Tender Number MTO Low Grade No 1 of 2027

TENDER DOCUMENT

FOR THE PURCHASE OF TIMBER

Tel: +27 44 871 1026
Fax: +27 44 871 1802
info@mto.co.za
www.mto.co.za
Private Bag X6603,
George East, 6539
6 Saagmeul Street, George Ind., George, 6529

MTO Forestry (Pty) Ltd | Company Reg. No: 1994/006586/07
Directors: L L Xate (Chairman), G I Carrihill, P Moila (Mrs), R Sewpersad, X N Nkala (Ms)
Alternates: D O Roberts | Acting Company Secretary: C Dionisio (Ms)

1. **TENDER NOTICE AND INVITATION TO TENDER**

MTO Forestry (Proprietary) Limited ("**MTO**") hereby invites tenders for tender number MTO Low Grade No 1 of 2027 in respect of pine saw logs in the log classes of S,A,B,C,D,BL in the planned, but in no way guaranteed mix of ;

Low Grade	Garcia		Kruisfontein		Tsitsikamma		Longmore		Longmore Sawmill		George Sawmill		Total	
Log Class	Volume	%	Volume	%	Volume	%	Volume	%	Volume	%	Volume	%	Volume	%
S	12	1%	9	4%	764	4%	284	16%	500	20%			1,570	12%
A10	60	4%	40	16%	2,033	10%	595	34%	600	24%	2	2%	3,330	25%
A20	10	1%	10	4%	299	1%	200	11%	750	30%	4	3%	1,273	10%
B10	132	10%	160	62%	2,588	13%	27	2%	375	15%	6	5%	3,288	25%
B20	10	1%	25		159	1%	621	35%	250	10%	48	40%	1,113	8%
C10	96	7%	193		1,582	8%	2	0%	25	1%	6	5%	1,904	14%
C20	12	1%	15		132	1%	31	2%			48	40%	238	2%
D10	17	1%	75		480	2%	1	0%			6	5%	579	4%
D20	3	0%	7		66	0%	1	0%					77	1%
Total	**352**		**534**		**8,103**		**1,762**		**2,500**		**120**		**13,372**	

delivered at roadside in the MTO Garcia, Kruisfontein, Tsitsikamma and Longmore forests and at Longmore and George Sawmills

for the period of 6 months from 11 January 2027 to 30 June 2027.

1.1. The closing date and time for the receipt of tenders is 13/11/2026 at 12h00 pm ("**Closing Time**").

1.2. Capitalised terms used and not otherwise defined in this Tender Document shall have the respective meanings assigned thereto in the Terms and Conditions attached as Annexure D hereto ("**the MTO Terms and Conditions**").

2. **TENDER CHECKLIST**

REQUIRED DOCUMENT(S)	**CHECK**
Duly completed particulars of the Tenderer, attached as Annexure A hereto	
Duly completed tender offer table, attached as Annexure B hereto	
Copy of this Tender Document, signed by the Tenderer on every page hereof in order to indicate its acceptance of the terms and conditions contained herein	
Copy of the MTO Terms and Conditions (attached as Annexure D hereto) signed by the Tenderer on every page thereof in order to indicate its acceptance of the Terms and Conditions contained therein.	

3. **SUBMISSION OF TENDERS**

3.1. Tenders must:

3.1.1. **include all of the documents listed in the Tender Checklist in clause 1.2 above and documents supporting the Consideration Criteria in Annexure C ("the Tender Documents"), duly completed and signed as necessary**;

3.1.2. be submitted by means of email, clearly marked with tender number and year and the words "TENDER DOCUMENTS" in the email subject line to tenders@mto.co.za,

3.1.3. be submitted before the Closing Time.

3.2. If the Tender does not include all the Tender Documents or if the Tender Documents are not fully and properly completed and/or signed (as the case may be) the Tender shall be void and shall not be considered.

