



Solid biofuel supply – model contract

Contracting for the sale and purchase of solid biofuels sets out the specification of what fuel is to be supplied and the responsibilities of both the seller and the buyer. When things go wrong the contracting parties need to look to the contract to clarify the respective responsibilities of both parties. If things are going well then a contract should never have to be referred to.

1. Contracts for the Sale and Purchase of Biomass to a Fuel Supplier

A wood fuel producer could simply be a grower selling felled or un-felled trees; a grower selling residues from harvest; a harvester selling the residues of harvest, or a wood processor selling process residues to a fuel supplier. There are a number of ways in which a contract can be structured for the transfer of the ownership of wood fibre from the producer to the supplier however, these are not covered in this Guide.

A wood fuel supplier may simply be a broker organizing for the collection and processing of harvest or process residues, processing them to meet a fuel specification, and delivery to an end user, or they could undertake all of the actions necessary to get wood residues into a fuel form and delivered to the end user.

2. Contracts for the Sale and Purchase of Wood Fuel between Fuel Supplier and End User

The development of formal contractual arrangements provide benefits to both end user and fuel supplier. A fuel supply contract provides the end user with a clear statement of their requirements and how they expect the agreement to be fulfilled. From the suppliers' point of view, a long term contract allows the supplier to put in place both the investment in plant and machinery and the logistical arrangements necessary to comply with the contract terms.

The contract is vital to a professional delivery of services. In conjunction with the fuel classification described in the [Bioenergy Association Technical Guide 1](#) the contract builds on the professional and reliable reputation of the fuel supply industry, and reassures fuel purchasers that the supplier will provide the fuel or service they require, and that the supplier does not merely view biomass as a useful way of dumping waste or co-product.

To ensure realistic commitments, the fuel supplier must comprehensively understand what the customer requires and be confident that it can be provided once an agreement is entered into. Failures by fuel suppliers to meet their contractual requirements may result in the energy user citing breach of contract and purchasing fuel from elsewhere. Where capital investment of specialist equipment has been made, any loss of revenue will seriously affect the viability of the fuel supply business. It is therefore in the fuel suppliers' best interest to only agree to undertake what is achievable and be transparent regarding potential risks.

3. A model contract

A model contract is set out in Appendix A. [Word version copies](#) are available from the Bioenergy Association. This model is only a guide and should be modified to fit the procedures and practices of fuel buyers and suppliers.

4. Model Contract Terms

A contract for wood fuel supply may include the following terms and components:

Preamble: The document should open with details of the parties to the contract plus the context of the contract so that there is no misunderstanding between the parties as to the purpose of the wood fuel and reliability of supply expectations etc. This could also include a basic statement of what the contract relates to, for example fuel supply for an installation at a certain address, and a brief outline of what the parties are responsible for.

The end user and fuel supplier should agree the parameters of the fuel supply, contract term, delivery method,

Biomass Specification: The contract should state the exact specification of the fuel to be supplied as per the boiler manufacturer's recommendations. For pellets, diameter and length; for woodchip, moisture content, particle size and the parameters of particle size, etc. the classification is set out in [Technical Guide 1](#).

It is also helpful to provide a description of the boiler and its fuel handling system, and to set out the key details pertinent to the plant performance.

Fuel verification: The contract will include conditions for verification that the fuel delivered meets the fuel specification. Some verification will be prior to and at the point of loading, and at the point of delivery. [Technical Guide 5](#) provides guidance on verification methods.

Quantity: The contract should describe the anticipated volume of supply, and the end user should ensure the contract states a guarantee of fuel supply over a set period, including any exceptions, and what indemnities should be in place in the event of the failure or for example where the supply company can no longer trade.

It is important for the end user to identify the potential consequential loss associated with making alternative arrangements for energy, liability for loss of use of a public building (school, leisure centre, etc.) or interruption of business.

From the supplier's view, fixed annual costs can be covered either by agreeing the minimum annual requirement of fuel or energy to be supplied, or by using a stepped charging system similar to electricity accounts, where the first units are charged at a higher rate in order to cover these fixed costs and after a certain consumption rate the price per unit decreases. It also gives cover against the site shutting down for any reason outside the supplier's control, such as a boiler malfunction, or where the end user stops trading leaving the supplier holding stock.

