtedly proper for the State and State Forests to claim commercial in confidence privilege in the light of this contractual commitment, but that is not a decisive consideration.

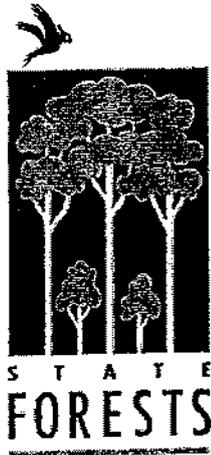
In my view the considerations in favour of disclosure convincingly outweigh the claim for privilege. The description of the magnitude in quantity and time of the Agreement by State Forests that I have quoted above is eloquent of its importance in the public interest. Principles of transparency and accountability plainly outweigh the commercial in confidence considerations and the admittedly prospectively serious implications put forward by State Forests and ASO when considering a contract for a sale by the State of this magnitude. The administration of the timber resources of the State involves political, ecological and economic considerations of significant public interest and, I repeat, the magnitude of this transaction is such as to expose it to a clearly recognisable obligation of disclosure. The claim for privilege is denied.

In summary:

The claim for legal professional privilege in the documents in section numbered 24 in volume number 4 is upheld.

The claim for commercial in confidence privilege in the whole of the remainder of the documents in volume 4 and the whole of the documents in volumes numbered 2 and 3 is denied.

COMMERCIAL IN CONFIDENCE



**TIMBER SUPPLY
AGREEMENT**

**AUSTRALIAN SILICON
OPERATIONS
PTY LIMITED**

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THIS AGREEMENT is made the 31 day of 01 2002

1. PARTIES AND RECITALS

- 1.1 THE FORESTRY COMMISSION OF NEW SOUTH WALES a corporation constituted under the Forestry Act 1916 (NSW) trading as STATE FORESTS (ABN 43 141 857 613) ('State Forests')
- 1.2 AUSTRALIAN SILICON OPERATIONS PTY LIMITED (ABN 87 901 097 675) ('Company')
- 1.3 THE STATE OF NEW SOUTH WALES ('State of NSW')

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Agreement unless a contrary intention appears:

'ACDC' means the Australian Commercial Disputes Centre;

'Act' means the Forestry Act 1916 (NSW);

"Actual Annual Supply" for a Year means the amount of Timber which is delivered to the Delivery Site during that Year;

"Adjusted Annual Supply" for a Year means the Base Annual Supply for that Year adjusted in accordance with clause 8;

'Annual Delivery Plan' means the plan prepared by State Forests in accordance with clause 12 which provides the indicative information for the supply of the Adjusted Annual Supply during the Year to which the plan applies;

'Annual Review' means a Review other than a General Review;

'Area of Supply' means the Crown-timber lands within State Forests South Coast Region (more particularly defined on the map attached as Schedule 8) provided that if the Adjusted Annual Supply for a Year exceeds 165,000 tonnes the Area of Supply may at the option of State Forests include the Crown-timber lands within Eden Management Area (more particularly defined on the map attached as Schedule 9) in relation to the quantity in excess of 165,000 tonnes;

'Base Annual Supply' means as it is defined in clause 6.1;

'Business Days' means the days Monday to Friday inclusive but excluding days which are public holidays in New South Wales;

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'Code' means the Code of Procedure to be prepared, agreed and otherwise varied from time to time in accordance with **clause 17**;

'Commencement Date' means the date upon which State Forests must commence delivery of Timber under this Agreement being the date determined in accordance with **clause 5**;

"Commonwealth" means the Commonwealth of Australia;

'Compartment' means an administrative forest area within a Management Area which is identified by State Forests, from which State Forests will make a supply of Timber available to the Company;

'Conditions Precedent' means each of:

- (a) the Company or a related body corporate obtaining unconditional approval from a financial institution and/or underwriter for not less than \$170 million in debt and/or equity funding to design, construct and operate the Silicon Project, including, without limitation, the Metallurgical Carbon Plant; and
- (b) the Company and its related bodies corporate obtaining all necessary approvals subject to conditions which are acceptable to the Company, to establish, construct and operate the Silicon Project, including, without limitation, the Metallurgical Carbon Plant;

'Contract Harvesting' means the harvesting or felling, snigging to a log dump, debarking, crosscutting, grading, labelling and loading of Timber onto a haulage vehicle at the log dump and ancillary works including roading, tracking, log dump construction and site rehabilitation as required by law, by a Contractor;

'Contract Harvesting Charge' means a charge payable by the Company per tonne of Timber in respect of State Forests procuring Contract Harvesting in relation to that Timber which is determined under **clauses 21**;

'Contract Haulage' means the transporting and delivering of Timber from log dumps in Compartments to the Delivery Site in accordance with the Code and the law, by a Contractor;

'Contract Haulage Charge' means a charge payable by the Company per tonne of Timber in respect of State Forests procuring Contract Haulage in relation to that Timber which is determined under **clause 21**;

'Contractor' means a person engaged by State Forests under a Tender Contract to carry out Contract Haulage or Contract Harvesting in respect of Timber to be made available to the Company under this Agreement;

'CPI' means the consumer price index published by the Australian Statistician for Sydney (all groups) or, if such an index is not produced, a replacement index determined by the President of the Institute of Chartered Accountants;

'Crown-timber land' has the same meaning as in the Act as at the date of this Agreement;

'current Review' is the Review then being conducted;

'Current Review Period' means:

- (a) for an Annual Review, the period between the current Review and the Annual Review immediately before it except where the current Review is the first Annual Review in which case the Current Review Period means Year 3;
- (b) for a General Review, the period between the current Review and the General Review immediately before it except where the current Review is the first General Review in which case the Current Review Period means the period between the current Review and the Commencement Date;

'Delivered Price' is defined in clause 18;

'Delivery Site' means Lot 544 DP 736015, Eurobodalla Shire, New South Wales or (subject to clause 38) such other location as State Forests and the Company agree upon in writing;

'EBITDA' means earnings before interest, tax, depreciation and amortisation;

"End Date" means 30 June 2003;

'Force Majeure' means:

- (a) an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality (including in relation to obtaining any approvals from Government Agencies and changes of law), war, sabotage, riot, blockade, demonstration, civil disobedience, epidemic, disease, fire, rain, flood, storm explosion, failure of power supply, loss, destruction or failure of plant or equipment (including, without limitation, loss, destruction or failure of plant or equipment which comprises part of the Silicon Project including, without limitation, the Metallurgical Carbon Plant) accident, natural disaster, calamity or unlawful act by any other person, or any similar cause which prevents:
 - (i) a party from performing its obligations (in whole or in part) under this Agreement for a period in excess of 1 month; or
 - (ii) the operation of the Metallurgical Carbon Plant, or any other part of the Silicon Project for a period in excess of 3 months;
- (b) a world wide collapse in market demand for a grade of silicon manufactured by the Company at the Silicon Plant using metallurgical carbon derived from the Timber supplied under this Agreement which causes the closure of the Metallurgical Carbon Plant or a cessation in the production of silicon by the Silicon Plant for a period of not less than 3 months; or
- (c) a collapse in the market demand for silicon manufactured by the Company at the Silicon Plant using metallurgical carbon derived from the Timber supplied under this Agreement, as a result of variations in the international exchange rate of the Australian dollar which causes the closure of any part of the Metallurgical Carbon Plant or a cessation in the production of silicon by the Silicon Plant for a period of not less than 3 months; or

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- (d) the Silicon Project not achieving practical completion and producing 10,000 tonnes of silicon within 30 months of the last of the Conditions Precedent being satisfied; or
- (e) the annual market demand for High Quality Large Logs harvested from Crown-timber lands within the South Coast Region falling below 34,000 cubic metres;

'General Review' means a Review referred to in clause 20.3;

'Government Agency' means:

- (a) a government or government department or body;
- (b) a governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law;

'Group A Species' means a Hardwood Species listed as a Group A species in Schedule 3;

'Group B Species' means a Hardwood Species listed as a Group B species in Schedule 3;

'Group C Species' means a Hardwood Species listed as a Group C species in Schedule 3;

'Hardwood Species' means any species of hardwood timber, including, without limitation, Group A Species, Group B Species and Group C Species;

'High Quality Large Logs' has the same meaning as in the Regional Forest Agreement for Southern New South Wales between the Commonwealth and the State of NSW dated 24 April 2001;

'Insolvency Event' means in respect of a party:

- (a) a receiver, manager, receiver and manager, trustee, administrator, controller or similar officer being appointed in respect of the party or any asset of the party;
- (b) a liquidator or provisional liquidator being appointed in respect of the party;
- (c) a moratorium of any debts of the party or an official assignment or a composition or an arrangement (formal or informal) with the party's creditors or any similar proceeding or arrangement by which the assets of the party are subjected conditionally or unconditionally to the control of the party's creditors being ordered, declared or agreed to;
- (d) the party becoming, or admitting in writing that it is, or being declared to be insolvent or unable to pay its debts;
- (e) any writ of execution, garnishee order or similar order, attachment, distress or other process in an amount exceeding \$10,000,000 (or its equivalent in a foreign currency) being made, levied or issued against or in relation to any asset of the party (which is not stayed, withdrawn or satisfied within 30 days of when it is made, levied or issued);
- (f) the party suspending payments of its debts generally; or

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- (g) the party being, or under legislation being presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute);

'Integrated Operation' means a timber harvesting operation in which timber is harvested to produce two or more different timber products (such as Timber and sawlogs) to supply two or more persons;

'Latent Defect' means a defect in Timber supplied under this Agreement which:

- (a) renders metallurgical carbon derived from Timber unsuitable for the manufacture of metallurgical grade silicon; and
- (b) the impact on the Company may be mitigated by amending the Specifications, but does not include any defect in Timber which the Company knew about or ought reasonably to have known about prior to the date of this Agreement, having regard to the cost of obtaining that information;

'Loss of EBITDA' means the net present value of the loss of EBITDA from the Silicon Project to the Company and its related bodies corporate arising directly from State Forests' failure to make Timber available to the Company, calculated during the period State Forests failed to make the Timber available. To remove all doubt a calculation of Loss of EBITDA, involves a comparison between the EBITDA which would have applied if the failure to supply had not occurred and the EBITDA where it has occurred, and must, in the latter case:

- (a) assume the Company and its related bodies will take all reasonable steps to mitigate the loss;
- (b) take into account earnings (after deduction of operating costs) which the Company and its related bodies corporate may derive from the Silicon Project from making silicon using raw materials other than metallurgical carbon derived from Timber supplied under this Agreement; and
- (c) take into account the best price reasonably obtainable (less associated costs) by the sale of the individual components of the Silicon Project if the Silicon Project was to close;

'Management Area' means an area of land designated as a 'Management Area' on the plans prepared by State Forests and attached as **Schedules 8 and 9**;

'Maximum Adjusted Annual Supply' for a Year means 105% of the Base Annual Supply for that Year;

'Maximum Annual Supply' for a Year means 200,000 tonnes of Timber or such lesser quantity determined in accordance with **clause 9**;

'Metallurgical Carbon Plant' means the metallurgical carbon manufacturing plant to be developed by the Company at the Delivery Site which will include a weighbridge, stockpiles of Timber and the Sawmill;

'Minimum Adjusted Annual Supply' for a Year means 95% of the Base Annual Supply for that Year;

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'Minimum Annual Supply' for a Year means 130,000 tonnes of Timber;

'Minister' means the New South Wales Minister for Forestry or any other Minister administering the Act;

'Monthly Delivery Schedule' means a schedule for the delivery of Timber to the Delivery Site for the month to which it applies, specifying information described in clause 13.1;

'Previous Review Period' means:

- (a) in the case of an Annual Review, the last Current Review Period except where the current Review is the first Review in which case the Previous Review Period means Year 2;
- (b) in the case of a General Review, the last Current Review Period except where the current Review is the first Review in which case the Previous Review Period means the period between the date of this Agreement and the Commencement Date;

'Residual Value of Timber' means the value of Timber prior to it being felled calculated by deducting from the market value of the metallurgical carbon produced from the Timber the costs of harvesting, hauling, and processing the Timber together with a reasonable margin for profit. The reference to the costs of harvesting and hauling timber is a reference to the costs of harvesting and hauling for the hardwood industry in NSW generally and not specifically State Forests' costs of harvesting and hauling Timber under this Agreement.

'Review' is defined in clause 20.1;

'RFA' means the Regional Forests Agreements between the Commonwealth and the State of NSW for:

- (a) Southern New South Wales dated 24 April 2001; and
- (b) the Eden Region of NSW dated 26 August 1999.

'Sawmill' means the timber processing plant at the Delivery Site which processes Timber into billets suitable for insertion into the metallurgical carbon plant;

'Silicon Plant' means the production facility, designed to produce 31,400 tonnes per annum of silicon, to be constructed by a related body corporate of the Company at Lithgow NSW that:

- (a) receives and stockpiles raw materials of quartz, metallurgical carbon, and flux wood;
- (b) measures and loads the raw materials into two electric arc open furnaces;
- (c) cools, collects, crushes, and sorts silicon metal products; and
- (d) prepares silicon metal products for transport;

'Silicon Project' means the project to be developed by the Company and its related bodies corporate which comprises:

- (a) the Metallurgical Carbon Plant;
- (b) a quartz mine; and
- (c) the Silicon Plant.

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'**Silicon Review**' means publications by a recognised industry analysis groups or individuals who analyse and publish international silicon prices, including the Metal Bulletin, CRU International Limited, Ryans Notes and any other publications agreed by State Forests and the Company or in default of agreement, determined (at the request of either party) by the president for the time being of the Institute of Chartered Accountants in Australia or his nominee;

'**Species Percentage**' for a species means the percentage specified for the species in **Schedule 3** as amended from time to time in accordance with **clause 28**;

'**Specifications**' means the specifications for the hardwood timber set out in **Schedule 2**;

'**Stumpage Price**' means the price set out in the Stumpage Price Schedule for Timber as amended from time to time in accordance with this Agreement which the parties acknowledge is equivalent to the total of:

- (a) the royalty which would be payable by a person pursuant to section 30A of the Act if the Timber was taken by the person under a timber licence issued under the Act (except that the amount is determined under this Agreement, and not under the Act); and
- (b) a reasonable amount payable in respect of State Forests costs and expenses incurred in the establishment, management, supervision and administration of the Contract Harvesting and Contract Haulage necessary to supply Timber to the Company which is agreed to be \$1.00 per tonne at the date of this Agreement;

'**Stumpage Price Schedule**' means **Schedule 4** as amended from time to time in accordance with this Agreement;

'**Tender Contract**' means a contract for Contract Haulage or Contract Harvesting between State Forests and a Contractor arising from a tender referred to in **clause 10**;

'**Tender Contract Rates**' means in relation to a Tender Contract in force in a Year:

- (a) if the Year is the first Year of the Tender Contract:- the rates payable by State Forests under the Tender Contract;
- (b) if the Year is not the first Year of the Tender Contract:- the rates which would have been payable by State Forests under the Tender Contract in the Year if the rates payable under it in its first Year were adjusted each subsequent Year in accordance with **Schedule 6**;

'**Term**' means the duration of this Agreement;

'**Timber**' means timber which conforms to the Specifications;

'**timber**' has the same meaning as in the Act as at the date of this Agreement;

'**tonnes**' means metric green tonnes at the time and point of delivery;

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'World price for silicon' for a Current Review Period or a Previous Review Period means (subject to clauses 20.12 and 20.13) the World price for silicon last published in the "Silicon Review" during the Current Review Period or the Previous Review Period as the case may be;

'Year' means;

- (a) for Year 1, the period commencing on the Commencement Date and ending on 30 June next following the Commencement Date;
- (b) for the final Year, the period commencing on 1 July 2020 and ending on 31 December 2020; and
- (c) for all other Years during the Term, the period of twelve months commencing on 1 July;

'Year 1' means the Year of the Commencement Date;

'Year 2' means the next Year after Year 1;

'Year 3' means the next Year after Year 2;

'Year 4' means the next Year after Year 3;

2.2 Interpretation

In this Agreement, unless the context requires otherwise:

- 2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;
- 2.2.2 a reference to any legislation or legislative provisions includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinated legislation issued under that legislative provision;
- 2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;
- 2.2.4 words importing the singular include the plural and vice versa;
- 2.2.5 words importing a gender include any gender;
- 2.2.6 a reference to a person includes:
 - (a) a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency; and
 - (b) their employees, officers, agents and contractors;
- 2.2.7 a reference to any thing includes a part of that thing;
- 2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;

- 2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;
- 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 2.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth;
- 2.2.13 a reference to the Minister is a reference to the Minister acting in his capacity as representative of the Crown in the right of the State of NSW but not as a statutory officer under the Act;
- 2.2.14 a reference to State Forests making Timber available to the Company is a reference to making Timber available by the method described in **clauses 10.1 and 10.2**;
- 2.2.15 a reference to State Forests delivering Timber to the Company is a reference to State Forests procuring delivery of that Timber to the Delivery Site in accordance with **clause 15**;
- 2.2.16 a reference to the Company taking Timber is a reference to the Company accepting delivery of Timber delivered by State Forest to the Company in accordance with this Agreement;
- 2.2.17 where an expression is defined, another part of speech has a corresponding meaning;
- 2.2.18 where any time period is required to be calculated from a specific date, that date must be excluded from the calculation;
- 2.2.19 the words "related body corporate" have the same meaning as in the *Corporations Act 2001*;
- 2.2.20 a reference to time is to local time in Sydney, New South Wales; and
- 2.2.21 a construction that would promote the purpose or object underlying any provision of this Agreement must be preferred to a construction that would not promote that purpose or object.