3.3. Tenders submitted after the Closing Time will **not** be considered.

Any further queries regarding any aspect of the Tender should be addressed to: Thinus Kok at 082 8895 332.

3.4. All Tenders accepted by MTO in accordance with clause 5 below will be subject to:

3.4.1. the MTO Terms and Conditions; and

3.4.2. the further general policies, procedures and rules applicable to the activities of all employees and contractors in forests, plantations and other premises managed by MTO from time to time ("**the MTO Policies and Rules**"), including but not limited to:

3.4.2.1. a comprehensive health and safety compliance contract;

3.4.2.2. a comprehensive environmental compliance policy for forestry operations;

3.4.2.3. MTO's company rules for forestry operations, to the extent to which such rules apply to this Tender;

3.5. The Tenderer should accordingly acquaint itself with the MTO Terms and Conditions on each occasion of submitting a tender as these may be amended by MTO in accordance with its operational requirements from time to time. The MTO Polices and Rules are available at the MTO office issuing the Tender and are subject to change from time to time in accordance with any changes in applicable legislation and/or industry norms and standards. It is the Tenderer's responsibility to keep itself acquainted with the latest version of the MTO Policies and Rules, and to comply therewith to the extent applicable to this Tender.

4. OPENING OF TENDERS

Tenders shall be opened in the presence of 2 (two) Employees of MTO as soon as practicable after the closing date and time. The employees of MTO who shall open the tenders shall be any 2 persons in the employ of MTO, one of whom shall be a senior Clerk or administrator employed in the Finance or office administration department of MTO and the other of whom shall be an employee of MTO who is a C or D Patterson grade forestry operational manager or forester.

5. EVALUATION OF TENDERS

5.1. Tenders that comply with clause 3 above shall be taken into consideration by MTO.

5.2. Tenders will be collated for assessment, based on the consideration criteria listed in Annexure C below, provided in each case that:

5.2.1. the price offered by the Tenderer for each class of timber which it wishes to purchase is equal to or more than the minimum (reserve) price placed on that specific class of timber,

as amended from time to time. For the avoidance of doubt, should the reserve price for the specific class of timber not be met, such timber will not be sold by MTO pursuant to this tender;

5.2.2. the Tenderer has a sound credit record (Credit Bureau check);

and

5.2.3. the Tenderer has not previously committed a material breach of the MTO Terms and Conditions applicable to log purchases from MTO.

5.3. The Tender will be awarded, *inter alia,* in respect of all classes of timber offered to the Tenderer that achieves the highest score based on the Consideration Criteria set out in the table attached as Annexure C hereto, hereto (the "**Designated Tenderer**"), provided that MTO reserves the right to award timber in a particular class to more than one Tenderer, where the Designated Tenderer does not submit a tender for all of the timber offered in that class.

5.4. The successful Tenderer shall be notified by MTO in writing, which notice shall stipulate the volume of timber in each class in respect of which the Tenderer has been successful.

5.5. Once the Tenderer has received notice of the acceptance of its tender, as contemplated in clause 1.1 above, the Agreement (as defined in the MTO Terms and Conditions) shall come into existence, subject to the MTO Terms and Conditions.

Annexure A

PARTICULARS OF TENDERER

(TO BE COMPLETED BY TENDERER)

Name of prospective Tenderer	
Name of contact person	
Physical address in the Republic of South Africa	
Postal address	
Telefax number	
Telephone number	
E-mail Address	
VAT registration number	

.....

FOR THE TENDERER

.....