Duration of the contract For a very long term contract, anything over three years, it is wise to set an annual review period when the logistics of fuel supply, any changes to the boiler set up etc can be discussed and issues resolved.

Set a renewal date prior to the termination of the contract to ensure that the heat plant owner can acquire satisfactory stock to feed the boiler and a transition to a new supplier can be arranged if necessary.

Price: Clearly state a unit price by the tonne, energy (Gigajoules), loose cubic metre, solid cubic metre, etc. Detail how units are to be measured, and how and when parameters such as moisture content, particle size and volumes will be verified.

The Bioenergy Association recommends that because wood fuel is very variable as to its energy composition because of moisture content that wood fuel should be sold on an energy basis. This removes any conflict over the variability of what is being delivered. But the terms of sales should be determined between the supplier and purchaser.

For contracts with a term longer than one year the seller may wish to propose a [price escalation clause](#) in the contract. There are many things that may affect future prices and sellers and buyers may agree an escalation clause specific to their locality and the sources of biomass fuel being offered. The base price for the biomass supplied would be adjusted annually on the anniversary of the contract according to any movement in the indices set out in the clause. However offering a simple percentage increase, or not including any escalation clause, can be attractive for some buyers as their fuel is then fixed for the duration of the contract.

From the fuel supplier's perspective the cost base and log sourcing arrangements for each supplier will be quite different, hence adoption of any particular type of inflator will depend on the individual business model of the supplier.

Confirm the exclusion or inclusion of GST.

Sources: In order to limit uncertainty the purchaser may wish to specify what material is acceptable. This may be of particular importance where the supplier is sourcing the fuel from a number of locations e.g. from a number of farm forestry blocks some of which may be on silica prone land.

The classification of sources of biomass for production of solid biofuel are set out in ISO 17225 -1. A guide for solid biofuel buyers and sellers is in [Technical Note TNSB 73](#).

Terms of payment: State the terms of payment, what penalties might accrue if the fuel is sub standard, when invoices are expected to be paid, and whether interest is chargeable after this period? It is also helpful to clarify the invoicing process, requirements for order numbers, receipts, delivery notes and self billing invoices.

Clearly state at which point the fuel is transferred to the customer. The Bioenergy Association recommends that the ownership transfer at the point of delivery into the receiving facility. This should be very specific e.g. lip of the storage bunker so that there is limited opportunity for dispute in the event of an entry of contaminant or spillage.

Delivery of biomass fuel: The fuel delivery should be described, stating responsibilities for opening and closing the fuel store, ensuring that any receiving equipment is activated during delivery, disconnecting and reconnecting hydraulics when using hookbins and other important details.

The times of delivery and to whom the delivery driver should report to and obtain a receipt are key details to also describe. Site policies for safe delivery need to be clear and procedures for ensuring that anyone coming onto the site understands these should be included in the contract.

The purchaser will generally be responsible for establishing a delivery schedule, check the fuel store to ensure satisfactory residual security levels of fuel are maintained, and ordering additional fuel. The means of communication and confirmation of an order for delivery should be explicit.

A minimum notice period for ordering fuel should be described and any potential penalties within the time period the contractor is required to deliver. The process of emergency deliveries should be described, and whether an additional charge should be made and in what circumstances.

If a purchaser sources fuel from more than one supplier and places it into the same storage facility there can be conflicts over responsibility if some fuel is not up to specification. Should mixed fuel be sub-standard or contain contaminants that damage the boiler it may result in a dispute between the parties to determine responsibility. Where the end user has material from a second supplier which they wish to put into the supply chain for their boiler it is better to keep the fuels separate. Where the end user prefers a more “ad hoc” approach the supplier should ensure that the contract indemnifies against any resultant problems.

Standard Terms: Detailed proposals relating to health and safety responsibility on site, together with insurance details, i.e. product liability insurance, transport and ownership liability should be stated.

The contract should include a dispute resolution process which should cover all aspects of the contract performance, setting out what actions are deemed as a “breach of contract” and the termination process.