3. SCOPE OF AGREEMENT

3.1 Silicon Project

If the Silicon Project proceeds the Company will require regular supplies of Timber to produce metallurgical carbon for the Silicon Project.

3.2 Control of Crown-timber lands

State Forests has the management and control of Crown-timber lands from which it can make a regular supply of Timber available to the Company.

3.3 Obligations

Subject to the terms and conditions set out in this Agreement each Year of the Term from the Commencement Date:

- 3.3.1 State Forests must make the Adjusted Annual Supply available to the Company from within the Area of Supply; and
- 3.3.2 the Company must take and pay for the Timber made available or pay for the Minimum Adjusted Annual Supply.

3.4 State of NSW Guarantee

The State of NSW guarantees that:

- 3.4.1 State Forests has sufficient resources and the necessary capacity to make Timber from within the Area of Supply available to the Company; and
- 3.4.2 will cause State Forests to perform its obligations as required by the provisions of this Agreement.

3.5 Exclusion of Guarantee for Force Majeure

The State of NSW will only be excused for any failure to perform its undertakings set out in clause 3.4 if prevented from doing so by Force Majeure. For the purposes of this clause 3.5 the words 'act or omission of government or government department or instrumentality' in the context of Force Majeure will be deemed to mean 'act or omission of a government or government department or instrumentality other than the government or a department or instrumentality of the State of NSW'.

3.6 Company Group Guarantee

Prior to the Commencement Date, the Company must ensure that the related body corporate of the Company which receives the debt and equity funding referred to in paragraph (a) of the definition of Condition Precedent (or the Company if it receives that funding) provides a guarantee to State Forests that:

- 3.6.1 the Company has sufficient resources and the necessary capacity to take or pay for Timber to be made available by State Forests to the Company in accordance with this Agreement; and
- 3.6.2 it will cause the Company to perform its obligations as required by the provisions of this Agreement, substantially in the form set out in Schedule 10.

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4. DURATION OF AGREEMENT

4.1 Term

This Agreement will take effect from the date of its signing and will operate until 31 December 2020 unless determined at an earlier date under a provision of this Agreement.

4.2 Obligations Subject to Conditions Precedent

The parties' obligations under clauses 3 and 5 to 33 inclusive are of no force until, on or before the End Date the Conditions Precedent are fulfilled or waived under clause 4.5.

4.3 Termination if Conditions Precedent not Satisfied

If the Conditions Precedent are not fulfilled (or waived under clause 4.5) on or before the End Date, then this Agreement automatically terminates on the End Date.

4.4 Effect of Termination

The termination of this Agreement does not affect any right of any party in respect of this agreement which has arisen before termination.

4.5 Waiver of Conditions Precedent

The Conditions Precedent may be waived by the Company by giving written notice of waiver of the Conditions Precedent to State Forests prior to the End Date.

4.6 Reasonable Endeavours

The Company must use reasonable endeavours to ensure that the Conditions Precedent are fulfilled on or before the End Date.

4.7 No Requirement to Waive

The obligation imposed on the Company by clause 4.6 does not require the Company to waive the Conditions Precedent.

5. COMMENCEMENT DATE

5.1 Determination and Notification

The Company must determine and notify State Forests of the Commencement Date within 20 Business Days after the date on which the last of the Conditions Precedent is satisfied.

5.2 Limits on Commencement Date

The Commencement Date determined and notified under **clause 5.1** must not be less than 9 months and not more than 18 months after the last Condition Precedent is satisfied.

6. COMPANY'S NOMINATION AND AMENDMENT OF THE BASE ANNUAL SUPPLY

6.1 Base Annual Supply

The Base Annual Supply for a Year means:

- 6.1.1 for Year 1:- the Base Annual Supply specified in **Schedule 1** for that Year divided by twelve and multiplied by the number of full months left in that Year after the Commencement Date; and
 - 6.1.2 for the Year commencing 1 July 2020:- half of the Base Annual Supply for the Year commencing 1 July 2019;
- but otherwise
- 6.1.3 the quantity of Timber specified in **Schedule 1** as the Base Annual Supply for that Year;
 - 6.1.4 the quantity nominated in accordance with this **clause 6** as the Base Annual Supply for that Year; or
 - 6.1.5 the quantity to which the Base Annual Supply for the Year may be varied in accordance with this Agreement (other than under **clause 8**).

6.2 Adjustment for Harmonisation

Without limiting **clause 6.3** the Company may by notice in writing to State Forests given not less than 6 months prior to the commencement of a Year amend the Base Annual Supply for the Year and the 2 Years following that Year provided:

- 6.2.1 the notice must be given not more than 18 months after the initial loading of the furnace of the Silicon Plant;
- 6.2.2 the variation must be for the sole purpose of harmonising the level of metallurgical carbon production and the optimum production capacity of the Silicon Plant in the relevant Years (assuming an estimated minimum production capacity of 31,500 tonnes of silicon metal per annum) after the Company has been able to assess the rate of conversion of Timber to metallurgical carbon, and the quantities of metallurgical carbon required to be produced to optimise silicon production levels, taking into account factors such as moisture loss, processing losses of Timber and metallurgical carbon, carbon yield and furnace capacity which the Company is presently unable to accurately quantify;
- 6.2.3 the Company must, at the time it gives notice, establish to State Forests' reasonable satisfaction that the proposed variation is for the purpose referred to in **clause 6.2.2** and must promptly provide at State Forests' request such information reasonably necessary to establish the Company's case for the variation; and
- 6.2.4 the variation for a Year may not exceed 15,000 tonnes more or less than the Base Annual Supply which is being amended.

6.3 Nomination of Base Annual Supply

Commencing Year 2, each Year ("the Notice Year") the Company, by notice in writing to State Forests given not less than 9 months prior to the end of the Notice Year:

- 6.3.1 may amend the Base Annual Supply for the second Year after the Notice Year by up to plus or minus 5%; and
- 6.3.2 must nominate the Base Annual Supply for the fourth Year after the Notice Year and provide indicative information regarding the Base Annual Supply it proposes to nominate for the fifth and sixth Years after the Notice Year.

6.4 Failure to nominate

If the Company fails to give notice in a Year in accordance with clause 6.3.2, the Base Annual Supply for the fourth Year after that Year will be the Base Annual Supply for the third Year after that Year.

6.5 Maximum and Minimum Limits on Nomination of Base Annual Supply

The Company may not nominate or amend a Base Annual Supply for a Year under this clause 6 so that:

- 6.5.1 the Maximum Adjusted Annual Supply for that Year exceeds the Maximum Annual Supply; or
- 6.5.2 the Minimum Adjusted Annual Supply for that Year is less than the Minimum Annual Supply.

7. STATE FORESTS' AMENDMENT OF THE BASE ANNUAL SUPPLY

7.1 Ramp-up Limit

If the Maximum Adjusted Annual Supply for a Year ("Current Year") exceeds the Actual Annual Supply in the Year before that Year ("Previous Year") by more than 40,000 tonnes, State Forests may amend the Base Annual Supply for the Current Year to that quantity that equates to a Maximum Adjusted Annual Supply for the Current Year of 40,000 tonnes more than the Actual Annual Supply for the Previous Year.

7.2 Ramp-down Limit

If the Minimum Adjusted Annual Supply for the Current Year is less than the Actual Annual Supply in the Previous Year by more than 25,000 tonnes, State Forests may amend the Base Annual Supply for the Current Year to that quantity that equates to a Minimum Adjusted Annual Supply for the Current Year of 25,000 tonnes less than that Actual Annual Supply for the Previous Year.

7.3 Reduction for Low Take

If the Company takes less than 85% of the Base Annual Supply for two consecutive Years (the two relevant Years), excepting any Year in respect of which State Forests required the Company to make payment under clause 11.1, State Forests may amend the Base Annual Supply for each of the three Years following the two relevant Years by

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reducing each Base Annual Supply by a percentage not greater than the percentage calculated using the following formula:

$(U1/AS1 + U2/AS2)/2$ expressed as a percentage where:

U1 is the amount by which Actual Annual Supply is less than Base Annual Supply in the first of the two relevant Years;

AS1 is the Base Annual Supply for the first of the two relevant Years;

U2 is the amount by which Actual annual Supply is less than Base Annual Supply in the second of the two relevant Years; and

AS2 is the Base Annual Supply for the second of the two relevant Years.

7.4 Reduction for Different Purpose

Nothing in this Agreement requires:

7.4.1 State Forests to make available Timber which is not intended to be applied in the manufacture of metallurgical carbon, charcoal or flux wood for silicon production; or

7.4.2 the Company to make payment under **clause 11.1** in respect of Timber which State Forests declines to make available under **clause 7.4.1** except if the Company intended to sell the Timber involved as firewood.

7.5 Notice of Different Purpose

7.5.1 The Company must as soon as practicable give State Forests written notice of any quantity which it intends to take in a Year under this Agreement but which it intends will not be applied by the Company in the manufacture of metallurgical carbon, charcoal, or flux wood for silicon production. The notice must provide details of the intended use, and the Company must promptly provide State Forests with such further information regarding the intended use which State Forests may request in order to decide whether to exercise its rights under **clause 7.4.1**.

7.5.2 State Forests must notify the Company as soon as practicable after receipt of a notice under **clause 7.5.1** from the Company regarding whether or not it intends to exercise its rights under **clause 7.4.1** and not make Timber available, including details of any changes to the Annual Delivery Plan to reflect that decision.

7.6 Reduction for Latent Defect

If the Specifications are amended as the result of Latent Defect and the effect of the amendments is to exclude a species from **Schedule 3**, State Forests may amend the Base Annual Supply for the Year current at the time of the amendment and those Base Annual Supplies for subsequent Years which were known at the time of the amendment of the Specification, by reducing each Base Annual Supply by the Species Percentage for that species.

7.7 Notice of Amendment to Base Annual Supply

State Forests must give the Company notice in writing of any amendment to a Base Annual Supply within 60 days of the right to amend arising under this **clause 7**.

8. ADJUSTED ANNUAL SUPPLY

8.1 Adjustments from Base Annual Supply to Adjusted Annual Supply

In any Year, State Forests must at the Company's request make available the Adjusted Annual Supply which may be more or less than the Base Annual Supply, provided that in any Year the Adjusted Annual Supply requested by the Company must not be:

- 8.1.1 greater than the lesser of the Maximum Adjusted Annual Supply or the Maximum Annual Supply; or
- 8.1.2 less than the greater of the Minimum Adjusted Annual Supply or the Minimum Annual Supply;

8.2 The Company must give notice in writing to State Forests of the Adjusted Annual Supply not less than 6 months prior to the end of the Year in which it is to be delivered.

8.3 Limits to Adjustments

The Company is not entitled to require deliveries greater than or less than the Base Annual Supply except in accordance with the conditions set out in this clause 8.

9. AMENDMENT OF THE MAXIMUM ANNUAL SUPPLY

9.1 Reduction for Low Take

If during any three Year period, commencing after Year 4, the average Actual Annual Supply is less than 165,000 tonnes, State Forests may, by notice in writing to the Company, amend the Maximum Annual Supply to the total of 20,000 tonnes (or more at the option of State Forests) and the average Actual Annual Supply during the 3 Year period.

9.2 Earn Back

If during any three Year period, occurring after an amendment under clause 9.1, the average Actual Annual Supply is more than 165,000 tonnes:

- 9.2.1 the Company may, by notice in writing to State Forests request that the Maximum Annual Supply be amended to the lesser of:
 - (a) 200,000 tonnes; or
 - (b) the aggregate of 20,000 tonnes (or less at the option of the Company) and the average Actual Annual Supply during the 3 Year period;

and

- 9.2.2 provided State Forests is not precluded from making the amended Maximum Annual Supply available to the Company by principles of good forest management, the regulatory framework and/or by reason of having entered into binding legal commitments to supply Timber to another person;

State Forests must agree to the amendment requested.

9.3 Reduction for Latent Defect

If the Specifications are amended as the result of Latent Defect and the effect of the amendments is to exclude a species from **Schedule 3 State Forests** may amend the Maximum Annual Supply by reducing it by the Species Percentage for that species.

9.4 Notice of Amendment to Maximum Annual Supply

State Forests must give the Company notice in writing of any amendment to the Maximum Annual Supply within 6 months of the right to amend arising under this **clause 9**.

10. METHOD OF SUPPLY AND TENDER CONTRACTS

10.1 State Forests to make Adjusted Annual Supply Available

Each Year State Forests will make the Adjusted Annual Supply available to the Company by procuring that Contract Harvesting and Contract Haulage operations are conducted and Timber is delivered to the Delivery Site.

10.2 Determination of When Timber is Made Available

For the purposes of determining whether State Forests has complied with its obligations to make Timber available (and, subject to **clause 7.4.2**, whether the Company has complied with its obligations to take Timber) State Forests will be deemed to have made available that quantity of Timber it is ready willing and able to deliver to the Delivery Site and not any lesser quantity which it actually makes available:

- 10.2.1 at the request of the Company (unless State Forests agrees to the request as an amendment to this Agreement);
- 10.2.2 as a consequence of lawful suspension of deliveries by State Forests under this Agreement as a result of a breach of this Agreement by the Company (but not as a result of Force Majeure); or
- 10.2.3 because, by operation of **clause 7.4**, it is not obliged to make a greater quantity available.

10.3 Engagement of Contractors by Tender

The Contractors from time to time carrying out Contract Harvesting and Contract Haulage for the purposes of this Agreement must be engaged by State Forests as the result of a competitive tender process which included New South Wales wide advertising.

10.4 Tender Contracts

State Forests must consult with the Company and include in its consideration of the structure and terms of any invitation to tender (in so far as those matters may relate to the volumes of Timber which may be supplied under this Agreement) the Company's comments on the following matters:

- 10.4.1 world best practice standards for harvesting and haulage services;

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- 10.4.2 tender volumes of sufficient scale to facilitate the achievement of optimum operational and pricing outcomes;
- 10.4.3 tender evaluation criteria and weightings; and
- 10.4.4 key contract provisions to be included in Tender Contracts, including base term which is anticipated to be between 3-6 years in most Tender Contracts.