DATE

Tel: +27 44 871 1026
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Annexure B

TENDER OFFER TABLE

(TO BE COMPETED BY TENDERER)

Product	Low Grade					
Class	DELIVERED AT ROADSIDE					
	Price in Rands / m³(Huber) excl. VAT					
	Garcia	Kruisfontein	Tsitsikamma	Longmore	Longmore Sawmill	George Sawmill
S						
A10						
A20						
B10						
B20						
C10						
C20						
D10						
D20						
Butt Log						

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Annexure C
CONSIDERATION CRITERIA

CRITERIA	INFLUENCE
PRICE	80%
BBBEE RATING	15% Points will be allocated on the following basis: • level 1 = 5 points • level 2 or 3 = 4 points • level 4 or 5 = 3 points • level 6 to 8 = 1 point • non-compliant = 0 points
Payment/operational track record	5% Points will be allocated based on whether or not the tenderer has experience and the capacity to comply with the MTO Terms and Conditions, as determined by MTO in its reasonable discretion. For purposes of clarity, experience shall mean appropriate training and/or prior involvement in transactions of the nature of this Tender and capacity shall mean access to appropriate levels of capital for purposes of this Tender.

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Annexure D
MTO TERMS AND CONDITIONS

1. **INTERPRETATION**

1.1. In these Terms, unless the context indicates otherwise:

1.1.1. "**Business Day**" means any day other than a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa;

1.1.2. **"Effective Date" me**ans the date upon which the Purchaser receives written notice of the acceptance of its tender to purchase Selected Timber;

1.1.3. "**Employees**" means contractors, agents or any other persons acting on behalf of the Purchaser and/or the Seller, as the context may indicate;

1.1.4. "**Harvested Logs**" means Selected Timber which is harvested by the Seller and delivered at roadside as specified by the Purchaser in the Tender Offer attached as **Annexure B** to the Tender Document;

1.1.5. "**Parties**" mean the Purchaser and the Seller, and "**Party**" shall mean either one of them, as the context may indicate;

1.1.6. "**Purchaser**" means the Party described in Annexure A to the Tender Document;

1.1.7. "**Selected Timber**" means the timber selected and marked by the Seller for the Purchaser;

1.1.8. "**Seller**" means MTO Forestry (Proprietary) Limited (Registration Number: 1994/006586/07), a private company duly incorporated in accordance with the laws of South Africa, of 1 Saagmeul Street, Industria, George, 6529, fax number: (044) 871 1802;

1.1.9. "**Tender Document**" means the document to which these Terms are attached; and

1.1.10. "**Terms**" means the Seller's terms and conditions, as set out in this document, together with any annexures or schedules thereto.

1.1.11. **Domicilium Citandi et Executandi** (address for legal service of notices and documents).

The addresses are as follows:

Registered address
MTO Forestry (Pty) Ltd
Jonkershoek Valley Road
Jonkershoek
Stellenbosch
7600

Postal Address
MTO Forestry (Pty) Ltd
Private Bag X5024
Jonkershoek
Stellenbosch
7599

Email: legalnotices@mto.group
Attention: Mrs Chris Dionisio

1.2. The headnotes to the paragraphs to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

1.3. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the female gender and words importing persons shall include partnerships and bodies corporate.

1.4. These Terms shall be binding on and enforceable by the permitted assigns, liquidators or other legal successors of the Parties as fully and effectually as if they had signed these Terms in the first instance and reference to any Party shall be deemed to include such Party's permitted assigns, liquidators or other legal successors, as the case may be.

1.5. Whenever a number of days is prescribed in these Terms, such number shall be calculated excluding the first and including the last day, unless the last day is not a Business Day, in which event the last day shall be the next day which is a Business Day.

1.6. Whenever performance is required to be made in these Terms on any date and such date is not a Business Day, such performance shall be required to be made on the next date, which is a Business Day.

1.7. The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to these Terms and the Parties waive any rights they have to rely on such rules.

1.8. Any provision of these Terms that contemplates performance or observance subsequent to any termination or expiry of these Terms shall survive such termination or expiry and continue in full force and effect.

2. COMING INTO OPERATION

These Terms come into operation on, and shall be effective as from the Effective Date. The Purchaser shall further, with effect from the Effective Date, be bound to comply with the MTO Policies and Rules (as this term is defined in the Tender Document) as applicable to this Tender from time to time, and may be required by the Seller to confirm its acceptance thereof in writing as a precondition of its entitlement to purchase any Selected Timber under these Terms.