Miscellaneous detail: Occasionally ash removal is included in fuel supply contracts and it may be appropriate for the supplier to remove ash at the same time as making a delivery but this must be covered in the contract.

Include a specific clause to cover the supplier in the event of plant shutdown outside the supplier’s control and any costs incurred by the supplier as a result. In addition the fuel supplier may wish to include a clause covering failure to commence the operation of the boiler. Boilers may be proposed but not go into operation due to issues beyond the supplier’s control, leaving the supplier holding stock.

Appendix A – Model contract for the sale and purchase of wood fuel

Contract between

<SUPPLIER> hereinafter referred to as “**the Supplier**”;

of <ADDRESS>

and

<END USER> hereinafter referred to as “**the End User**”;

of <ADDRESS>

for the supply of wood fuel to

<SITE LOCATION> which is the site (owned and) operated by the End User where the delivery of wood fuel is required by the End User, hereinafter referred to as “**the site**”.

1. Supply of wood fuel

1.1. The Supplier agrees to supply to the End User and the End User agrees to purchase from the Supplier wood fuel to the specifications, in the quantities, for the period, at the price, and on the terms and conditions set out in this contract.

2. Duration of contract

2.1. This contract is for a period of <XX> and will commence on <DATE> and end on <DATE>, (with a formal review after the first three months of the contract to assess the need for any adjustments to the contract).

2.2. Any adjustments requested in terms of Clause 2.1 need to be agreed jointly between the End User and Supplier. If the Supplier or End User cannot agree or meet adjustments, each party may terminate the contract after 3 months if it wishes to.

2.3. Any adjustments made to the contract in terms of Clause 2.1 must relate to the;

- Ability of the Supplier to meet the fuel specification, or
- The appropriateness of the fuel supplied to ensure efficient performance of the End User’s equipment for which the fuel is supplied.

2.4. This contract may be extended by agreement of both parties not less than three months before the end of the original contract period.

2.5. In the event of either party failing to meet their contractual obligations under this contract the other party has the right to terminate the contract at three months notice unless such breach of contract is remedied by the defaulting party to the reasonable satisfaction of the non-defaulting party. If any material breach is committed by either party which, in the reasonable opinion of the non-defaulting party, can not be remedied within 10 working days the non-defaulting party may terminate this contract immediately by way of written notice.

3. Quantity

3.1. The monthly quantity of wood fuel supplied during the defined contract period averaged over each twelve month period of the contract term, starting from the date of contract signing, will be a minimum <XX> tonnes and a maximum of <YY> tonnes at the fuel specification defined in Schedule 1.

- 3.2. The End User may order amounts in addition to the maximum specified in Clause 3.1 by requesting an additional delivery from the Supplier, specifying the quantity required, and the date and time by when the End User requires the delivery in accordance with Clause 6.4. If the Supplier is able to satisfy the request, it shall notify the End User accordingly and deliver the amount requested as soon as is reasonably practicable. The Supplier may charge the contract price for any additional delivery made in accordance with Clause 4 or any other price by mutual agreement. If the Supplier cannot satisfy the request, it shall notify the End User of the reason why.
- 3.3. The Supplier is under no obligation to supply greater quantities of wood fuel other than that specified in Clause 3.1.
- 3.4. The proof measurement of quantity of wood fuel supplied is to be by providing the End User with a weigh bridge docket for each delivery showing the truck identifier and the weight of wood fuel supplied in each delivery load. The weighbridge must be operated by a suitably licensed operator.
- 3.5. The End User reserves the right to audit the bill of loading of any load using an alternative weighbridge. In the case of substantial discrepancy between the Supplier's bill of loading and the End User's audit, the invoiced amount shall be adjusted as appropriate. If repetitive and substantial discrepancies occur, it is expected the Supplier will rectify the cause of the discrepancies to the satisfaction of the End User, otherwise the End User reserves the right to terminate the contract.