10.5 **Limits to Scope of Tender Contract**

The Company acknowledges that a Contractor engaged as a result of an invitation to tender will be engaged to assist State Forests to supply timber to a number of persons, and that while State Forests will consult with and take into account the Company's views with regard to the invitation to tender, it may not be possible for State Forests to accommodate those views in all respects.

10.6 **Terms of Tender Contract**

Despite any view to the contrary by the Company the invitation to tender:

- 10.6.1 may call for tenders in relation to fully mechanised felling;
- 10.6.2 may specify that a person's tendered rate for Contract Harvesting must be a rate \$1.00 less than the person's tendered rate for High Quality Large Logs or other timber having a higher market value than Timber;
- 10.6.3 may otherwise give effect to State Forests decisions on good forest management which are relevant to the work to be performed by tenderers; and
- 10.6.4 must comply with NSW Government tendering guidelines, policies and procedures as amended from time to time.

10.7 **Tender Process**

State Forests must prepare the invitation for tender, send a copy of the invitation to tender to the Company, conduct the tender, evaluate the tender proposals, and award the contract or contracts in accordance with State of NSW tendering policies and procedures.

10.8 **Disclosure of Tender Contract Terms**

State Forests must disclose to the Company those Tender Contracts which relate to the Contract Harvesting Charges and Contract Haulage Charges under this Agreement. The Company must treat the Tender Contracts as confidential documents which may not be disclosed to any other person.

10.9 **Changes to Scope of Services under Tender Contract**

State Forests must ensure that the scope of services to which the Contract Harvesting Charges and the Contract Haulage Charges apply from time to time, does not significantly change during the Term. To remove doubt, nothing in this clause is intended to prohibit change in the way the services are provided.

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10.10 Responsibility for Contractors

For the avoidance of doubt, State Forests acknowledges that it is solely responsible for all costs, loss, claims and damages arising from or in connection with the Tender Contracts and the process of tendering for the Tender Contracts, including, without limitation:

- 10.10.1 any claims made by Contractors or tenderers that State Forests has not complied with the tender process;
- 10.10.2 any payments due under the Tender Contracts – including, without limitation, interest on payments due under the Tender Contracts;
- 10.10.3 any claims by contractors for damages for breach of a Tender Contract; and
- 10.10.4 any loss, cost, or expense suffered by State Forests as a result of a Contractor breaching a Tender Contract.

11. TAKE OR PAY

11.1 Stumpage Price and Pay Obligations

Subject to clause 11.2 if in any Year the Company takes less than the Minimum Adjusted Annual Supply and State Forests does not terminate this Agreement as provided under clause 34.3 the Company must pay State Forests within 90 days after the end of the Year the sum of money equal to the difference between the Stumpage Price that would have been payable had the Company taken the Minimum Adjusted Annual Supply and the Stumpage Price paid or payable for the Actual Annual Supply in that Year. The Stumpage Price payable per tonne on that difference will be the average Stumpage Price paid by the Company in that Year calculated by dividing the total Stumpage Price paid by the Actual Annual Supply in that Year.

11.2 Reduction for Supply to Third Party

Any payment due under clause 11.1 must be reduced (or refunded) to the extent of the price (if any) obtained by State Forests for the sale to another person of the Timber in respect of which the payment is made. State Forests must promptly disclose to the Company the relevant particulars of any such sale.

11.3 Reduction for Supply in Following Year

If in the Year in which the Company makes a payment under clause 11.1, the Actual Annual Supply exceeds the Minimum Adjusted Annual Supply ('excess Timber'), the Stumpage Price payable for the excess Timber will be reduced by the amount paid under clause 11.1 commencing the first month after the Actual Annual Supply exceeds the Minimum Adjusted Annual Supply.

11.4 Stumpage Pay Obligation Pre-estimate of Damages

Any sum payable by the Company under clause 11.1 is payable as pre-estimated and liquidated damages and not as a penalty.

11.5 Contract Haulage Charges and Contract Harvest Charges Pay Obligations

Subject to **clause 11.6** if in any Year the Actual Annual Supply is less than the Minimum Adjusted Annual Supply the Company must pay State Forests within 90 days after the end of the Year the sum of money equal to 35% of the difference between the aggregate Contract Haulage Charges and Contract Harvest Charges that would have been payable had the Company taken the Minimum Adjusted Annual Supply and the aggregate Contract Haulage Charges and Contract Harvest Charges paid or payable for the Actual Annual Supply in that Year. The aggregate Contract Haulage Charges and Contract Harvest Charges payable per tonne on that difference will be the average aggregate Contract Haulage Charges and Contract Harvest Charges paid by the Company in that Year calculated by dividing the total aggregate Contract Haulage Charges and Contract Harvest Charges paid by the Actual Annual Supply in that Year.

11.6 Reduction if Actual Costs Lower than Estimate

The parties acknowledge that the Company's obligation to pay liquidated damages under **clause 11.5** has been inserted in this Agreement to offset a reciprocal liability State Forests may have under Tender Contracts. State Forests will use reasonable endeavours to limit its said reciprocal liability under the relevant Tender Contracts as a result of the Company's failure to take Timber under this Agreement. Despite **clause 11.6** the Company's liability under that clause may not exceed the reciprocal liability State Forests has under the relevant Tender Contracts in respect of the same Year.

11.7 Contract Harvest Charges and Contract Haulage Charges Pre-estimate of Damages

Any sum payable by the Company under **clause 11.5** (subject to **clause 11.6**) is payable in addition to the obligation to pay damages under **clause 11.1**, and as pre-estimated and liquidated damages and not as a penalty.

12. ANNUAL DELIVERY PLAN

12.1 Requirements for Annual Delivery Plan

The Annual Delivery Plan:

- 12.1.1 must be based on the Base Annual Supply, or Adjusted Annual Supply to the extent it has been determined at the time of preparation of the Annual Delivery Plan, or such other quantity as may be notified by the Company to State Forests or otherwise agreed in writing between the parties;
- 12.1.2 must set out indicative information regarding the monthly quantities (which for each month must be not less than 5%, or more than 15%, of the Adjusted Annual Supply) and the species mix of Timber to be delivered to the Company;
- 12.1.3 must allow for stockpiling by the Company at the Delivery Site to make provision for wet weather preventing Contract Harvesting of Timber by State Forests; and
- 12.1.4 must set out indicative information regarding the Compartments from which the Timber will be harvested by State Forests.

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12.2 Negotiation of Annual Delivery Plan for Years 1 and 2

State Forests and the Company must, as soon as practicable after service of the notice referred to in **clause 5.1**, confer and negotiate in good faith to reach agreement on an Annual Delivery Plan for Year 1 and a draft Annual Delivery Plan for Year 2. In default of agreement, the Annual Delivery Plan and the draft Annual Delivery Plan will be determined by State Forests in accordance with the matters referred to in **clause 12.1** including, without limitation, any adjustments to the Base Annual Supply which have been notified by the Company to State Forests, and otherwise providing for Timber to be delivered in approximately equal monthly volumes.

12.3 Negotiation of Annual Delivery Plan for Subsequent Years

Not later than 30 April in each Year, State Forests and the Company must confer and negotiate in good faith to reach agreement on an Annual Delivery Plan for the following Year and a draft Annual Delivery Plan for the Year after that. In default of agreement, the Annual Delivery Plan and the draft Annual Delivery Plan will be determined by State Forests in accordance with the matters referred to in **clause 12.1** including, without limitation, any adjustments to the Base Annual Supply which have been notified by the Company to State Forests, and otherwise providing for Timber to be delivered in approximately equal monthly volumes.

12.4 Annual Delivery Plan Subject to Adjusted Annual Supply

For the avoidance of doubt, State Forests' ability to determine the Annual Delivery Plans and the Monthly Delivery Plans under **clauses 12.2, 12.3 and 13.2** is subject always to the Company's right to determine the Adjusted Annual Supply.

13. MONTHLY DELIVERY SCHEDULES

13.1 Requirements for Monthly Delivery Schedule

The Monthly Delivery Schedule:

- 13.1.1 must be based on, but not bound to, the indicative information in the Annual Delivery Plan for the month to which it applies;
- 13.1.2 must include that month's proportion of the Base Annual Supply, or, to the extent that it has been determined, the Adjusted Annual Supply, which proportion must be not less than 5% and not more than 15% of the Adjusted Annual Supply (based on adjustments which have been notified to State Forests at the time the Monthly Delivery Schedule is prepared);
- 13.1.3 must set out indicative information regarding the quantities and species mix of Timber to be delivered to the Company during that month and the Compartments from which the Timber will be harvested;
- 13.1.4 must take into account the need for the Company to stockpile Timber at the Delivery Site to make provision for wet weather preventing Contract Harvesting. This stockpile will be sufficient to maintain timber processing operations at the Delivery Site for at least fourteen (14) days; and
- 13.1.5 must include any special delivery requirements the Company may have for that month, as agreed between the parties.

13.2 **Negotiation of Monthly Delivery Schedule**

No later than seven (7) days prior to the Commencement Date the parties must confer and negotiate in good faith to reach agreement on a Monthly Delivery Schedule for remainder of the month after the Commencement Date. From the Commencement Date, no later than seven (7) days prior to the commencement of each calendar month the parties must confer and negotiate in good faith to reach agreement on a Monthly Delivery Schedule for that month. In default of agreement, the Monthly Delivery Schedule will be determined by State Forests in accordance with the matters referred to in clause 13.1, including, without limitation, any adjustments to the Base Annual Supply which have been notified by the Company to State Forests.

13.3 **Notification of Variations**

If either party wishes to vary a Monthly Delivery Schedule during the month to which it applies, the party must notify the other as soon as practicable and the parties must negotiate in good faith to reach agreement on an amended Monthly Delivery Schedule. In default of agreement the original Monthly Delivery Schedule shall apply.

14. **AMENDMENT OF ANNUAL DELIVERY PLANS**

14.1 **State Forests to Amend Annual Delivery Plan**

Following consultation with the Company State Forests must amend any relevant Annual Delivery Plan in order to give effect to the Adjusted Annual Supply or an amendment to the Base Annual Supply.

14.2 **Requests by Company**

Without limiting the Company's ability to notify State Forests of the Adjusted Annual Supply, from time to time the Company may request State Forests by notice in writing to consider any modification or change to an Annual Delivery Plan. If State Forests is satisfied that the requested modification or change is necessary it may amend the Annual Delivery Plan.

14.3 **Amendments due to Forest Management**

Where any Timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause or if for any other reason relating to forest management State Forests considers an amendment of an Annual Delivery Plan is necessary, State Forests may after consultation with the Company and taking into account the Company's comments amend or vary the Annual Delivery Plan having regard to the matters set out in clause 12.1 and subject to the Company's right to determine the Adjusted Annual Supply.

14.4 Consequential Amendments to Draft Annual Delivery Plan

If an Annual Delivery Plan may be amended or varied by State Forests in accordance with clause 14.3, State Forests may make any consequential amendments or variations necessary to the draft Annual Delivery Plan for the following Year.

14.5 Notification of Amended Annual Delivery Plan

State Forests must provide the Company with a copy of any amended Annual Delivery Plan or and any amended Monthly Delivery Schedules or draft Annual Delivery Plan as soon as practicable.

15. DELIVERY

15.1 Acceptance of Timber by Company

The Company must accept Timber delivered to the Delivery Site by State Forests:

- 15.1.1 substantially in accordance with the Monthly Delivery Schedule; and,
- 15.1.2 during the delivery hours in clause 15.2.

15.2 Time for Delivery

The delivery hours must be a minimum of 12 hours on Business Days, or such lesser limit as may be determined by approvals from Government Agencies which are to be obtained for the Delivery Site or as otherwise agreed by the parties, ('specified hours'). Delivery hours on weekends, public holidays and on Business Days outside the specified hours are to be by arrangement between State Forests and the Company.

15.3 Unloading

The Company will promptly unload Timber delivered to it in accordance with this Agreement, and must ensure that all unloading operations are performed in a safe manner in accordance with the NSW WorkCover's Code of Practice for the Safe Loading and Unloading of Logs (1995) and any other code issued by New South Wales WorkCover or other relevant agency which replaces or exercises the functions carried out by New South Wales WorkCover.

15.4 Driver Training

State Forests must ensure that all truck drivers delivering Timber to the Delivery Site undertake site induction training provided by the Company at the Company's expense.

15.5 Compliance at Delivery Site

State Forests must require its employees, officers, agents and contractors when entering and remaining upon the Delivery Site to:

- 15.5.1 observe both the Company's normal safety and operational procedures, the *Occupational Health and Safety Act 1983 and 2000 (NSW)* and the *NSW WorkCover's Code of Practice for the Safe Loading and Unloading of Logs 1995 (NSW)*;

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- 15.5.2 only access those areas of the land which are necessary for it to deliver Logs or inspect timber which is disputed by the Company under **clause 16** or alleged by the Company to contain Latent Defect, such areas to be notified by the Company to State Forests from time to time;
- 15.5.3 cause as little harm and inconvenience as possible;
- 15.5.4 not stay on the land for any longer than is reasonably necessary;
- 15.5.5 leave the land as nearly as possible in the condition in which State Forests found it;
- 15.5.6 take reasonable care not to cause loss or damage to property or injury to persons on the land; and
- 15.5.7 co-operate as much as practicable with the Company.

16. SPECIFICATIONS

16.1 Acceptance of Conforming Timber

The Company must accept any timber which, when delivered to the Delivery Site, conforms to the Specifications.

16.2 Deemed to Conform

Timber will be deemed to conform to the Specifications once the Timber has been unloaded at the Delivery Site and the Company does not object under **clause 16.3** to its failure to meet the Specifications.

16.3 Disputed Timber

If the Company disputes that timber delivered by State Forests conforms to the Specifications, the Company will advise State Forests of the dispute within three (3) Business Days of delivery of the timber and set the timber aside for inspection and adjudication by a suitably qualified State Forests officer.

16.4 Inspection of Disputed Timber

The parties must arrange for the inspection and adjudication of disputed timber within five (5) business days after receipt of advice referred to in **clause 16.3**.

16.5 Resolution of Disputed Timber

Subject to **clause 16.7** the Company must accept the determination of the suitably qualified State Forests officer regarding disputed timber as final and binding.

16.6 Non-Conforming Timber

If disputed timber fails to meet the Specifications:

- 16.6.1 State Forests may arrange for the timber to be re-serviced so that it complies with the Specifications; or
- 16.6.2 the Company may, at its sole discretion, elect to accept delivery of the timber on terms and conditions (including price) to be agreed between the parties and

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in such a case the disputed timber will be deemed to be Timber made available to the Company as part of the Annual Supply; or
 16.6.3 if, for any reason, the Company does not elect to accept delivery of the timber, State Forests must remove the timber from the Delivery Site within 7 days at State Forests' expense.

16.7 Unacceptable Levels of Disputed Timber

If either party is of the reasonable opinion there has been a sustained and unacceptable level of disputed timber or that there is a pattern of manifest error in the determination of disputed timber the parties must negotiate in good faith to resolve the issues of concern to the party and in default of agreement the matter may be dealt with under clause 35.

16.8 Review of Specifications

The parties acknowledge the Specifications at the date of this Agreement are the parties best estimate of their respective requirements for Timber under this Agreement. The parties must confer at the expiration of 12 months after the Commencement Date to review and, if agreement can be reached, refine the Specifications in the light of the practical experience gained.

17. DETERMINATION OF QUANTITY OF TIMBER

17.1 Determination under the Code

The method of determination of the quantities of Timber delivered to the Company by State Forests will be as set out in the Code.

17.2 Preparation of the Code

The parties must negotiate in good faith to reach agreement on a Code prepared by State Forests in consultation with the Company as soon as practicable after the service of the notice referred to in clause 5.1. If the parties are unable to reach agreement within 3 months of service of the notice the matters in dispute will be referred to mediation under clause 35.