3. SALE

The Seller sells to the Purchaser, who purchases from the Seller, the Selected Timber subject to these Terms. The Purchaser shall under no circumstances purchase the Selected Timber for purposes of resale at roadside or otherwise.

4. VOLUME AND LOG MIX

4.1. The Seller does not guarantee the total volume of Selected Timber available or the log mix in which it will be supplied.

4.2. Selected Timber can never be of uniform quality due to a large variety of factors including, but not limited to, tree physiology, and differences arising from silvicultural, species, site or climatic influences.

4.3. The Purchaser purchases the Selected Timber *voetstoots* ("as is").

5. DELIVERY AND PASSING OF RISK IN RESPECT OF HARVESTED LOGS

5.1. The point of delivery is at roadside and delivery by the Seller shall be effected according to the following provisions:

5.1.1. the Seller shall fell the trees, debranch and crosscut them into lengths and deposit the logs within approximately 5 (five) meters from the nearest road in the Seller's plantation at sites determined by the Seller, both of which are in the Seller's reasonable discretion accessible to transport vehicles; and

5.1.2. delivery of the logs at roadside shall be deemed to have been effected when the logs have been deposited, measured and duly marked for removal.

5.2. With Respect to the delivery of all Harvested Timber:

5.2.1. the Purchaser shall not remove any logs until delivery has been effected;

5.2.2. the Purchaser shall remove all logs within 30 (thirty) days of delivery of same, or such longer period as MTO may in its reasonable discretion grant in circumstances where the Purchaser, through no fault of its own and due to circumstances outside its control, is unable to remove such logs within the foresaid 30 day period;

5.2.3. although the Purchaser shall be liable for payment thereof, it shall forfeit all rights to logs not removed within the period specified above and the Seller shall have the right to dispose of such logs in whatever manner it deems fit and for its own account.

5.3. The risk in respect of Harvested Logs shall pass from the Seller to the Purchaser upon delivery by the Seller as set out in clauses 5.1 to 1.1 above.

5.4. The issue of an invoice shall constitute prima facie proof that the logs reflected therein have been delivered by the Seller.

5.5. Ownership of the Harvested Logs shall pass from the Seller to the Purchaser upon removal of the logs by the Purchaser at Roadside.

6. PURCHASE PRICE AND PAYMENT

6.1. Payment of the purchase price due for all Harvested Logs shall be made on thirty days from date of statement.

6.2. All payments due under this clause 6 (together with VAT thereon at the applicable rate) shall be made free of deduction or set off and by way of electronic funds transfer to the following bank account (or such other bank account as may be notified by the Seller to the Purchaser in writing from time to time):

Bank:	Standard Bank
Account number:	082 563 993
Account type:	Cheque
Branch:	Knysna

Branch code: 050-314

6.3 Should the Purchaser fail to pay any amount due in respect of the purchase price on the due date for such payment, the Seller may, irrespective of any other action it may take, forthwith prevent the Purchaser from removing any further delivered timber. In addition, interest at such prime overdraft rate charged to the Seller by its chosen bank from time to time, plus two percentage points, compounded monthly and calculated from the day following the due date until the date of payment in full, will accrue on all overdue amounts.

6.4 PRICE ADJUSTMENT

Price Variation

The price of the Selected Timber as set out in the Tender Offer ("the Price") is based on the Seller's costs prevailing at the date of the Effective Date. The Seller reserves the right to increase the Price at any time prior to delivery of Selected Timber in the event that there is an increase in the Seller's input costs arising from one or more of the following:

(a) an increase in the cost of fuel (including, without limitation, diesel, petrol, and any other petroleum-based or alternative fuel products) used by the Seller in the production, processing, storage, or transportation of the Selected Timber;
(b) an increase in the cost of labour (including, without limitation, increases arising from changes to the national minimum wage, the national living wage, employer pension contributions, employer national insurance contributions, or any other statutory or regulatory requirements affecting the cost of employing or engaging personnel); or

(c) an increase in any other input cost directly attributable to the production, processing, storage, or delivery of the Selected Timber, howsoever arising,

in each case where such increase occurs after the date of the Effective Date and was not reasonably foreseeable by the Seller at the date of the Effective Date (a "Cost Increase").