4. Price

- 4.1. The value of fuel supplied will be based on energy content (gigajoules delivered) and be calculated by weight and moisture content, which will be measured and agreed at each delivery, and fixed price for the term of the contract.
- 4.2. The price (exclusive of GST) for wood fuel delivered into the fuel store of the End User will be based upon the following tariff up until <DATE>: \$<XX> per GJ of biomass.
- 4.3. The energy content value of each delivery load will be calculated as follows;

$$\text{Energy Content} = (18.842 - 0.212 \times \text{MC}) \times \text{Weight}$$
 Where:
 - The derived Energy Content of the load is the net or lower heating value of energy in gigajoules (GJ).
 - MC is the wet basis moisture content in percent.
 - Weight is the delivered fuel in tonnes.
 (This formula is based on the 'Scion NZ – Woody Biomass for Boiler Fuel -Guidelines for Payment by Energy Content' document.)
- 4.4. Unless otherwise specified in Clause 4.3, prices shown in Clause 4.3 shall include all costs and expenses of insurances, freight, local cartage and/or any other services in the delivery of the wood fuel.
- 4.5. The price of the biomass will be adjusted annually on the anniversary of the contract being signed according to any movement in the New Zealand Department of Statistics Producer Price Index (Inputs). *(applicable only for contracts over one year of duration)*

5. Fuel sources

- 5.1. The wood fuel will be derived from the following sources (*delete as appropriate*):
 - forest harvest residues;
 - wood processing residues;
 - arboricultural arisings;

- short rotation coppice (SRC);
- agricultural arisings (e.g. straw);
- energy crops, such as miscanthus;
- urban wood.

The parent source of the wood fuel is declared as being (*insert as appropriate*).

6. Delivery of wood fuel

- 6.1. Wood fuel will be supplied in bagged/baled/loose form [*delete as appropriate*] and delivered to the End User by a suitable vehicle for delivery into the End User's fuel store. The fuel shall be delivered by a truck/trailer suitable for unloading wood fuel directly into the fuel store. The Supplier is to provide all associated equipment for the safe delivery of the fuel.
- 6.2. The driver is to report to the main site office each visit prior to unloading.
- 6.3. Delivery of wood fuel will be according to requests from the End User. Requests are to be made by electronic mail or facsimile. The Supplier will confirm receipt of a request by electronic mail or facsimile within one working day. The confirmation from the Supplier will create a commitment for purchase by the End User.
- 6.4. The notice period for requesting delivery of wood fuel from the End User will be a minimum of <XX> days.
- 6.5. On the dispatch of any consignment of wood fuel, the Supplier shall send a Delivery Note and a Fuel Quality Declaration to the End User by electronic mail or facsimile. A paper copy of the Delivery Note and Fuel Quality Declaration shall be provided to the End User at the site with the delivery of each consignment.
- 6.6. Responsibility for checking levels of wood fuel within the fuel store and informing the Supplier of the need for a fuel delivery rests with the End User.
- 6.7. In the event of the requirement for a delivery at less than the notice period in clause 6.4 an additional fee of \$<XX> per tonne of biomass will be payable to cover the costs of an emergency delivery.
- 6.8. Unless otherwise agreed in advance with the End User, deliveries shall be made between the hours of <XX>.00 and <YY>.00, or any other time agreed with the End User in advance between Monday and <XXX>day.
- 6.9. If a delivery cannot be made within the hours specified in the contract and the whole or part of the delivery is not possible due to obstructions on the End User's site that are beyond the control of the Supplier, the Supplier will be entitled to compensation to cover the cost of transport and payment of an additional surcharge of <XX>% of the value of the wood fuel ordered, unless the End User informs the Supplier of said obstruction within the notice period specified in Clause 6.4 above.
- 6.10. Upon delivery of the wood fuel to the End User, visual checks shall be made by the End User to ensure conformity to the agreed specification.
- 6.11. If checks reveal that the wood fuel does not conform to the agreed specification as per Schedule 1, the End User reserves the right to reject the load in full. In the event that it is not possible to visually check the fuel load until it is in the fuel silo, but the wood fuel is subsequently found to not conform to the agreed specification within 24 hours of delivery, then the End User reserves the right to reject the fuel. Rejected fuel will be removed by, and at the expense of, the Supplier. Any such dispute over the specification of the wood fuel delivered will be resolved as per Clause 13.
- 6.12. The Supplier shall be responsible for immediately clearing up any wood fuel spilt during offloading and shall provide suitable tools for this job. If the Supplier does not undertake such

clean up within a reasonable time then the End User may undertake the clean up and pass on the costs of clean up, which must be reasonable, to the Supplier.