17.3 Requirements for Code

The Code must make provision for:

17.3.1 measurement of truck loads by weighbridge and verification of the weighbridge or other device as required by the manufacturer's specifications and the requirements of the *Trade Measurement Act 1989* and Regulations. In particular the Code may provide that if a weighbridge is not practicably available at the Delivery Site the quantity of Timber delivered to the Delivery Site on a truck may be measured by weight measuring devices incorporated into the truck;

- 17.3.2 the use of electronic delivery docket incorporating details of the load of Timber delivered by individual trucks including the Contractor's name and the Compartment from which the Timber was loaded;
- 17.3.3 weighbridge procedures to be observed by the Contractors and the Company;
- 17.3.4 acknowledgment of delivery procedures;
- 17.3.5 electronic recording of weighbridge transactions; and
- 17.3.6 compliance checks.

18. DELIVERED PRICE

The price payable per tonne of Timber delivered to the Company under this Agreement shall be the Delivered Price, which will be the aggregate of:

- 18.1 the Stumpage Price applicable to that Timber (including the administration costs referred to in paragraph (b) of the definition of Stumpage Price);
- 18.2 the Contract Haulage Charge applicable to that Timber;
- 18.3 the Contract Harvest Charge applicable to that Timber; and
- 18.4 any GST payable on the supply of that Timber under clause 24.1, and no other amounts.

19. STUMPAGE PRICE

19.1 Interim and Reconciled Stumpage Prices

For the purposes of this clause:

- 19.1.1 Interim Stumpage Prices means the prices described in the Stumpage Price Schedule as the Interim Stumpage Prices; and
- 19.1.2 Reconciled Stumpage Prices means the prices described in the Stumpage Price Schedule as the Reconciled Stumpage Prices.

19.2 Stumpage Prices Payable in Years 1, 2 and 3

During Year 1, Year 2 and Year 3 the Stumpage Prices payable by the Company are the Interim Stumpage Prices.

19.3 Reconciliation

Following the determination of the Reconciled Stumpage Prices at the end of Year 3 the party who has had the benefit of the difference (if any) between the amount paid or payable by the Company during Year 1, Year 2 and Year 3 applying the Interim Stumpage Prices and the amount which would have been payable by the Company if the Reconciled Stumpage Prices applied, must pay the difference to the other party within 3 months of the end of the Year 3.

19.4 Reconciliation by Reduction of Future Amounts Owing

State Forests may make part or whole of any payment due to the Company under clause 19.3 by a reduction of the amount due on Timber delivered to the Company.

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19.5 Determination of Stumpage Prices after Year 3

Each Year after Year 3 the Stumpage Prices will be as determined in accordance with **clause 20**. For the purposes of the first Review under **clause 20** the Stumpage Prices applicable at the time of the Review shall be the Reconciled Stumpage Prices.

20. REVIEW OF STUMPAGE PRICES

20.1 Review

Commencing at the end of Year 3 the Stumpage Price will be amended or varied from 1 July in each Year following a review initiated under **clause 20.4** (a "Review"). State Forests must amend or vary the Stumpage Price Schedule to give effect to the Stumpage Price determined by a Review.

20.2 Annual Review

The Stumpage Prices determined by an Annual Review will be those which:

20.2.1 are calculated by application of the formula set out in **clause 20.11**; or

20.2.2 State Forests and the Company otherwise agree upon after taking into account the factors set out in **clause 20.10**.

20.3 General Review

Stumpage Prices for:

20.3.1 the Year following Year 4 or the Year commencing 1 July 2006 (whichever first occurs); and

20.3.2 the fifth and tenth Year following the first occurring Year referred to in **clause 20.3.1**,

shall be determined in a General Review which must take into account all the factors set out in **clause 20.10**. If the parties are unable to reach agreement on the applicable Stumpage Prices, then the applicable Stumpage Prices will be determined by State Forests.

20.4 Initiation of a Review

Either State Forests or the Company may initiate a Review by notice in writing given not less than one month prior to the 1 July from which any proposed amendment or variation to the Stumpage Price Schedule is to take effect. If neither State Forests or the Company initiate a Review by that date, the Stumpage Price for the following Year will be the same amount as the Stumpage Price for the previous Year. If a Review is called but the Review is not concluded by that date any amendment or variation arising from a Review must be implemented retrospectively to that date.

20.5 Conduct of Reviews

State Forests and the Company must conduct any Review jointly and in good faith. Any determination of Stumpage Price under this **clause 20** may be referred by either party for dispute resolution under **clause 35**.

20.6 Request for Information

- 20.6.1 Subject to **clause 20.6.2**, a party ("**disclosing party**") must promptly provide, on a confidential basis, information requested by the other party ("**requesting party**"), that is relevant to any of the factors in **clause 20.10** which the parties have agreed to use in a Review. The requesting party must treat all data or documentation supplied as confidential which may not be disclosed to any other person.
- 20.6.2 For the avoidance of doubt, the obligations of the Company under this **clause 20.6** to provide information relating to the sale of silicon from the Silicon Plant continue to apply if, at any time during the Term, the Silicon Plant is owned by a company which is not a related body corporate of the Company.

20.7 Information Not Provided

Despite any other provision of this Agreement, where in a Review (except the first Review after the Commencement Date):

- 20.7.1 the Company fails to provide State Forests with:
- (a) the weighted average price for silicon produced by the Silicon Project obtained by the Company or its related bodies corporate during the Current Review Period or the Previous Review Period (or both); or
 - (b) any further particulars of sales of silicon from the Silicon Plant and any documentary evidence verifying those particulars, as may be reasonably requested by State Forests in order to verify the relevant weighted average prices; or
- 20.7.2 the Company provides State Forests with the information and particulars referred to in **clause 20.7.1** but State Forests (acting reasonably) is of the opinion the weighted average price provided was influenced by sales of silicon which involved transfer pricing amongst the Company and its related bodies corporate or otherwise were not bona fide sales in a competitive market,

State Forests may determine the Stumpage Prices to apply from that Review (and, in circumstances referred to in **clause 20.7.1**, each Review thereafter conducted without the Company providing the information and particulars) taking into account such of the factors set out in **clause 20.10** (except those referred to in **clause 20.10.1**) as State Forests determines are appropriate.

20.8 New Stumpage Price Categories

State Forests, with agreement by the Company, may:

- 20.8.1 create new categories of timber for Stumpage Pricing, based on factors State Forests considers relevant, including location, quality and size, and may discontinue application of existing timber categories; and
- 20.8.2 include in the Stumpage Price Schedule a separate Stumpage Price for any Timber taken from the Eden Management Area.

20.9 Initial Stumpage Price for New Categories

An initial Stumpage Price for new categories of Timber created in accordance with **clause 20.8** shall be determined by State Forests following consultation with the Company. Any determination of the initial Stumpage Price by State Forests must be consistent with the Stumpage Price of existing categories of Timber with due regard to quality, and harvesting and haulage costs so that there is no material financial disadvantage to the Company in respect of the Delivered Price of the new categories of Timber.

20.10 Method for General Review

The factors to be taken into account for the purposes of **clause 20.2.2** and **clause 20.3** are such of the following factors of which the parties have sufficient information to consider the factor:

- 20.10.1 variations between the weighted average price for silicon produced by the Silicon Project obtained by the Company or its related bodies corporate during the Current Review Period and the weighted average price for that silicon obtained in the Previous Review Period;
- 20.10.2 variations between the average World price for silicon during the Current Review Period and the average World price for silicon during the Previous Review Period;
- 20.10.3 variations between prices paid or agreed to be paid timber from public forests throughout Australia, being timber comparable to Timber (or from which Timber may be derived), during the Current Review Period and prices paid or agreed to be paid for such timber during the Previous Review Period;
- 20.10.4 variations between the Residual Value of Timber during the Current Review Period and the Residual Value of Timber during the Previous Review Period;
- 20.10.5 variations between the costs of forest management (including State Forests' costs and expenses incurred in the establishment, management, supervision and administration of the Contract Harvesting and Contract Haulage necessary to supply Timber to the Company) incurred by State Forests during the Current Review Period and those costs incurred by State Forests during the Previous Review Period; and
- 20.10.6 variations in any other commercial or market factor which in the reasonable opinion of the Company or State Forests is relevant to the value of Timber.

20.11 Method for Annual Review

The formula for the purposes of **clause 20.2.1** is as follows:

$$NSP = [(CWP/PWP + CWAP/PWAP)/2]CSP$$

Where:

- 'NSP' means the Stumpage Price determined by the current Review;
- 'CSP' means the Stumpage Price which applied during the Current Review Period;
- 'CWP' means the World price for silicon during the Current Review Period;
- 'PWP' means the World price for silicon during the Previous Review Period;
- 'CWAP' means the weighted average price for all silicon produced by the Silicon Project obtained by the Company or its related bodies corporate during the Current

Review Period except in the first Review after the Commencement Date when CWAP will have the same value as CWP; and
 'PWAP' means the weighted average price for silicon produced by the Silicon Project obtained by the Company or its related bodies corporate during the Previous Review Period except in the first Review after the Commencement Date when PWAP will have the same value as PWP.

To resolve doubt the references to CSP, CWP, PWP, and CWAP, shall be to those items in \$US reduced to their numerical value so that the expression $(CWP/PWP + CWAP/PWAP)$ has a numerical value unaffected by exchange rates between \$US and \$AU (except if the CWAP or PWAP includes sales in \$AU the conversion of those sales to \$US shall apply the conversion rate applicable at the date of the Review).

20.12 Review of Indexation

The parties acknowledge that the definition of World price for silicon may be an imprecise index for purposes of establishing and maintaining a relationship between the Stumpage Price for Timber and the value of silicon produced by the Silicon Project. For this reason State Forests and the Company agree that during the Year 1, Year 2 and Year 3 and from time to time on not less than 6 months notice from one party to the other they will consult and negotiate in good faith to review and refine the definition. To this end the Company must from time to time collate and make available to State Forests on a confidential basis all information reasonably relevant to identifying the most appropriate grades and international index.

20.13 Basis of Indexation Negotiations

The parties acknowledge that the basis of the negotiations referred to in clause 20.12 will be to refine the definition so that it refers to the most appropriate grades of silicon produced by the Silicon Project and an objective international index for changes in the value of those grades in order to establish and maintain a relationship (without detracting from the relevance of other matters referred to in clause 20.10) between the Stumpage Price for Timber and the value of silicon produced by the Silicon Project. If the parties are unable to reach agreement State Forests or the Company may refer the matter to mediation and arbitration under clause 35 and any such arbitration must be determined on that basis of the negotiations.

21. CONTRACT HARVESTING CHARGE AND CONTRACT HAULAGE CHARGE

21.1 Calculation and Review

The Contract Harvesting Charge and the Contract Haulage Charge:

- 21.1.1 for Year 1 will be the rates respectively set out in Schedule 5 as varied from the date of this Agreement in accordance with that Schedule 5; and
- 21.1.2 for Year 2 and each Year thereafter will be the Tender Contract Rates applicable under the Tender Contracts for the Contractors who have been allocated the Contract Harvesting and the Contract Haulage respectively involved during the Year, converted into a weighted average rate (respectively) in accordance with Schedule 7.

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21.2 Notification

Prior to the commencement of each Year State Forests must provide the Company with the calculation of the Contract Harvesting Charge and the Contract Haulage Charge for the Year.

21.3 Review of Schedule 6

If in the reasonable opinion of a party, Contract Harvesting or Contract Haulage under this Agreement is being carried out in a manner which is significantly different from the Base Parameters set out in **Part 4 of Schedule 6**, the party may request and the parties must carry out a review of the Indicators and Indicator Weightings defined in **Part 3 of Schedule 6** for Contract Harvesting or Contract Haulage (as the case may be).

21.4 Terms of a Review

If a review is to be carried out under **clause 21.3** the parties must negotiate in good faith to reach agreement on amendments necessary to ensure that:

- 21.4.1 each Indicator and Indicator Weighting reasonably reflects the effect of the factor sought to be addressed by the Indicator and Indicator Weighting, on the actual costs to a Contractor of carrying out Contract Harvesting or Contract Haulage (as the case may be); and
- 21.4.2 the Base Parameters set out in **Part 4 of Schedule 6** properly reflect the manner in which Contract Harvesting or Contract Haulage (as the case may be) is being carried out.

21.5 Referral to Dispute Resolution

In the event the parties are unable to reach agreement on appropriate amendments referred to in **clause 21.4** the matter may be referred by either party for mediation and arbitration under **clause 35**.

22. ANNUAL RECONCILIATION OF THE CONTRACT HAULAGE CHARGE

22.1 Recalculation of Contract Haulage Charges

At the conclusion of each Year (except Year 1) the parties must as soon as practicable (and in any event prior to the end of July in the following Year) jointly recalculate the Contract Haulage Charge for the Year using the actual volumes per Compartment delivered to the Company during the Year.

22.2 Adjustment

The party who has had the benefit of the difference (if any) between the amount paid or payable by the Company during a Year applying the Contract Haulage Charge advised under **clause 21.1.2** and the amount which would have been payable by the Company if the recalculated Contract Haulage Charge had applied, must pay the difference to the other party within 3 months of the end of the Year in which the difference arose.

22.3 Adjustments by Deduction

State Forests may make part or whole of any payment due to the Company under clause 22.2 by a reduction of the amount due on Timber delivered to the Company.

23. FOREST MANAGEMENT

Without limiting State Forests' obligation under this Agreement, including, without limitation, to deliver the Adjusted Annual Supply, the Company acknowledges that:

- 23.1.1 State Forests must manage the Crown-timber lands within the Area of Supply:
- (a) in accordance with the provisions of a forest agreement and integrated forestry operations approval (IFOA) within the meaning of the *Forestry and National Park Estate Act 1998* which will, in effect, require that, except in certain limited circumstances, forestry operations within the Area of Supply must be for the primary purpose of logging High Quality Large Logs and other high quality timber; and
 - (b) to otherwise achieve a range of environmental, recreational, occupational health and safety, silvicultural, commercial and other objectives;
- 23.1.2 for the purposes of this Agreement State Forests will, with due regard for the matters set out in clauses 23.1.1(a) and (b), and otherwise acting reasonably be the sole determinant of what constitutes good forest management of Crown-timber lands in the Area of Supply;
- 23.1.3 Timber is a by product of logging High Quality Large Logs and other high quality timber; and
- 23.1.4 each Year State Forests will plan the Compartments from which it proposes to make the Adjusted Annual Supply available to the Company and will select the Contractors for that purpose in accordance with good forest management.

24. GOODS AND SERVICES TAX

24.1 Prices Exclusive of GST

Stumpage Prices, Contract Haulage Charges and Contract Harvest Charges and any other consideration for supplies specified in this Agreement do not, subject to the operation of this clause, include any amount in respect of GST unless provided otherwise.

24.2 Recovery of GST

If GST is or will be imposed on a supply made under this Agreement, the supplier may:

- 24.2.1 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
- 24.2.2 otherwise recover from the recipient the amount of that GST.

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24.3 Invoice

The supplier must ensure that any invoice issued under this agreement in respect of a taxable supply is a Tax Invoice or Adjustment Note as appropriate or, if no invoice is to be otherwise issued under this Agreement, must issue a Tax Invoice or Adjustment Note as appropriate within 7 days of GST being imposed on a taxable supply made under this Agreement. Notwithstanding any other provision of this Agreement the payment of any amount by the recipient in respect of a taxable supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

24.4 Costs Exclusive of GST

Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit provided that the reimbursement or indemnification does not amount to consideration for a taxable supply.

24.5 Calculation by Reference to Consideration or Value

If the consideration for a supply under this Agreement is calculated by reference to the consideration or value of other supplies, in performing that calculation, the consideration or value for those other supplies excludes any amount in respect of GST payable on those supplies.