Notification and Calculation

Where the Seller proposes to increase the Price pursuant to this clause, the Seller shall give the Purchaser written notice of the proposed increase ("Price Adjustment Notice"), setting out in reasonable detail the nature of the Cost Increase and the revised Price. The revised Price shall reflect only such additional cost as is reasonably and properly attributable to the Cost Increase, and the Seller shall not be entitled to increase the Price by an amount exceeding the amount of the Cost Increase actually incurred.

Purchaser's Rights on Receipt of a Price Adjustment Notice

Upon receipt of a Price Adjustment Notice, the Purchaser may, within fourteen (14) days of receipt of such notice, notify the Seller in writing that it does not wish to proceed with the Tender Offer at the revised Price, in which case the Tender Offer (or the affected part thereof) shall be deemed cancelled without liability on the part of either party, save in respect of any Selected Timber already delivered. If the Purchaser does not serve such notice within the said fourteen (14) day period, the Purchaser shall be deemed to have accepted the revised Price, and payment for the Selected Timber shall be due at such revised Price.

Evidence of Cost Increase

The Seller shall, upon reasonable request by the Purchaser, provide such supporting documentation or evidence as is reasonably necessary to verify the existence and extent of any Cost Increase relied upon by the Seller in issuing a Price Adjustment Notice, provided that the Seller shall not be required to disclose commercially sensitive information relating to the terms of its arrangements with third-party suppliers.

No Waiver

The failure by the Seller to exercise its rights under this clause in respect of any particular Cost Increase shall not constitute a waiver of the Seller's right to exercise such rights in respect of any subsequent Cost Increase.

Relationship with Other Terms

This clause is without prejudice to any other rights or remedies available to the Seller under these Terms and Conditions or at law, and nothing in this clause shall operate so as to reduce or limit the Price payable by the Purchaser below the Price originally specified in the Tender Offer.

7. SECURITIES

The Purchaser shall furnish the Seller with securities as the Seller might require from time to time in writing in respect of:

7.1 the Purchaser's payment obligations under these Terms, in an amount equal to the value of 2 months' anticipated log purchases; and

7.2 in addition, all quantified or reasonably quantifiable costs incurred by the Seller or for which the Seller may become liable as a result of any breach of contract by the Purchaser, in an amount equal to 25% of the amount determined under clause 7.1, provided that such additional securities may only be requested where the Purchaser (i) is in breach of any of its obligations under these Terms, or (ii) has previously committed a breach of these Terms more than one occasion (notwithstanding that such breach may have been remedied).

8. INDEMNITY

8.1. The Seller shall not be liable for payment of damage caused to the Purchaser's sawmills, machinery, equipment, buildings, products or supplies of any nature whatsoever, unless such damage is caused by negligence on the part of the Seller's Employees acting in the course of their employment and within the scope of their duties.

8.2. The Purchaser shall indemnify the Seller in accordance with the following provisions:

8.2.1. the Purchaser shall indemnify the Seller and keep it indemnified against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the work undertaken by the Purchaser in terms of this contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;

8.2.2. the Purchaser shall, upon request of the Seller, provide proof of adequate indemnity insurance;

8.2.3. the Seller shall not be liable for or in respect of any damages or compensation payable at law by the Purchaser in respect of or in consequence of accident or injury to any workman or other person; and

8.2.4. the Purchaser, its Employees or agents shall, in using any road or area on the Seller's property, do so at their own risk and they shall have no claim whatsoever against the Seller or its Employees, for any loss, damage or injury arising out of the condition of, or the use of such road or area, and the Purchaser hereby indemnifies the Seller and its Employees against all such claims.