- 6.13. If the Supplier is not able to safely, or without spillage, deposit the wood fuel being delivered into the End Users fuel store then the Supplier must not make the delivery and must immediately advise the End User of such action. If the End User does not remedy the ability of the Supplier to deliver the wood fuel safely and without spillage then the Supplier may avoid the delivery and invoice the End User for any reasonable costs involved.
- 6.14. The wood fuel shall remain at the risk of the Supplier until delivery to the company is complete (i.e. the biomass is offloaded into the End User's store), when ownership of the wood fuel shall pass to the End User.
- 6.15. Where the Supplier is unable to provide the wood fuel or the full quantity of wood fuel requested by the End User in terms of Clause 6.3 for any reason whatsoever, the Supplier must immediately notify the End User and the End User may, at its discretion, vary the Contract or terminate the Contract in accordance with the Termination clause.
- 6.16. If the Supplier is unable to supply part of the quantity of wood fuel requested the Supplier may, with the End User's prior written consent, provide other fuel from a third party to meet the objectives of this Contract. The Supplier shall have full responsibility for ensuring this Contract is complied with.
- 6.17. In the event of the parties for whatever reason agreeing to discontinue the supply of wood fuel and/or replace the same with alternative fuel, then any approved alternative fuel may be added to Schedule 1 by way of Variation and any fuel agreed to be discontinued shall be identified as such in Schedule 1.
- 6.18. All deliveries must be accompanied by a delivery docket which must be signed for and retained by an End User officer.

7. Supply Certainty

- 7.1. The End User's primary requirement is for a guaranteed supply of fuel.
- 7.2. In the event that the Supplier fails to supply adequate quantities and/or quality of fuel for the continual operation of the End User's plant at any stage during the contract period, the End User reserves the right to source fuel from an alternative source. The Supplier, under these circumstances, will be required to pay all additional costs incurred by the End User directly related to the supply shortfall. This includes, but is not limited to, all reasonable additional fuel cost, transportation cost, supply fees, cost of work by End User staff, and administration cost.
- 7.3. A failure to supply adequate quantities of fuel for continual operation of the plant at any stage will give the End User the right to terminate the contract.

8. Fuel Quality and Consistency

- 8.1. The quality and consistency of the fuel is important because it affects the performance of the End User's plant.
- 8.2. The End User has the right to audit random samples from any delivery of fuel to check that the quality specifications are being met by the Supplier.
- 8.3. The Supplier is financially responsible for any damage to the fuel feed system, heat plant, and air quality equipment caused by any wood supplied which does not meet the specification in the contract (e.g.. high moisture content, contaminants, etc).

9. Wood fuel quality verification

- 9.1. The Supplier grants the End User the right to audit and inspect the Supplier's records concerning delivery of the wood fuel.

- 9.2. The Supplier grants the End User access to the Supplier's premises, facilities and staff concerning the delivery of the wood fuel.
- 9.3. The End User's failure to inspect does not relieve the Supplier of any responsibility to perform according to the terms of this Contract.
- 9.4. The wood fuel shall be subject to inspection and test at all reasonable times and places by the End User or those parties representing the End User, during and after delivery. The End User may, at its sole discretion, require the Supplier to replace any rejected fuel that does not meet the specification in Schedule 1.
- 9.5. The Supplier must undertake fuel quality verification as set out in Schedule 1. The Quality Verification Reports are to be provided to the End User along with the monthly invoice.
- 9.6. Where the moisture content in the Quality Verification Report differs by more than 10% from the results of delivery sampling for more than three loads of every ten loads delivered the Supplier is to clarify the discrepancy with the End User and agree a remedy.
- 9.7. Where the moisture content arising from discrepancy identified in Clause 9.6 is less than the delivery sampled moisture content used to calculate invoice amounts, an adjustment to the invoice payment will be made to reflect the lower moisture content.
- 9.8. The End User may at any time send representative samples of wood fuel for evaluation, analysis, testing and approval. All samples must meet the fuel specification as set out in Schedule 1. Such tests are to be at the End User's expense.
- 9.9. The methods for maintaining the original quality of the wood fuel once the Supplier has delivered it on site is the responsibility of the End User.