24.6 Adjustments for GST Induced Spikes

In the calculation of Delivered Prices by reference to movements in any index, such as the CPI:

- 24.6.1 any increase in the index attributable to the introduction or increase in the rate of GST published by the Commonwealth Statistician or similar government body is to be excluded from the index for the purposes of adjusting the consideration;
- 24.6.2 if the Commonwealth Statistician or similar government body does not publish the increase in the index attributable to the introduction or increase in the rate of GST, State Forests and the Company will negotiate to determine a reasonable amount attributable to the increase in the index as a result of the introduction or increase in the rate of GST for the purpose of this clause, and, if the parties fail to agree within 20 Business Days of the commencement of those discussions, State Forests or the Company may request the president for the time being of the Institute of Chartered Accountants in Australia or an officer of another Australian professional association agreed by State Forests and the Company to appoint a person to decide the increase in the index attributable to the introduction or increase in the rate of GST for the purposes of this clause;
- 24.6.3 the person appointed will act as an expert and not an arbitrator;
- 24.6.4 the expert's decision is final and binding on the parties; and
- 24.6.5 State Forests and the Company must each pay one half of the expert's fee (including expenses) in relation to the decision.

24.7 GST on Indemnity Payments

If a payment to satisfy a claim or a right to claim under or in connection with this document (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

24.8 GST on Claims

If a party has a claim under or in connection with this document for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).

24.9 GST on Revenue Claims

If a party has a claim under or in connection with this document whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

24.10 GST on Supplies

If either party supplies anything to the other under or in connection with this document, the recipient must pay to the supplier an amount equal to any GST payable on that supply in addition to any amount payable under this document. The recipient must make that payment as and when the consideration for that supply or part of that consideration must be paid or provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that supply.

24.11 Definitions

In this clause:

- 24.11.1 **Adjustment Note** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;
- 24.11.2 **GST** includes any replacement or subsequent similar tax;
- 24.11.3 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 24.11.4 **New Tax System changes** has the same meaning as in the Trade Practices Act 1974 (Cth);
- 24.11.5 **Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises; and
- 24.11.6 terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

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25. PAYMENT

25.1 Monthly Invoices

State Forests will issue monthly invoices for the Delivered Price for Timber delivered under this Agreement to the Company by the 7th day of each month in relation to deliveries of Timber in the previous month.

25.2 Payment of Invoices

The Company must pay any invoice within fourteen (14) days of the date of issue. The Company is liable to pay an invoice and any interest accrued on that invoice as a debt due and payable to State Forests.

25.3 Failure to Pay Invoices

If the Company fails to pay an invoice on the due date for payment of that invoice:

25.3.1 State Forests may give written notice to the Company of its intention to suspend deliveries of Timber if payment is not made within 7 days after the date of the notice; and

25.3.2 State Forests may suspend deliveries of Timber under this Agreement if the Company has not made payment within the 7 day period, until payment has been made.

26. TITLE AND RISK

Ownership of the Timber comprising part of the Adjusted Annual Supply will pass to the Company once the Timber has been delivered to the weighbridge at the Delivery Site.

27. LATENT DEFECT

27.1 Notification of Latent Defect

If the Company becomes aware of a Latent Defect in Timber, the Company must:

27.1.1 as soon as possible, give written notice to State Forests indicating there may be Latent Defect;

27.1.2 within 28 days of a notice under clause 27.1.1, give further written notice to State Forests detailing:

- (a) the basis for the Company's opinion there is Latent Defect in Timber; or
- (b) notice that the Company does not hold the opinion there is Latent Defect in Timber; and
- (c) if the Company is of the opinion there is Latent Defect in Timber:
 - (i) all scientific and economic evidence by which the Company alleges there is Latent Defect;
 - (ii) the impact of the continued supply by State Forests of Timber which contains the Latent Defect; and

- (iii) any proposed changes to the Specifications, the Delivered Price, Base Annual Supply, Adjusted Annual Supply, and Maximum Annual Supply.

27.2 Interim Arrangements

Following issue of a notice under **clause 27.1.1** until agreement or determination under this **clause 27** or until notice is give under **clause 27.1.2(b)** (if any):

- 27.2.1 the Company may, but is not required to, isolate deliveries of Timber which it alleges contains the Latent Defect, in a separate stockpile at the Delivery Site, to be held pending resolution of the Latent Defect under this **clause 27**;
- 27.2.2 State Forests must within the constraints of not incurring or inflicting significant financial or other disadvantage to itself or other persons who receive timber from Integrated Operations which include the harvesting of the Timber which alleged contains the Latent Defect, use all reasonable endeavours where practicable to minimise the supply of Timber with the alleged Latent Defect;
- 27.2.3 the Company must continue to pay for the Timber containing the alleged Latent Defect, whether or not that Timber is stockpiled under **clause 27.2.1**; and
- 27.2.4 State Forests may request, and the Company must, at its expense:
- (a) provide State Forests with such further information and verifying documentation;
 - (b) have conducted such further scientific studies; and
 - (c) obtain and provide to State Forests the opinion of such suitably qualified scientist,
- that State Forests may reasonably request in order to satisfy itself that there is a Latent Defect.

27.3 Referral to Independent Expert

If State Forests and the Company are unable to reach agreement on whether the alleged Latent Defect is a Latent Defect the determination of that issue must be referred to a suitably qualified person ("Independent Expert") as follows:

- 27.3.1 the Independent Expert will be appointed by agreement between State Forests and the Company or in default of agreement either party will be entitled to request an Independent Expert be appointed by ACDC;
- 27.3.2 State Forests must prepare and deliver the terms of reference to the Independent Expert within 20 days of advice of the appointment;
- 27.3.3 the terms of reference must include:
- (a) the information provided by the Company to State Forests regarding the alleged Latent Defect;
 - (b) any further submissions State Forests or the Company wishes the Independent Expert to consider;
 - (c) advice that the Independent Expert may request and the parties will if it is reasonably practicable provide further information that the Independent Expert may require to make a determination; and
 - (d) a requirement that the Independent Expert review the material provided and report the Independent Expert's determination of whether there is Latent Defect within 2 months of the reference;
- 27.3.4 the parties must accept the Independent Expert's determination as final and binding;

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- 27.3.5 different Independent Experts may be required if there are different areas of expertise under dispute; and
- 27.3.6 the costs of the Independent Expert must be paid by the Company.

27.4 Negotiation of Effect of Latent Defect

If it is agreed or determined that there is Latent Defect State Forests and the Company must negotiate in good faith regarding:

- 27.4.1 any amendments to the Specifications which would be required as a result of the Latent Defect;
- 27.4.2 any amendments to the Delivered Price which would result from any proposed amendments to the Specifications, and proposed amendments to the Base Annual Supply, Adjusted Annual Supply, or Maximum Annual Supply in accordance with **clauses 7.7 and 9.3**;
- 27.4.3 how to deal with any Timber which has the Latent Defect which has been stockpiled by the Company, including without limitation consideration of the sale of that Timber to third parties; and
- 27.4.4 any other potential implications of the Latent Defect on the supply of Timber under this Agreement.

27.5 Basis of Negotiations

State Forests and the Company acknowledge that the basis of negotiations under **clause 27.4** will be:

- 27.5.1 to mitigate the impact of the Latent Defect on the operations of both State Forests and the Company;
- 27.5.2 to ensure that State Forests is not financially or otherwise disadvantaged as a result of any changes resulting from Latent Defect;
- 27.5.3 to allow State Forests a reasonable period of time to adjust its deliveries of Timber to take account of the Latent Defect on the basis of the following periods following agreement or determination under **this clause 27**:
- (a) if the Latent Defect is apparent in less than 2% of the Timber:- 3 months;
 - (b) if the Latent Defect is apparent in between 2% and 5% of the Timber:- 6 months;
 - (c) if the Latent Defect is apparent in between 5% and 15% of the Timber:- 12 months;
 - (d) if the Latent Defect is apparent in more than 15% of the Timber:- 18 months,

provided that nothing in this **clause 27** or any mediation or arbitration under **clause 35** which may arise out of it shall prevail over the principle set out in **clause 27.5.2** or the provisions of **clauses 7.7 and 9.3**.

27.6 Failure to Agree

If State Forests and the Company are unable to agree on the matters set out in **clause 27.4** within 3 months of the agreement or determination that there is Latent Defect either State Forests or the Company may refer the matter to mediation and arbitration under

clause 35 and any such arbitration must be determined on the basis of the matters set out in clause 27.5 and any submissions lodged by State Forests and the Company.

28. SPECIES PERCENTAGES

28.1 Intention of Species Percentage

The parties acknowledge that the Species Percentages set out in **Schedule 3** is intended to provide the most accurate information reasonably available at the time regarding of the proportional presence of each of the Group A Species, Group B Species and Group C Species within the Area of Supply.

28.2 Warranty Regarding Initial Species Percentage

State Forests warrants that the Species Percentages set out in **Schedule 3** as at the date of this Agreement are reasonable estimates of the proportional presence of each of the Group A Species, Group B Species and Group C Species within the Area of Supply, based on the information available to State Forests as at the date of this Agreement.

28.3 Amendment of Species Percentage

State Forests may with the consent of the Company amend the Species Percentages from time to time to reflect the most up to date inventory information available to State Forests.

28.4 Withholding Consent

The Company may not withhold its consent to an amendment to the Species Percentages if State Forests' request for consent is supported by new, reliable and scientifically acceptable data and information justifying the amendment.

29. INDEMNITY AND INSURANCE

29.1 Company Indemnity

The Company indemnifies State Forests against all actions, proceedings, claims, demands and expenses by any person (other than a party to this Agreement) in respect of or arising out of the performance by the Company of its obligations under this Agreement, including, without limitation, any acts or omissions of any of its employees, contractors or agents, but excluding any action, proceedings, claims, demands or expenses arising out of any negligent act or omission of State Forests.

29.2 Company to Take Out Insurance

The Company will take out and maintain Public Liability Insurance under a policy approved by State Forests in an amount not less than \$20 million for each and every occurrence and not limited in the aggregate for any one period of claim.

29.3 State Forests Indemnity

State Forests indemnifies the Company against all actions, proceedings, claims, demands and expenses by any person (other than a party to this Agreement) in respect of or arising out of the performance by State Forests of its obligations under this Agreement, including, without limitation, any acts or omissions of any of its employees, contractors or agents, but excluding any action, proceedings, claims, demands or expenses arising out of any negligent act or omission of the Company.

30. NON EXCLUSIVITY

30.1 Rights of State Forest

Subject to State Forests complying with its obligations to make Timber available to the Company in accordance with this Agreement State Forests reserves the right to:

- 30.1.1 supply Timber and other timber from within the Area of Supply; or
- 30.1.2 issue licences to obtain Timber, timber, products or forest materials within the Area of supply,

to any other person provided that any such other supplies do not prejudice the availability of Timber for the Company, or (with due regard to the acknowledgment set out in clause 23.) do not deal unfairly or inequitably with the Company.

30.2 Rights of Company

Subject to the Company complying with its obligations to purchase Timber from State Forests in accordance with this Agreement, the Company may enter into agreements, or engage in other arrangements or activities for the purchase or creation of products which are the same as, similar to, or replacements of, the Timber.

31. FORCE MAJEURE

31.1 Company Prevented from Complying

If the Company is prevented from taking or accepting Timber or from carrying on the processing of Timber for the purposes of the Silicon Project by Force Majeure and:

- 31.1.1 the Force Majeure was not caused by any act or omission on the part of the Company, or any of its employees contractors or agents;
- 31.1.2 the Company has taken all practicable precautions to prevent the Force Majeure; and
- 31.1.3 the Company has made all reasonable efforts to contain the effect of the Force Majeure,

then no claim may be made by State Forests to the extent that the Company's non performance results from the Force Majeure.

31.2 State Forests Prevented from Complying

If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:

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- 31.2.1 the Force Majeure was not caused by any act or omission on the part State Forests or any of its employees contractors or agents;
- 31.2.2 the State Forests has taken all practicable precautions to prevent the Force Majeure; and
- 31.2.3 State Forests has made all reasonable efforts to contain the effect of the Force Majeure,
- the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure.

31.3 **Right to Terminate**

If a party is unable to resume the performance of its obligations within a period of 18 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') the other party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 21 months from the relevant date and in this regard time will be of the essence.

31.4 **Initial Notice of Force Majeure Event**

A party affected by Force Majeure must give initial notice of the existence, occurrence, or likely occurrence of the Force Majeure as soon as is practicable to do so and in any case it must provide a more detailed notice within 28 days of the Force Majeure being apparent which provides clear details of the event or occurrence claimed as Force Majeure and setting out particulars of the likely effects of the event or occurrence in question.

32. **PRIORITY OF SUPPLY**

32.1 **Priority of Supply**

If an event of Force Majeure results in a reduction in the yield of Timber within the Area of Supply then State Forests must allocate the available Timber to the Company and other persons with contracts with State Forests for the supply of Timber from the Area of Supply in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister, but must not detrimentally affect the supply of Timber to the Company compared to the supply of timber available to other persons with contracts with State Forests.

32.2 **Limited Rights Against Non-compliance**

The Company will have no claim against State Forests for non-compliance with its obligations to make the Adjusted Annual Supply available if State Forests, as far as is reasonably practicable, supplies Timber in substantial compliance with clause 32.1.

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33. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

33.1 Commonwealth Action

Without limiting the Company's rights to obtain compensation under the RFA, or the State of NSW's obligations to the Company under the RFA, where State Forests fails to make Timber available to the Company as a result of an act or omission or law of the Commonwealth ('Commonwealth Action'), then neither State Forests nor the State of NSW will be in any way responsible to the Company for any loss suffered.

33.2 Payments Outside RFA

If the Commonwealth makes a payment to the State of NSW other than in accordance with the RFA, for the purpose of compensation for losses suffered by the Company as a result of a Commonwealth Action, the State of NSW will account to the Company for that payment in accordance with any terms and conditions agreed with or imposed by the Commonwealth, provided that nothing in this clause requires the Company to accept payment of compensation or the terms and conditions of payment.

33.3 Notification to Company

If State Forests becomes aware of a Commonwealth Action that will prevent it from supplying Timber to the Company, then:

33.3.1 State Forests will notify the Company; and

33.3.2 the State of NSW will notify the Commonwealth of the impact of the Commonwealth Action on the Company.

33.4 Limitation of State Forests and State of NSW Liability

Where State Forests or the State of NSW is in breach of this Agreement by reason of any failure to make Timber available any claim by the Company against State Forests or the State of NSW may not exceed the lesser of:

33.4.1 the costs, loss, damage or expense which would be incurred by the Company as a direct result of obtaining the Timber (which State Forests failed to make available) from the most economic alternative source; or

33.4.2 the Loss of EBITDA,
but may not otherwise include consequential losses.

34. DEFAULT OR INSOLVENCY

34.1 Breach or Repudiation

If the Company or State Forests breaches or repudiates this Agreement, nothing in this clause 34 (other than clause 34.3) will prejudice the right of either party to recover damages or exercise any other right.

34.2 State Forests Right to Terminate

State Forests may terminate this Agreement if the Company:

- 34.2.1 suffers an insolvency event; or
- 34.2.2 commits a material breach of this Agreement and the default is not remedied by the Company to the reasonable satisfaction of State Forests within a period of thirty (30) days after notice of the breach has been served on the Company. Material breaches include without limitation:
 - (a) failing to ensure that State Forests is provided with a guarantee in accordance with **clause 3.6**;
 - (b) failing to accept Timber in breach of **clause 15** (provided such breach may be remedied by payment of the Delivered Price for the Timber delivered by State Forests and further provided it will not be a material breach if the Company gave at least 28 days written notice it will not be accepting the Timber);
 - (c) failing to make payments in breach of **clauses 11 and 25**;
 - (d) failing to take out and maintain any insurance in breach of **clause 29.2**;
 - (e) purporting to assign the whole or any part of this Agreement without complying with **clause 36.1**; and
 - (f) failing to ensure that a Proposed Sale or Facility Assignment is subject to the consent in writing of State Forests in breach of **clause 36**.