9. COMPLIANCE WITH LEGISLATION

9.1. In conducting any operations on the Seller's premises the Purchaser shall comply inter alia with the provisions of:

9.1.1. the Compensation for Occupational Injuries and Diseases Act, 1993, as amended, or re-enacted;

9.1.2. the Unemployment Insurance Act, No 63 of 2001, as amended, or re-enacted; and

9.1.3. the National Road Traffic Act, No 93 of 1996 as amended, or re-enacted.

9.2. The Purchaser shall give all notices and pay all fees required to be given or paid by the Purchaser by an Act of Parliament, Ordinance or any Regulations or Bye-Laws of any local or other statutory authority in relation to the execution of any work undertaken in terms of this contract and by the rules and regulations of the Seller and all public bodies, companies or parties whose property or rights are or may be affected in any way. The Purchaser shall conform in all respects with the provisions of any Act of Parliament, Ordinance, Sectoral determination and the Regulations or Bye-laws of any local or other statutory authority which may be applicable to any work undertaken in terms of this contract.

9.3. The Purchaser shall: -

9.3.1. ensure that it familiarises itself with the requirements of the Occupational Health and Safety Act 5 of 1993 ("the Act") and that it and its Employees or contractors comply with them;

9.3.2. appoint competent Employees who shall be trained on any occupational health and safety aspect pertinent to them or to the work that is to be performed;

9.3.3. strictly enforce discipline regarding occupational health and safety;

9.3.4. issue Personal Protective Equipment as required and see to it that such equipment is worn at all material times;

9.3.5. enforce safe work practices and all Employees shall be made conversant with the contents of these practices;

9.3.6. not use unsafe equipment/machinery and/or articles whilst doing work on the Seller's property;

9.3.7. not allow alcohol or other intoxicating substance on the Seller's premises. Anyone suspected to be under the influence of alcohol or any other intoxicating substance shall not be allowed on the premises;

9.3.8. give full participation if and when the Seller's Employees inquire into occupational health and safety issues; and

9.3.9. ensure that all vehicles used by or on behalf of himself or his agents on the Seller's Property, shall whenever such vehicles are upon the Seller's Property, be in a road worthy condition and validly insured for third party risk, and that such vehicles shall be driven only by drivers in possession of valid and appropriate driver's licences.

10. **INSURANCE**

10.1. The Purchaser shall, for the duration of these Terms (as provided for in clause 2 hereof), effect, in its name, policies of insurance to the satisfaction of the Seller to cover of:

10.1.1. public liability insurance, including the spread of fire of at least R7 000 000-00 (seven million rand) per incident or claim;

10.1.2. employers liability of at least R1 000 000-00 (one million rand) per incident or claim; and

10.1.3. pollution liability of at least R1 000 000-00 (one million rand) per incident or claim,

provided that such insurance shall not be required in the event that the Purchaser does not take delivery of any Selected Timber at the Seller's plantation, and will not enter the Seller's plantation for any other purpose under these Terms.

10.2. Proof of payment for the insurance policies referred to in clause 10.1 above (if applicable) must be provided by the Purchaser to the Seller on a monthly basis from the effective date until the date on which all the logs sold to the Purchaser in terms hereof have been removed by the Purchaser, within 7 (seven) days following the end of each month.

11. DAMAGE TO PROPERTY OF THE SELLER

Any damage to the timber or the property of the Seller caused by the Purchaser, and/or its Employees, and/or its Contractors shall be assessed by the Seller. Should the Purchaser dispute the damage caused and/or the amount owing, the provisions of clause 16 shall apply. Save in the case of a dispute as aforesaid, and the amount assessed shall be paid by the Purchaser within such period as the Seller may stipulate.