10. Terms of payment

- 10.1. The Supplier will invoice the End User on a monthly basis. This will be based upon the number of loads recorded and delivered (by weight) and will be assessed on the <XX> day of each month. The invoice amount will be the energy content delivered multiplied by the price as outlined in clause 4.3.
- 10.2. The End User shall be entitled to query any aspect of the Supplier's invoice. The Supplier shall fully and promptly co-operate with the End User to resolve any such query. While any matter is being queried, the Supplier shall continue to supply the wood fuel without interruption or delay.
- 10.3. Terms are monthly payment at <XX> days from date of invoice.
- 10.4. Payment will be effected by Electronic Funds Transfer (EFT) (direct credit).
- 10.5. In the event that any payments are overdue the Supplier has the right to refuse to make further supplies until all outstanding overdue invoices have been settled.
- 10.6. Interest shall be payable on amounts overdue at the daily published <Bank> base rate plus 2%.

11. Disputed Payments

- 11.1. If either Party disputes the accuracy of any invoice, it shall notify the other Party accordingly within 10 Business Days of receipt of such invoice. The invoiced Party shall pay the undisputed amount of the invoice and may withhold the disputed amount. The Parties shall endeavour to reach agreement on the disputed amount and if agreement is reached, make any payments necessary. If agreement is not reached the matter shall be referred to mediation in accordance with clause 16. No part payment shall be treated as being in full and final settlement of any obligation of either Party unless expressly acknowledged in writing by the other Party to be such.

- 11.2. If any amount has been disputed under Clause 11.1 and as a result of the dispute resolution one Party has to pay an amount to the other Party, interest shall be payable on that amount calculated daily from and including the due date of the invoice in dispute but excluding the date of payment of the amount at a rate equal to the <BANK> overdraft rate.

12. Variations

- 12.1. Unless otherwise specifically provided for under this Contract, any variation, amendment, modification or alteration to this Contract will only be valid when endorsed by both Parties in writing

13. Health and Safety

- 13.1. The End User shall provide a copy of their site safety manual to the Supplier.
- 13.2. A risk assessment and method statement shall be prepared in advance of the first delivery by the Supplier following an initial site visit and discussion with the End User, to take account of the hazards on site and the risks posed to pedestrians, vehicles and property on the site during wood fuel delivery and offloading. This method statement will agree with the End User and shall be formally reviewed annually, or whenever a change to the hazards and risks on site are identified.
- 13.3. The Supplier shall use all reasonable endeavours to ensure that all requirements of the Health and Safety in Employment Act 1992 are complied with by its employee(s) while on the End User's site. This includes taking all reasonable steps to:
- a) ensure employees of the Supplier are safe while on the End Users site making fuel deliveries and that the work they do will not harm any other person;
 - b) identify all hazards the Supplier's employees may be exposed during deliveries on the site;
 - c) ensure that before any of the Supplier's employee commences work on the site they are:
 - a. informed of hazards they may be exposed to or may create through their work and methods to control such hazards;
 - b. informed of emergency procedures and the location of safety equipment; and
 - c. sufficiently experienced to carry out the work safely or are supervised by someone who is.
- 13.4. The Supplier will use all reasonable endeavours to ensure employees of the End User are safe while making deliveries.
- 13.5. The End User shall advise the Supplier of any site hazards and their current procedures for controlling such hazards.
- 13.6. The End User shall provide a site induction course for all new Supplier employee(s) to ensure that they are familiar with and understand site safety requirements in the areas where deliveries are to be made.
- 13.7. The Supplier is required to report to the End User within 24 hours any accident that has harmed or might have harmed any person.