34.3 Company Fails to Take

If the Company:

- 34.3.1 takes less than 80 percent of the Base Annual Supply for two consecutive Years during the Term; or
- 34.3.1 takes less than 65 per cent of the Base Annual Supply in any Year, State Forests:
 - 34.3.3 must enter into discussions with the Company to determine the reasons for the failure and, if appropriate, any measures that may be taken to prevent a repeat occurrence; and
 - 34.3.4 may, at the conclusion of the discussion period, if it reasonably forms the view that the Company is unable or unlikely to substantially perform its obligations under this Agreement,

terminate this Agreement, provided that on and from such termination, State Forests will not be entitled to claim against the Company for any loss, cost or expense incurred or suffered by State Forests resulting from, or arising as a consequence of termination under this **clause 34.3**.

34.4 Company's Right to Terminate

The Company may terminate this Agreement if State Forests:

- 34.4.1 suffers an insolvency event; or
- 34.4.2 commits a material breach of this Agreement and the default is not remedied within a reasonable period after notice to remedy the breach has been served on State Forests, then the Company may terminate this Agreement. A material

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breach includes without limitation failing to supply the Adjusted Annual Supply in breach of **clause 3.3.1**.

34.5 Claims for Loss

The party terminating this Agreement arising from the default of the other party may claim damages for all loss arising from the default (other than consequential loss) unless the claim for damages is excluded under this Agreement.

35. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

35.1 Initial Recourse to Mediation

If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement which cannot be settled by the parties within fourteen (14) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the ACDC to appoint a mediator and the mediator will be so appointed.

35.2 Conduct of Proceedings by Mediator

The mediator must conduct proceedings under this **clause 35** in accordance with the Guidelines for Commercial Mediation of the ACDC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute.

35.3 Submission to Arbitration

In the event that the dispute has not been settled within twenty eight (28) days or such other period as agreed to in writing between the parties, after the appointment of the mediator, the dispute or difference must be submitted to arbitration.

35.4 Appointment of Arbitrator

Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

35.5 Investigations by Arbitrator

The Arbitrator or some person appointed on the Arbitrator's behalf may investigate the Company's and State Forests' affairs and accounts so far as may be necessary to assist

the Arbitrator to determine any matter referred for arbitration. The Company and State Forests must give the Arbitrator full access to all accounts and papers necessary for that purpose and must afford the Arbitrator full information and assistance.

35.6 Location of Mediation

Any mediation or arbitration must be held in Sydney, NSW and either party may be represented by a legal practitioner.

35.7 Court Action

Nothing in this clause 35 shall prejudice the right of the party to seek urgent injunctive or declaratory relief in a Court in respect of any matter arising under this Agreement.

35.8 Determination of Stumpage Price Review

In so far as the provisions of this clause 35 apply to clause 20, the issue for consideration by any arbitration or litigation is to be limited to whether the Stumpage Price in dispute was a reasonable one considering the factors and principles set out in clause 20 to be taken into account in determining the Stumpage Price and, otherwise met the requirements for the Stumpage Price set out in clause 20.

35.9 Re-determination of Stumpage Price Review

If an arbitration or litigation regarding a Stumpage Price determines that State Forests determination of the Stumpage Price was unreasonable or did not comply with the requirements for the Stumpage Price set out in clause 20, then State Forests must:

- 35.9.1 promptly re-determine the disputed Stumpage Price which will then apply from the first date the Stumpage Price was originally intended to apply; and
- 35.9.2 refund to the Company any over payment made under the Stumpage Price with interest calculated pursuant to clause 42.

36. ASSIGNMENT OF AGREEMENT AND SALE OF SILICON PLANT

36.1 Assignment of Agreement

The Company may only assign:

- 36.1.1 the whole of this Agreement; and
- 36.1.2 with the consent in writing of State Forests which, in addition to the matters set out in clause 36.5, may not be unreasonably withheld.

36.2 Change in Control

Any change in control of the Company (or if the Company is a subsidiary, any change in control of its holding company) will be deemed to be an assignment of the Company's rights and entitlements under this Agreement. For the purpose of this clause 'change in control' means control of more than 50% of the shares with the right to vote in general meetings of the corporation.

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36.3 Payment of Outstanding Debts

The Company may not assign this Agreement unless the Company has paid all debts due and payable to State Forests under this Agreement.

36.4 Application for Consent

If the Company wishes to assign this Agreement it must make a written application to State Forests requesting an assignment and must provide all details and information concerning the assignee and the effect of the assignment as may be reasonably required by State Forests.

36.5 Ability to Withhold Consent

State Forests may withhold its consent to the assignment if in its reasonable opinion:

- 36.5.1 the assignee is incapable of performance of the obligations which will be assigned to it;
- 36.5.2 the assignment is not in accordance with **clause 36.1.1**;
- 36.5.3 the Company has not complied with **clause 36.3**; or
- 36.5.4 the assignee may not, or may not be able to, apply all the Timber supplied to it under this Agreement for the purposes of the Silicon Project.

36.6 Deemed Consent to Assignment

For the purpose of this **clause 36** State Forests will be deemed to have consented to an assignment of the Company's obligations under this Agreement if it has not notified the Company of its decision to give or withhold consent, and the reasons for its decision, within 2 months of the date on which the Company makes an application for assignment.

36.7 Execution of Additional Agreements

The Company must ensure that any assignee executes all agreements and other documents which State Forests may reasonably require to record or effect any assignment including an undertaking to remedy or rectify any existing material breach.

36.8 Rights and Obligations of Company on Assignment

When an assignment takes effect in accordance with **clauses 36.1 to 36.7**, all rights of the Company terminate and the Company is released from all obligations under this Agreement.

36.9 Silicon Plant

As at the date of this Agreement, the Company and its related bodies corporate own all of the rights which current exist in relation to the development and operation of the Silicon Plant.

36.10 Proposal to Sell or Change Control of Silicon Plant

If, at any time during the Term, the Silicon Plant is proposed to be sold to a party which is not a related body corporate of the Company, or there is a change in control of the company which owns the Silicon Plant ("**Proposed Sale**"), the Company must make a written application to State Forests requesting consent to the Proposed Sale and must provide all details and information concerning the Proposed Sale and the effect of the Proposed Sale as may be reasonably required by State Forests.

36.11. Completion Subject to Consent

The Company must ensure that completion of the Proposed Sale is subject to the consent in writing of State Forests which in addition to the matters set out in **clause 36.12**, may not be unreasonably withheld.

36.12 Basis for Withholding Consent

State Forests may withhold its consent to completion of the Proposed Sale if in its reasonable opinion:

- 36.12.1 the owner of the Silicon Plant following completion of the Proposed Sale is incapable of performance of the obligations which will be assigned to it; or
- 36.12.2 the assignee may not, or may not be able to, apply all the Timber supplied to the Company under this Agreement (in the form of metallurgical carbon or otherwise) for the purposes of the Silicon Project.

36.13 Deemed Consent to Proposed Sale

For the purpose of this **clause 36** State Forests will be deemed to have consented to completion of the Proposed Sale if it has not notified the Company of its decision to give or withhold consent, and the reasons for its decision, within 2 months of the date on which the Company makes an application for consent to the Proposed Sale.

36.14 Capacity of Guarantor

If, at any time during the Term, the company which provides the guarantee under **clause 3.6 ('Guarantor')** proposes to assign the financing facilities for the Silicon Plant ("**Facility Assignment**"), the Company must make a written application to State Forests requesting consent to the Facility Assignment and must provide all details and information concerning the Facility Assignment and the effect of the Facility Assignment as may be reasonably required by State Forests.

36.15. Facility Assignment Subject to Consent

The Company must ensure that completion of the Facility Assignment is subject to the consent in writing of State Forests which, in addition to the matters set out in **clause 36.16**, may not be unreasonably withheld.

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36.16 Basis for Withholding Consent to Facility Assignment

State Forests may withhold its consent to completion of the Facility Assignment if in its reasonable opinion:

- 36.16.1 the assignee of the Facility Assignment is incapable of performance of the obligations which will be assigned to it; or
 36.16.2 the assignee does not execute a guarantee in the form set out in **Schedule 10** in favour of State Forests.

36.17 Deemed Consent to Facility Assignment

For the purpose of this clause 36 State Forests will be deemed to have consented to completion of the Facility Assignment if it has not notified the Company of its decision to give or withhold consent, and the reasons for its decision, within 2 months of the date on which the Company makes an application for consent to the Facility Assignment.

37. DISSOLUTION OF STATE FORESTS

37.1 Dissolution of State Forests

The State of NSW agrees that if State Forests is dissolved, the obligations and liabilities of State Forests under this Agreement shall become the obligations and liabilities of the State of NSW or an agency of the State of NSW that has the legal capacity to perform those obligations and meet those liabilities.

37.2 Notification of New Agency

Upon dissolution of State Forests, the State of NSW undertakes to notify the Company of the identity of any agency which has assumed responsibility for the obligations and liabilities of State Forests under this Agreement.

38. CHANGE OF DELIVERY SITE

Subject to:

- 38.1.1 the Company being prepared to pay the actual cost to State Forests of procuring Contract Haulage to the new Delivery Site; and
 38.1.2 State Forests not being otherwise financially disadvantaged by the change to the Delivery Site,

State Forests may not withhold its agreement to a request by the Company for a change in the location of the Delivery Site.

39. NEGOTIATIONS TO ENTER A FRESH AGREEMENT

The parties must, at the Company's written request, enter into negotiations in good faith regarding a fresh agreement to commence at the conclusion of this Agreement concerning an annual supply of Timber over a period of years for the purposes of the Silicon Project upon such reasonable terms as the parties deem fit provided:

- 39.1.1 the request is made no sooner than 1 January 2018 and no later than 1 January 2020;
- 39.1.2 the Company has not been in material breach of this Agreement; and
- 39.1.3 nothing in this provision shall be construed as preventing each of State Forests or the State of NSW from refusing to extend the Agreement in its absolute discretion.

40. SECURITY

40.1 Discretion to Require Security

State Forests may at its sole discretion require the Company to provide security for the purpose of ensuring the due and proper performance of the Company's obligations under this Agreement ('security').

40.2 Amount of Security

If State Forests requires the Company to provide security the Company must provide the security in the amount determined by State Forests from time to time which must not exceed a sum equivalent to 15% of the Delivered Price of the Base Annual Supply for the Year then being ('secured amount').

40.3 Written Notice of Amount

State Forests will give the Company written notice of any amount determined under clause 40.2 or any adjustment to or variation of the secured amount that may be determined by State Forests under the provisions of this clause 40 provided that in the case of security State Forests may require to be in place on the Commencement Date State Forests must give not less than 2 months written notice to the Company.

40.4 Lodgement of Security

The Company must lodge, adjust or vary the secured amount within 28 days of the receipt of a notice from State Forests under clause 40.3 except in the case of security required to be in place on the Commencement Date where the security must be lodged not less than 28 days prior to the Commencement Date.

40.5 Form of Security

The security must be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, an unconditional undertaking given by a financial institution or insurance company approved by State Forests in a form approved by State Forests or in any other form approved by State Forests.

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40.6 **Transferability of Security**

If the security is not transferable by delivery, it must be accompanied by an executed transfer or other documentation sufficient to effect transfer of the security. The costs (including stamp duty) of any transfer or retransfer must be borne by the Company.

40.7 **Drawing on Security**

State Forests may at any time and without notice to the Company, draw upon the secured amount to meet any loss or damages arising from the Company's failure to perform any of its obligations under this Agreement.

40.8 **Additional Security**

If State Forests draws on the secured amount under this Agreement but does not terminate this Agreement as a result of any breach, then the Company must provide additional security so that the secured amount is maintained at the level determined under this clause 40.

40.9 **Suspension of Deliveries**

State Forests may suspend the Company's rights to any Timber if the Company fails to lodge the security or to vary or adjust the secured amount within the time required by any notice to the Company under this clause 40.

40.10 **Release of Security**

Following the termination of this Agreement State Forests must release the security to the Company as soon as practicable after:

40.10.1 the expiration of six (6) months from the date of termination of this Agreement;
or

40.10.2 State Forests (acting reasonably) being satisfied that:

(a) the Company does not owe State Forests any money in accordance with the Agreement; and

(b) the Company is unlikely to suffer an insolvency event within six (6) months from the date of termination of this Agreement,

whichever shall first occur.

41. **VARIATION**

41.1 **Entire Agreement**

This Agreement comprises the entire understanding of the parties.

41.2 **No Variation or Waiver**

None of the provisions of this Agreement may be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.

41.3 **Amendments to Delivery Plans**

Agreement by State Forests to an Annual Delivery Plan or a Monthly Delivery Schedule or amendment thereto which would result in the Company taking less than a quantity of Timber the Company is required to take under this Agreement in any Year will not constitute a waiver of any obligation imposed or right given by this Agreement.

42. **INTEREST**

In the event that the Company fails to pay any money due to State Forests when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest per annum for the time being payable under Schedule J of the Supreme Court Rules (NSW).

43. **NOTICE**

43.1 **Service of Notice**

Any notice required to be served under this Agreement may be served:

(a) in the case of the Company:

Managing Director
Australian Silicon Operations Pty Ltd
Level 26
25 Bligh Street
Sydney NSW 2000
Facsimile: 02 9232 0200

(b) in the case of State Forests:

General Manager Marketing
State Forests of NSW
Building 2
423 Pennant Hills Road
Pennant Hills NSW 2120
Facsimile: 02 94818510

43.2 **Change of Address**

The parties may change the address for service of notice from time to time by notice in writing to the other party.

44. **GOVERNING LAW**

This Agreement is governed by the laws of New South Wales and the parties agree to the jurisdiction of the Courts of New South Wales.

45. SEVERABILITY

If any provisions of this Agreement are held to be invalid, illegal or unenforceable by a Court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired unless that would materially change the intended effect of this Agreement.

46. TO CO-OPERATE, LIAISE AND SHARE INFORMATION

46.1 Co-Operation

Each party will co-operate and liaise with the other as much as is reasonably possible to ensure that this Agreement operates effectively throughout its term.

46.2 Provision of Information

Subject to the Conditions Precedent being satisfied before the End Date and the Company and State Forests reaching an agreement under which State Forests will be the Company's plantation service provider for 20,000 hectares of tree plantations in the dry land salinity zone of the NSW component of the Darling Murray Basin, each of State Forests and the Company acknowledges and agrees, upon a written request being made by the other party, to provide to the requesting party, for no additional consideration, information held by or under the control of the disclosing party relating to the following matters:

- 46.2.1 the results of tests or trials of Hardwood Species;
- 46.2.2 the physical characteristics of Hardwood Species, including timber density and drying times;
- 46.2.3 the quantity of off-cuts and other waste produced from saw logs of Hardwood Species of various dimensions;
- 46.2.4 the charcoal production potential of various types and grades of Hardwood Species;
- 46.2.5 the manufacture or sale of metallurgical carbon or silicon; and
- 46.2.6 such other information as the parties by mutual agreement determine should be shared from time to time.

46.3 Restrictions on Disclosure

Nothing in this clause 46 requires a party to disclose any information to the other party where:

- 46.3.1 the information is irrelevant to the manufacture or sale of metallurgical carbon or silicon; or
- 46.3.2 to make such disclosure would, or is likely to, breach an obligation of confidence to a third party, or breach any intellectual property rights of a third party.

46.4 No Acquisition of Rights

The recipient of information shared under this clause 46 does not acquire any right or interest in any intellectual property subsisting in the information, and any intellectual property that subsists in the information that is provided must be used for internal purposes only, and not disclosed to third parties without the prior written consent of the party providing the information.