12. FORCE MAJEURE

12.1. A Party ("**the Affected Party**") shall not be liable for any loss suffered by the other Party arising out of delay in performance, or non-performance, of the Affected Party's obligations due to any cause (whether arising from natural causes, human agency or otherwise) which the Affected Party cannot reasonably and practicably control in the ordinary conduct of the Affected Party's business, including, without limitation, boycotts, governmental actions, state of emergency, war (declared or otherwise), warlike hostilities, civil commotion, riots; exceptionally bad weather; fire; labour strikes; lock-outs; loss or delay in transit; delay on the part of a third party supplier; shortage of labour or materials; equipment breakdown; accidents; deliberate damage by a third party; theft; and generally the acts and omissions of third parties.

12.2. The Affected Party shall give notice to the other Party (to be immediately confirmed in writing) of the nature and estimated duration of such impediment.

12.3. Relief from liability for non-performance by reason of the provisions of this clause 12 shall commence on the date upon which the Affected Party gives notice of the impediment relied upon by it, and shall terminate upon the date upon which such impediment ceases to exist.

12.4. In the event of an impediment referred to in this clause 12 occurring, the other Party shall co-operate and collaborate with the Affected Party and use all reasonable efforts to overcome such impediment and/or nullify its effect.

12.5. If such impediment has not been overcome or its effect so nullified within a period of 90 (ninety) days from the date of notification in terms of clause 12.2 above, then the other Party shall be entitled (as its sole remedy therefor) to terminate these Terms at the end of seven (7) days written notice to this effect given to the Affected Party, and no Party shall have any claim against the other arising out of such termination, whatsoever.

13. BREACH

13.1. Should either Party commit a breach of any provision of these Terms and fail to remedy such breach within seven (7) days of receiving written notice from the other Party requiring it to do so, then such other Party shall be entitled, without prejudice to any other rights it has in law, to cancel these Terms or to claim immediate specific performance of all of the defaulting Party's obligations whether or not due for performance, in either event without prejudice to the aggrieved Party's right to claim damages.

13.2. In the event of any Party to these Terms, having been given notice by the other Party in terms of clause 13.1 above twice or more, and such Party thereafter again commits a breach as envisaged in clause 13.1 the other Party shall be entitled (notwithstanding the above) to cancel these Terms summarily, by informing such Party in writing of the termination of these Terms.

14. CESSION

14.1. The Seller shall be entitled to cede or assign these Terms without the written consent of the Purchaser. The Seller shall however be obliged to inform the Purchaser of such cession or assignment.

14.2. The Purchaser shall not be entitled to cede or assign these Terms without the prior written consent of the Seller having been obtained.

15. NOTICES AND DOMICILIUM

15.1. The Purchaser chooses as its *domicilium citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of these Terms ("***domicilium***"), the addresses as set out in Annexure A of the Tender Document, and the Seller chooses as its *domicilium*, the address set out in clause 1.1.11 above, provided that a Party may change its *domicilium* to any other physical address and its address for the purposes of notices

to any other telefax number or electronic mail address by written notice to the other Party to that effect. Such change of address will be effective 7 (seven) days after receipt of notice of the change of *domicilium*.

15.2. All notices to be given in terms of this Term will be in writing, and:

15.2.1. if delivered by hand during normal business hours, be rebuttably presumed to have been received on the date of delivery;

15.2.2. if sent by electronic mail, be rebuttably presumed to have been received within 24 (twenty four) hours after the time of sending;

15.2.3. if sent by telefax before 16h30 on a Business Day be rebuttably presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after 16h30, or on a day which is not a Business Day, will rebuttably be presumed to have been received on the following Business Day.

15.3. Notwithstanding the above, any notice actually received by the Party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause 15.

16. **DISPUTE RESOLUTION: NEGOTIATION, THEN ARBITRATION**

16.1. Should any dispute, disagreement or claim arise between the Parties ("**the dispute**") concerning these Terms the Parties shall endeavour to resolve the dispute by negotiation.

16.2. This entails one of the Parties inviting the other in writing to meet and to attempt to resolve the dispute within 14 (fourteen) days from date of written invitation.