14. Other terms and conditions

- 14.1. The wood fuel shall be delivered in a prompt and timely manner to meet the reasonable requirements of the End User and within the delivery dates requested and agreed;
- 14.2. The Supplier shall use the highest reasonable standard of skill, care and quality and employ techniques, methods, procedures and, where necessary, materials of a high quality and standard in accordance with best professional practice in providing the wood fuel;

- 14.3. The Supplier will exercise the specific skills and experience required to source and supply the wood fuel and will ensure that the fuel is provided to the End User's satisfaction;
- 14.4. The Supplier shall comply with all relevant New Zealand standards and international standards (if not in conflict) (both general and industry-specific) applicable in respect of sourcing and supplying of the wood fuel;
- 14.5. The wood fuel is of a quality and fitness for the purpose for which the fuel is supplied to the End User and, in particular:
- . The Supplier acknowledges the End User has described to the Supplier the particular purpose for which the wood fuel is required. The Supplier acknowledges the End User relies upon the Supplier's skill and judgment and the wood fuel shall be reasonably fit for such purpose;
 - . The Supplier acknowledges that it is not released from its obligations as a result of the End User failing to observe defects in the wood fuel which an examination ought to have revealed.
- 14.6. Wood fuel that does not meet the required quality standards remain at the risk and cost of the Supplier who shall be required to remove such fuel in accordance with the direction of the End User.
- 14.7. Damage to equipment as a result of sub-standard quality wood fuel and/or foreign objects contained within the fuel will be the responsibility of the Supplier, and as such, the Supplier indemnifies the End User for the cost of repair or replacement of damaged equipment.
- 14.8. End user plant outage or operational problems that are a direct result of sub-standard maintenance, equipment misuse/neglect or equipment defects are not the responsibility of the Supplier. In this instance, any reasonable cost that is incurred by the Supplier as a result of not being able to deliver fuel will be charged to the End User.
- 14.9. The Supplier will indemnify the End User against the cost of repair to fuel handling and combustion equipment caused by the Supplier or supply of wood fuel not in accordance with the specification set out in Schedule 1, with the exception of consequential losses such as having to pay for heat supplied from other sources to a limit of \$<XXXX>
- 14.10. The Supplier shall hold at its cost, at all times during the continuance of this Contract, Public Liability Insurance of not less than two million dollars (\$2,000,000.00).
- 14.11. The Supplier shall, if requested by the End User, provide it with written evidence that all insurances are in force and, when required by End User, the Supplier shall produce the policies and evidence of payment of current premiums. If the Supplier fails to provide such evidence the End User may, after notifying the Supplier in writing, arrange that insurance, pay its premium and deduct the cost from any moneys payable to the Supplier or recover it as a debt owing.
- 14.12. Where the Supplier is in breach of any of its obligations under this Insurance clause, the End User may suspend the commencement of the supply of wood fuel until the obligations have been complied with. No such suspension shall entitle the Supplier to a Variation.
- 14.13. The Supplier's liability under this contract (including under any indemnity) shall be limited to \$<XXXX>

15. Indemnity

- 15.1. The Supplier indemnifies the End User in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the End User and any other person claiming through the End User as a direct or indirect consequence of any unlawful,

negligent, tortuous, criminal, reckless or dishonest errors, acts or omissions of the Supplier in the performance of its obligations under this Contract.

16. In the event of a dispute

- 16.1. Both parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the contract within thirty days of either party notifying the other of the dispute. Initially the party who wishes to bring the dispute to the notice of the other will do so in writing. The other party will respond to this in writing within 5 working days of receiving the notification of a potential dispute. Where the potential dispute relates to on-site issues at either the end-user or Supplier sites, a joint site meeting will normally take place within 8 working days of the potential dispute being brought to the other party's attention.
- 16.2. Where a resolution has been agreed after one or more meetings, including a site meeting (if appropriate), this shall be communicated in writing and noted by both parties.
- 16.3. Except as otherwise expressly provided, any dispute between the Parties arising out of or related to this contract shall, in the first instance, be the subject of a meeting between the Parties to negotiate a resolution of such dispute. The meeting shall be attended by individuals from each Party who have decision making authority with respect to the matter in question. Should the negotiations not lead to a settlement of the dispute within thirty days of the date of the meeting, the Parties shall use their best efforts to select an alternative dispute resolution procedure ("ADR"), such as a mini-trial, mediation or arbitration, to resolve the dispute. If the Parties are unable to agree upon a form of ADR within twenty days, then, upon seven days written notice to the other party specifying the intended course of action, any Party may pursue other available remedies. If the Parties are able to agree upon a form of ADR, they shall pursue the implementation of the ADR in good faith and in a timely manner. In the event the ADR does not result in resolution of the dispute, then upon seven days written notice to the other Parties specifying the intended course of action, any Party may pursue other available remedies.
- 16.4. Unresolved disputes shall be referred to arbitration in accordance with the Arbitration Act 1996.