47. CONFIDENTIALITY

No party will disclose the contents or terms of this Agreement or any information or documents received by it in connection with the negotiation of this Agreement or pursuant to the provisions of this Agreement without the prior written consent of the other parties, except to the extent that:

- 47.1 the information is available to the public generally;
- 47.2 that party is required to make the disclosure by law or to make any filing, recording or registration required by law including without limitation any disclosure required by the listing rules of the stock exchange;
- 47.3 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorisation, approval or licence from any public body or authority;
- 47.4 it is necessary or expedient that the disclosure be made to any taxation or fiscal authority;
- 47.5 the disclosure is made on a confidential basis to the professional advisers of that party (including any industry association) for the purpose of obtaining advice in relation to this Agreement or the enforcement of this Agreement or otherwise for the purpose of consulting those professional advisers; or
- 47.6 the disclosure is required or desirable to be made in pursuance of any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.

48. NATURE OF INFORMATION CONTAINED IN THIS AGREEMENT

The parties acknowledge that this Agreement contains:

- 48.1.1 information constituting trade secrets of the parties;
- 48.1.2 information of commercial value to the parties and the disclosure of this agreement or the information contained in it would destroy or diminish the commercial value of the information; and
- 48.1.3 information concerning the business, professional, commercial and financial affairs of the parties and disclosure of this Agreement or the information contained in it by a party would have an unreasonable adverse effect on the affairs of the other parties.

49. **EXPENSE**

Each party is liable for its own costs and expenses in relation to the negotiation, preparation and execution of this Agreement, except that the Company must pay any stamp duty which is payable on this Agreement.

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IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and year first hereinbefore written.

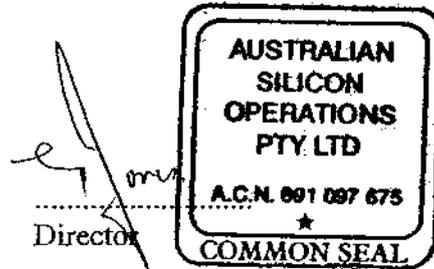
I Robert Patrick Smith)
the Chief Executive of State Forests)
have hereunto affixed the)
Seal of the FORESTRY COMMISSION)
OF NEW SOUTH WALES)
in the presence of:)

Bob Hunt
.....

[Signature]
.....
Witness

THE COMMON SEAL of)
AUSTRALIAN SILICON OPERATIONS)
PTY LIMITED)
was hereunto affixed in accordance)
with its Constitution in the)
presence of: *PETER W.F. ANDERSON*)

[Signature]
.....
Director/Secretary



SIGNED SEALED AND DELIVERED)
by THE HONOURABLE)
KIMBERLEY MAXWELL YEADON)
Minister for Forestry)
in and for the State of New South Wales)
for and on behalf of the Crown (but not)
so as to incur any personal liability) in the)
presence of:)

[Signature]
.....
Minister for Forestry

[Signature]
.....

SCHEDULE 1

BASE ANNUAL SUPPLY

Year 1:	150,000 tonnes
Year 2:	175,000 tonnes
Year 3:	175,000 tonnes
Year 4:	175,000 tonnes

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SCHEDULE 2

TIMBER SPECIFICATIONS

General Specifications

- Species - As per Schedule 3;
- Timber to be delivered in log form;
- No restrictions on moisture content;
- At least 97% of log surface area to be bark free;
- Lengths to 2.0 m. minimum and 11.00 m. maximum;
- Diameter to 15 cm. minimum;
- No restrictions on maximum diameter;
- Logs more than 80 cm in diameter must not exceed 2.5 m in length. Logs may be split prior to delivery to avoid this requirement;
- Branches and projections flush trimmed;
- Shattered ends and jagged slovens removed;
- Free of pronounced bends; and
- Sweep 20 cm or less measured over any 3.0 m log section.

Defect Tolerances

- Charcoal acceptable on logs;
- No restrictions on spiral grain;
- Logs with a large end diameter under 60 cm. must have an average of 10cm. of solid wood between the pipe and the outside circumference of the log.
- Logs with a large end diameter over 60cm. must have a minimum average of 12cm. of solid wood between the pipe and the outside circumference of the log.
- Rot must not exceed one quarter of the surface area of the log at either end. Logs may be either docked or split prior to delivery to meet this specification

Labelling

Each log must be labelled in a distinctive manner to indicate to which of Species Group A, Species Group B or Species Group C the log belongs. Subject to the parties reaching agreement on a reasonable adjustment to the Contract Harvesting Charge each log must at the request of the Company be labelled in a distinctive manner to indicate which Hardwood Species it is.

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Schedule 3

Species Mix and Group - South Coast Region

SCHEDULE 3

SPECIES PERCENTAGES AND GROUPS

No.	Scientific Name	Common Name	Species Percentage by weight (indicative 20 yr average)	Species Group
1	<i>Eucalyptus maculata</i>	Spotted Gum	27.9%	B
2	<i>Eucalyptus fastigata</i>	Brown Barrel	10.6%	C
3	<i>Eucalyptus sieberi</i>	Silvertop Ash	8.4%	C
4	<i>Eucalyptus globoidea</i>	White Stringybark	7.9%	C
5	<i>Eucalyptus muelleriana</i>	Yellow Stringybark	6.9%	A
6	<i>Eucalyptus paniculata / sideroxylon / fibrosa</i>	Ironbark	5.3%	A
7	<i>Eucalyptus pilularis</i>	Blackbutt	5.1%	C
8	<i>Eucalyptus piperita</i>	Sydney Peppermint	4.0%	C
9	<i>Eucalyptus cypellocarpa</i>	Monkey Gum	3.9%	C
10	<i>Eucalyptus saligna</i>	Sydney Blue Gum	2.3%	C
11	<i>Eucalyptus longifolia</i>	Woollybutt	2.2%	A
12	<i>Syncarpia glomulifera</i>	Turpentine	1.9%	C
13	<i>Eucalyptus viminalis</i>	Ribbon Gum	1.7%	C
14	<i>Eucalyptus agglomerata</i>	Blueleaved Stringybark	1.7%	C
15	<i>Eucalyptus obliqua</i>	Messmate	1.3%	A
16	<i>Eucalyptus radiata</i>	Narrowleaved Peppermint	1.1%	C
17	<i>Eucalyptus fraxinoides</i>	White Ash	1.1%	C
18	<i>Eucalyptus smithii</i>	Gully Peppermint	0.9%	C
19	<i>Eucalyptus gummifera</i>	Red Bloodwood	0.8%	C
20	<i>Eucalyptus elata</i>	River Peppermint	0.7%	C
21	<i>Eucalyptus bosistoana</i>	Coastal Grey Box	0.6%	A
22	<i>Eucalyptus resinifera</i>	Red Mahogany	0.6%	A
23	<i>Angophora floribunda</i>	Roughbarked Apple	0.5%	C
24	<i>Angophora costata</i>	Smoothbarked Apple	0.5%	C
25	<i>Eucalyptus dalrympleana</i>	Mountain Gum	0.4%	C
26	<i>Eucalyptus angophoroides</i>	Appletopped Box	0.4%	C
27	<i>Eucalyptus consideniana</i>	Yertchuk	0.4%	A
28	<i>Eucalyptus botryoides</i>	Bangalay	0.4%	C
29	<i>Eucalyptus nitens</i>	Shining Gum	0.4%	C
30	<i>Eucalyptus pauciflora</i>	Snow Gum	0.1%	C
31	<i>Eucalyptus propinqua</i>	Grey Gum	0.1%	C

percentages derived from FRAMES LQ and Pulp Log Product Classes

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SCHEDULE 4

THE STUMPAGE PRICE SCHEDULE

1. The Stumpage Price applicable as at 1 January 2002 ("the 2002 Rate") is \$7.56 per tonne.
2. The Interim Stumpage Prices for Year 1, Year 2 and Year 3 shall be the 2002 Rate varied in the same proportion as:
 - (a) the variation if any in the CPI during the period 1 January 2002 to the Commencement Date; and
 - (b) the estimated variation in the CPI during the period from the Commencement Date to the mid point in time between the Commencement Date and the end of Year 3, calculated at the Commencement Date on the assumption the CPI will vary during that period at the same rate it varied during the period 1 January 2002 to the Commencement Date.
3. The Reconciled Stumpage Prices for Year 1, Year 2 and Year 3 shall be calculated at the end of Year 3, and shall be the 2002 Rate varied in the same proportion as:
 - (a) variation referred to in clause 2(a) above; and
 - (b) 50% of the variation in the CPI from the Commencement Date to the end of Year 3.
4. In calculating the variation in the CPI during a period the figures used shall be the figure last published prior to the commencement of the period and the figure last published prior to the end of the period.

SCHEDULE 5

CONTRACT HARVESTING AND CONTRACT HAULAGE CHARGES IN YEAR 1

1. In this Schedule 5:
 - “ACHC” means the Contract Harvesting Charge to apply after application of the formula set out in clause 4;
 - “ACHLC” means the Contract Haulage Charge to apply after application of the formula set out in clause 5;
 - “APDH” has the same meaning as the Average Price for Diesel (Harvesting) for the relevant 3 month period;
 - “APDHL” has the same meaning as the Average Price for Diesel (Haulage) for the relevant 3 month period;
 - “Average Price for Diesel (Harvesting)” means the weighted average (by day) wholesale list price for Diesel 500 in NSW (excluding GST) published by Shell Australia less the Federal Diesel Fuel (Offroad) Rebate, during a 3 month period;
 - “Average Price for Diesel (Haulage)” means the weighted average (by day) wholesale list price for Diesel 500 in NSW (excluding GST) published by Shell Australia less the Federal On Road Diesel Grant, during a 3 month period;
 - “CHC” means the Contract Harvesting Charge calculated in accordance with clause 3 of this Schedule; and
 - “CHLC” means the Contract Haulage Charge calculated in accordance with clause 3 of this Schedule;

2. The Delivery Charges applicable as at 1 January 2002 (“the 2002 Rates”) are:

Contract Harvesting Charge:-	\$18.00 per tonne.
Contract Haulage Charge:-	\$13.65 per tonne.

3. Subject to clauses 4 and 5 of this Schedule 5, each of the Contract Harvesting Charges and the Contract Haulage Charge for Year 1 shall be the 2002 Rates varied in the same proportion as:
 - (a) the variation in the CPI during the period 1 January 2002 to the Commencement Date. In calculating the variation in the CPI during that period the figures used shall be the figure last published prior to the commencement of the period and the figure last published prior to the end of the period; and
 - (b) the estimated variation in the CPI during the period from the Commencement Date to the mid point in time between the Commencement Date and the end of Year 1, calculated at the Commencement Date on the assumption the Variation in the CPI will occur at the same rate as occurred during the period 1 January 2002 to the Commencement Date.

4. If the Average Price of Diesel (Harvesting) during the 3 months prior to the Commencement Date exceeds \$0.55/litre the Contract Harvesting Charge calculated under clause 3 above must be varied in accordance with the following formula:

$$ACHC = CHC \times [1 + ((APDH - \$0.55/\text{litre}) / \$0.55/\text{litre} \times 8\%)]$$

For example, if CHC is \$18.00/tonne, and APD is \$0.75/litre, then:

$$\text{ACHC} = \$18.00 \times [1 + ((\$0.75 - \$0.55)/\$0.55 \times 8\%)] = \$18.52$$

5. If the Average Price of Diesel (Haulage) during the 3 months prior to the Commencement Date exceeds \$0.75/litre the Contract Haulage Charge calculated under clause 3 above must be varied in accordance with the following formula:

$$\text{ACHLC} = \text{CHLC} \times [1 + ((\text{APDHL} - \$0.75/\text{litre})/\$0.75/\text{litre} \times 20\%)]$$

For example, if CHLC is \$13.00/tonne, and APD is \$0.95/litre, then:

$$\text{ACHLC} = \$13.00 \times [1 + ((\$0.95 - \$0.75)/\$0.75 \times 20\%)] = \$13.69$$

6. If the Contract Harvesting Charge is increased by operation of clause 4 above and during any 3 month period after the Commencement Date the Average Price of Diesel (Harvesting) falls below \$0.50/litre, the Contract Harvesting Charge shall revert from the end of that 3 month period to the figure it would have been but for the operation of clause 4.
7. If the Contract Haulage Charge is increased by operation of clause 5 above and during any 3 month period after the Commencement Date the Average Price of Diesel (Haulage) falls below \$0.67/litre, the Contract Haulage Charge shall revert from the end of that 3 month period to the figure it would have been but for the operation of clause 5.

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M.J. King

SCHEDULE 6

Contract Harvesting and Contract Haulage Cost Review

Part 1: Definitions and interpretation

In this Schedule unless the context indicates to the contrary:

'Base Indicator Rates' for a review means the Indicator Rates which were the Current Indicator Rate for the previous Cost Review except in the case of the first Cost Review in which case the Base Indicator Rates will be the Indicator Rates which applied 4 months prior to the Commencement Date;

'Cost Item' means a Harvesting Cost Item or a Haulage Cost Item as the case may be;

'Cost Review' means the calculation of changes in the cost of Contract Harvesting and the cost of Contract Haulage using the methodology set out in this Schedule 6;

'Current Indicator Rates' means the Indicator Rates applicable on the first day of the month of the Cost Review;

'Harvesting Cost Item' means a factor relevant to the cost of Contract Harvesting more particularly being any item set out in column 1 of Part 3(A) of this Schedule 6;

'Haulage Cost Item' means a factor relevant to the cost of Contract Haulage more particularly being any item set out in column 1 of Part 3(B) of this Schedule 6;

'Indicator' means an Indicator of a Cost Item more particularly being any Indicator set out in column 2 of Part 3(A) or (B) of this Schedule 6;

'Indicator Rate' means the value or status of an Indicator at a point in time except in the case of diesel where the Indicator Rate is the weighted average rate published by Shell Australia during the three month period preceding the point in time; and

'Indicator Weighting' means the weighting given to a Indicator for the purpose of calculating the weighted movement across all Indicators during a review more particularly being the weighting set out in column 4 of Part 3(A) or (B) of this Schedule 6 as that weighting may vary in accordance with clause 7 of this Schedule 6.

Part 2: Methodology

1. Cost Reviews will be carried out in June of each Year to be used in the calculation of the Contract Harvesting Charge or Contract Haulage Charge for the following Year.
2. The first calculation under this Schedule will occur in June Year 2.

3. Ascertain the Current Indicator Rate for each Indicator in column 2 of Part 3, expressed in dollars and cents, percentage or as an index (as the case may be).
4. Ascertain the movement in each Indicator during the relevant review period by establishing percentage increase (or decrease) in the Indicator Rate (by comparing the Current Indicator Rate (see clause 3) to the Base Indicator Rate) and applying any weighting specified in column 2 to that percentage change. An example of the methodology is shown below:
 - assume movement in harvesting wages Indicator Rate is from \$500 (Base Indicator Rate) to \$520 (Current Indicator Rate)
 - harvesting wages Indicator Rate change is therefore + 4%
 - weighting for harvesting wages is 90% (from column 2 of Part 3)
 - 90% of + 4% is + 3.6%.

Therefore +3.6 percent is the movement in the harvesting wages Indicator.

5. Calculate the weighted movement across all indicators by applying the methodology below:
 - (a) multiply the movement in each Indicator (see clause 4) by the Indicator Weighting in column 4 of Part 3 (eg, the + 3.6% for harvesting wages from clause 3 above is multiplied by the relevant weighting for harvesting wages, ie 38%, with the product being 1.4%)
 - (b) the sum of the products of each calculation referred to in clause 5(a) is the weighted movement across all Indicators.
6. The weighted movement across all Indicators calculated in accordance with clause 5 is the variation in the cost of conducting Contract Harvesting or Contract Haulage (as the case may be).
7. For the purposes of the next Cost Review ascertain new column 4 Part 3 Indicator Weightings for each Indicator by multiplying the then current column 4 Part 3 Weighting for each Indicator by the movement in the relevant Indicator (see clause 4 above) and then dividing the result by the weighted movement across all indicators (see clause 5 above). This will produce a new table of Indicator Weightings which sum to 100 percent. For example:
 - assume harvesting wages movement (see clause 4 above) is +3.6%, the weighted movement across all Indicators is + 2%, and the Indicator Weighting for harvesting wages (from column 4 of Part 3) is 38%;
 - then the new Indicator Weighting for harvesting wages is calculated by the formula:
 - $38\% \times 1.036 / 1.02$ which equals 38.6%

M/L. Gary

Part 3 : Indicators and Weightings

A. Contract Harvesting Costs

Column 1	Column 2	Column 3	Column 4
Cost Item	Adjustment Indicator	Indicator Rate at 1 July 2001	Weighting at 1 July 2001
Item 1: Wages	Wages: 90% of the movement in Federal Forest and Building Manufacturing and Merchandising General Award (1996) Level 5 operator	\$507.20	38.00%
	Workers Compensation: 100% of the movement in the applicable WorkCover NSW rate for native forest harvesting	15.00%	5.00%
	Superannuation: 100% of the legislated movement in the employer superannuation contribution rate	8.00%	2.00%
Item 2: Fuel	100% of the movement in the Shell Wholesale price for Diesel 500 in NSW (excluding GST) less the Diesel Fuel (Off Road) Rebate		
	Wholesale Price (excluding GST)	\$0.8514	
	Less Diesel Fuel (Off Road) Rebate	\$0.3840	
	Total	\$0.4674	8.00%
Item 3: Repairs and Maintenance	Parts: 100% of the movement in the ABS Transportation vehicle parts index	105.0	6.00%
	Labour: 90% of the movement in the Metal and Engineering Award Level C10 mechanic	\$507.20	5.00%
Item 4: Administration and Overheads	90% of the movement in the ABS Consumer Price Index for 8 capital cities	132.7	9.00%
Item 5: Capital related items (depreciation and interest)	No adjustment		27.00%

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mlb. King

B. Contract Haulage Costs

Cost Item	Adjustment Indicator	Indicator Rate at 1 July 2001	Weighting at 1 July 2001
Item 1: Wages	Wages: 90% of the movement in Transport Industry Interim (State) Award – Transport Worker Grade 7	\$584.50	27%
	Workers Compensation: 100% of the movement in the applicable WorkCover NSW rate for native forest haulage	8.81%	2%
	Superannuation: 100% of the legislated movement in the employer superannuation contribution rate	8.00%	2%
Item 2: Fuel	100% of the movement in the Shell Wholesale price for Diesel 500 in NSW (excluding GST) less the On road Grant		20%
	Wholesale Price (excluding GST)	\$0.8514	
	Less On Road Grant	\$0.1851	
	Total (inc GST)	\$0.6663	
Item 3: Repairs and Maintenance	Parts: 100% of the movement in the ABS Transportation vehicle parts index	105.0	5%
	Labour: 90% of the movement in the Metal and Engineering Award Level C10 mechanic	\$507.20	5%
Item 4: Tyres	100% of the movement in the retail list price (including GST) of a Goodyear G286 11R22.5 radial truck tyre	\$882.00	8%
Item 5: Administration and Overheads	90% of the movement in the ABS Consumer Price Index for 8 capital cities	132.7	6%
Item 6: Capital related items (depreciation and interest)	No adjustment		25%

Part 4 Base Parameters

A. Harvesting

Mechanised falling and processing to remove unmerchantable sections

Long wood extraction by snigging to log dumps

Debarking and crosscutting into log products on log dumps by means of excavator and/or chainsaw

Loading by excavator

Single shift daylight operations, 5 to 6 days per week.

B. Haulage

6 or 7 axle truck configurations

Single shift, predominantly daylight, operations working 12 to 14 hours per day (depot to depot),
5 to 6 days per week

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SCHEDULE 7

PART 1: CALCULATION OF THE CONTRACT HARVESTING CHARGE FOR A YEAR

1. In this Part 1 'Harvesting Difficulty Classes' means a number of different classes specified in a Tender Contract, categorising differences in the complexity and difficulty of harvesting timber in Compartments, which provides a basis for different rates of remuneration for Contractors.
2. State Forests will:
 - (a) For each Compartment identified in the Annual Delivery Plan for the relevant Year allocate Contractors to carry out Contract Harvesting and will allocate to each Contractor a specified quantity of Timber to be harvested out of the Compartment;
 - (b) For each Compartment identified in the Annual Delivery Plan for the relevant Year determine the Harvesting Difficulty Class for the Compartment;
 - (c) prepare a spreadsheet in the form and manner of the spreadsheet set out in Part 3 to this Schedule ("the Part 3 Spreadsheet) in respect of Contract Harvesting matters, on the basis of the Tender Contract Rates in the relevant Year for each Contractor, the Harvesting Difficulty Class for the Compartments involved, and the quantity proposed by State Forests to be harvested by each Contractor from the Compartments; and
 - (d) using the methodology implicit in the Part 3 Spreadsheet calculate the Weighted Average Harvesting Rate on the basis of the information specified in clause 2(c) above.
3. The Weighted Average Harvesting Rate calculated in accordance with clause 2(d) of this Part 1 will be the Contract Harvesting Charge for the relevant Year.

PART 2: CALCULATION OF THE CONTRACT HAULAGE CHARGE FOR A YEAR

1. In this Part 2 'Road Classes' means a number of different classes specified in a Tender Contract, categorising differences in the standards of roads over which Timber is hauled from Compartments to the Delivery Site, which provides a basis for different rates of remuneration for Contractors.

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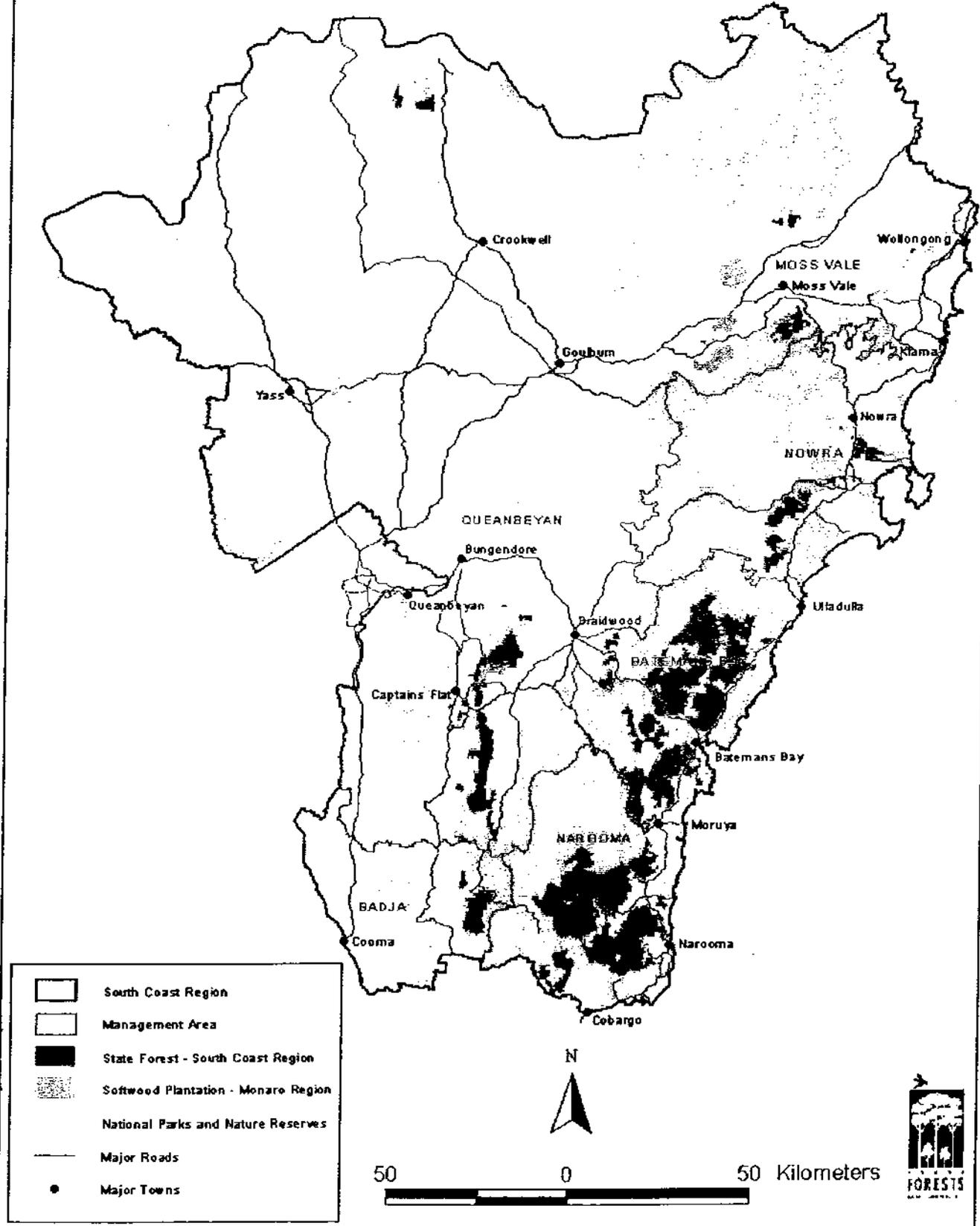
2. State Forests will:
- (a) For each Compartment identified in the Annual Delivery Plan for the relevant Year allocate Contractors to carry out Contract Haulage and will allocate to each Contractor a specified quantity of Timber to be delivered to the Delivery Site from the Compartment;
 - (b) For each Compartment identified in the Annual Delivery Plan for the relevant Year determine the Road Classes and the haulage distance from the Compartment to the Delivery Site;
 - (c) prepare a spreadsheet in the form and manner of the Part 3 Spreadsheet in respect of Contract Haulage matters on the basis of the Tender Contract rates applicable in the relevant Year for each Contractor, the haulage distance by Road Class for each Compartment involved, and the quantity proposed by State Forests to be delivered to the Delivery Site by the Contractor; and
 - (d) using the methodology implicit in the Part 3 Spreadsheet calculate the Weighted Average Haulage Rate on the basis of the information specified in clause 2(c) above.
4. The Weighted Average Haulage Rate calculated in accordance with clause 2(d) of this Part 2 will be the Contract Haulage Charge for the relevant Year.

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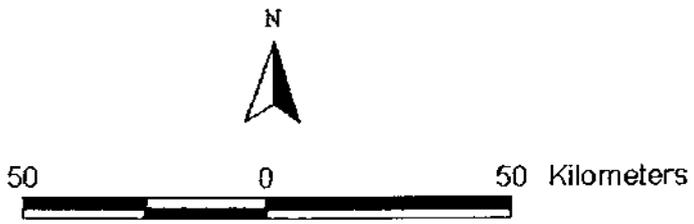
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AREA OF SUPPLY - South Coast Region

Schedule 8



- South Coast Region
- Management Area
- State Forest - South Coast Region
- Softwood Plantation - Monaro Region
- National Parks and Nature Reserves
- Major Roads
- Major Towns

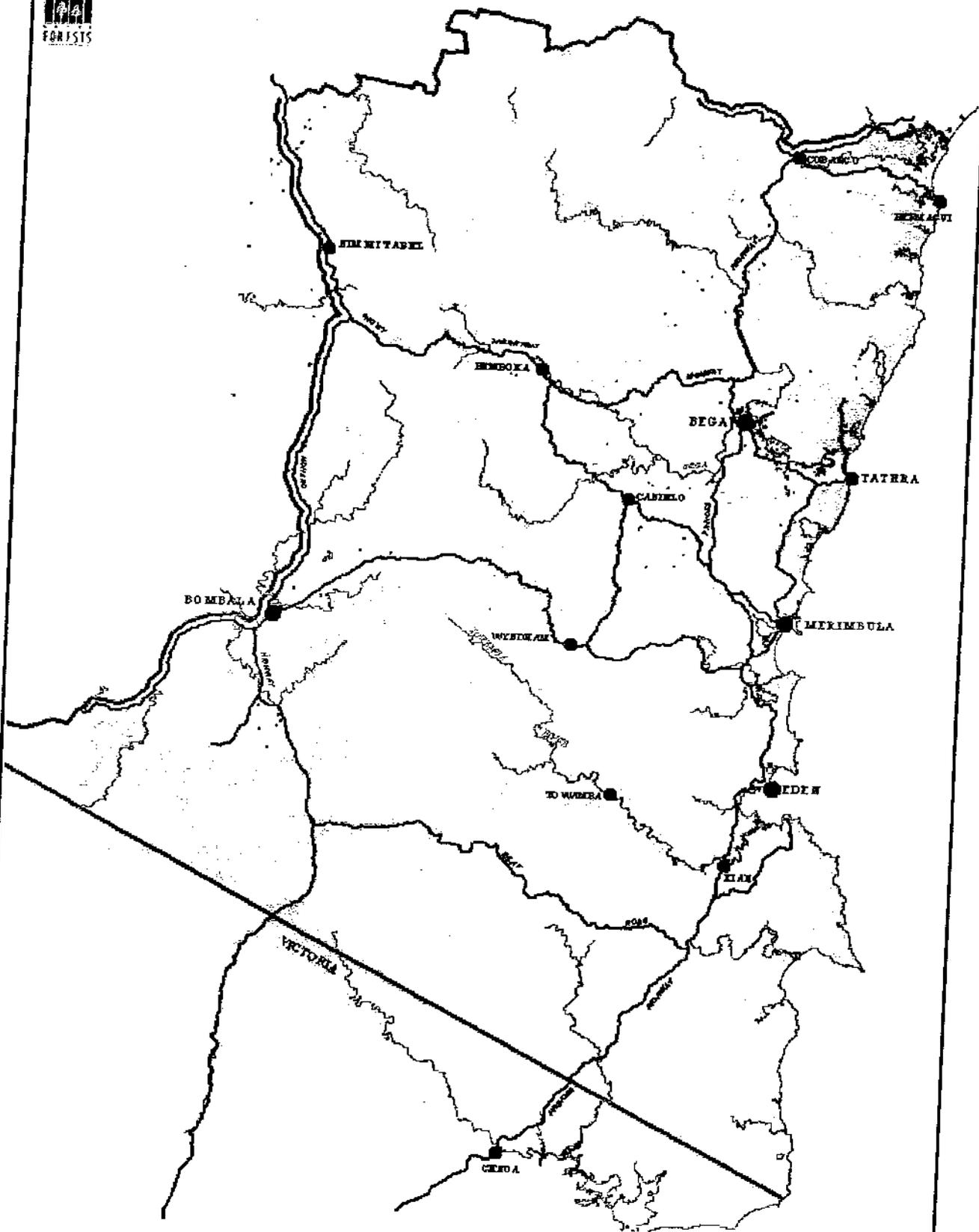


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AREA OF SUPPLY Eden Management Area

SCHEDULE 9



- | | | |
|---|--|---|
|  STATE FORESTS |  NATIONAL PARKS & NATURE RESERVES |  MAJOR ROAD |
|  SOFTWOOD PLANTATION |  EDEN MANAGEMENT AREA |  MAJOR TOWNS |



M. J. King

SCHEDULE 10

COMPANY GROUP GUARANTEE

To: The Forestry Commission of NSW

[Insert name of guarantor] guarantees to the Forestry Commission of NSW that:

1. Australian Silicon Operations Pty Ltd ABN 87 901 097 675 (Company) has sufficient resources and the necessary capacity to take or pay for timber to be made available by the Forestry Commission of NSW to the Company in accordance with the Timber Supply Agreement dated [] (Agreement); and
2. it will cause the Company to perform its obligations as required by the provisions of the Agreement.

EXECUTED by [name of guarantor]:

Signature of director

Signature of director/secretary

Name

Name