17. Remedies

- 17.1. The rights of both parties under this Contract shall be in addition to their rights and remedies at law or in equity.
- 17.2. The Supplier shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages.
- 17.3. Any wood fuel the Supplier fails to supply in accordance with this Contract so that it constitutes a material breach of this Contract may be obtained elsewhere by the End User. Any damages, losses, costs and expenses incurred by the End User, due to the Supplier's failure, may be offset against moneys owed to the Supplier or recovered as a debt owing.

18. Force Majeure

- 18.1. A party, provided that it has complied with the provisions of clause 16.3, shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and, subject to clause 16.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:
 - a) Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;

- b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - c) compliance with any law;
 - d) fire, explosion or accidental damage;
 - e) extreme adverse weather conditions;
 - f) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - g) any labour dispute, including but not limited to strikes, industrial action or lockouts;
 - h) non-performance by Suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - i) interruption or failure of utility service, including but not limited to electric power, gas or water.
- 18.2. The corresponding obligations of the other party will be suspended to the same extent as those of the party first affected by the Force Majeure event.
- 18.3. Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
- a) it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
 - b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 18.4. If the Force Majeure Event prevails for a continuous period of more than three months, any party may terminate this agreement by giving 14 days' written notice to all the other parties. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

19. Termination

- 19.1. The End User may immediately cancel this Contract, either entirely or in part, by written notice to the other party if the Supplier commits one or more of the following events of default:
- a) The Supplier is, or becomes, unable to pay its debts when due, or there is an enforceable judgment, distress, attachment, execution or other process in an amount in excess of \$25,000 enforced against the Supplier;
 - b) The Supplier enters into, or resolves to enter into, any voluntary administration, compromise with or assignment for the benefit of its creditors, or enters into, or resolves to enter into, a court-approved arrangement or a capital reorganisation or reconstruction or there is a change in the effective management or control of the Supplier;
 - c) An application or order is made or a resolution passed for the winding up of the Supplier other than for the purpose of amalgamation or reconstruction approved by the End User;

- d) A receiver, a receiver and manager, an official manager, a liquidator, a statutory manager, a trustee or an equivalent person is appointed over all or part of the Supplier’s assets or undertaking;
- e) The Supplier ceases to carry on its business in whole or in part (except in the circumstances of a Force Majeure Event);
- f) The Supplier, by act or omission, allows circumstances to occur as a consequence of which any rights, powers, licences, permits or authorisations necessary for the proper management and supply of the Product are cancelled or are liable to cancellation;
- g) If an individual, the Supplier dies or suffers a disability which prevents him or her from performing the Supplier’s obligations under this Contract;
- h) The Supplier is the subject of repeated complaints (on matters such as the Supplier’s health and safety practices) from the End User or from other recipients of the wood fuel;
- i) If the Supplier’s fuel consistently does not meet the contractually agreed upon fuel specification. In this particular case, if the End User elects to do so, which they can do at their sole discretion, the End User may give the Supplier an opportunity and a specified time frame for altering their fuel material in order to meet the specifications;
- j) There is, in the End User’s reasonable opinion, an irretrievable breakdown in relations between the End User and the Supplier.

20. Confidentiality

20.1. Each Party must unless otherwise required by law keep confidential the information gained about the other party through the exercise of this contract.

20.2. The covenant contained in Clause 15.1 shall survive termination of this contract.

21. Third party rights

21.1. A person who is not a party to this contract shall not have any rights under or in connection with it.

22. Governing law and jurisdiction

22.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of New Zealand.

22.2. The parties irrevocably agree that the courts of New Zealand shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

Agreed this <DATE>

Name..... Position

(On behalf of <END USER>)

Name..... Position..... (On behalf of <SUPPLIER>)