16.3. If the dispute has not been resolved by such negotiation within 14 (fourteen) days of the commencement thereof by agreement between the Parties, then the Parties shall submit the dispute, for final resolution, to arbitration to be administered by an arbitrator or arbitrators appointed by the Arbitration Foundation of Southern Africa ("**AFSA**"), in accordance with its rules.

16.4. Unless otherwise agreed in writing by all the Parties, any such negotiation or arbitration shall be conducted in English and in Cape Town.

16.5. The provisions of this clause 16:

16.5.1. constitute an irrevocable consent by the Parties and no Party shall be entitled to withdraw therefrom or claim at any stage of the proceedings that he is not bound by such proceedings;

16.5.2. are severable from the rest of these Terms and shall remain in effect despite the termination of or invalidity or alleged invalidity for any reason of these Terms or any part thereof; and

16.5.3. shall not preclude any Party from instituting any injunctive proceedings in any appropriate court.

16.6. If and to the extent that there is a conflict between the provisions of this clause 16 and clause 4 of the conditional approval of Competition Commission Case Number 2009DEC4830 (the "**Condition**"), the provisions of clause 4 of the Condition shall prevail.

17. MISCELLANEOUS PROVISIONS

17.1. No indulgence, leniency or extension of time which any Party ("**the Grantor**") may grant or show to any other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.

17.2. These Terms constitute the whole of the agreement between the Parties relating to the matters dealt with in these Terms and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of these Terms not incorporated in these Terms shall be binding on either of the Parties.

17.3. No variation, addition to, deletion from, or agreed cancellation of these Terms will be of any force or effect unless in writing and signed by the Parties' duly authorised representatives.

17.4. The Parties agree that:

17.4.1. each clause of these Terms shall be severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be, and continue to be, of full force and effect; and

17.4.2. in the event that any one or more provisions of these Terms shall for any reason be deemed to be invalid, such invalidity shall not affect any other provision of these Terms and the Parties shall substitute a valid, legal and enforceable provision which gives effect as near as possible to the economic result intended by the Parties; provided, however,

that in the event that the Parties fail to agree, they shall each have the right to terminate these Terms, subject to a notice period of 60 (sixty) days given to the other in writing.

17.5. Nothing contained in these Terms or in any instrument, agreement or other document delivered pursuant hereto or in connection herewith shall make either Party a partner, joint venturer or agent of the other. It is the intention of the Parties that each Party is and shall continue to be independent of the other.

17.6. Neither Party shall have any authority, express or implied, to act on behalf of or to bind the other Party, and no Party shall take any action to create any such authority or the appearance of such authority.

17.7. These Terms supersede all prior discussions, understandings and agreements between the Parties with respect to the subject matter hereof and contains the sole agreement between the Parties with respect to such subject matter. The Parties waive the right to rely on any alleged provision, whether express or implied, not contained in these Terms.

17.8. These Terms shall be interpreted and implemented in accordance with and be subject to the laws of the Republic of South Africa. Either Party shall be entitled, but not obliged, subject always to its compliance with the provisions of clause 15.3 above, to institute any proceedings arising out of or in connection with these Terms in the Magistrates' Court which has jurisdiction.

For **……Customer……**

Signature: _____

who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

For **MTO FORESTRY (PROPRIETARY) LIMITED**

Signature: _____

Tel: +27 44 871 1026
Fax: +27 44 871 1802
info@mto.co.za
www.mto.co.za
Private Bag X6603,
George East, 6539
6 Saagmeul Street, George Ind., George, 6529

who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Tel: +27 44 871 1026
Fax: +27 44 871 1802
info@mto.co.za
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MTO Forestry (Pty) Ltd | Company Reg. No: 1994/006586/07
Directors: L L Xate (Chairman), G I Carrihill, P Moila (Mrs), R Sewpersad, X N Nkala (Ms)
Alternates: D O Roberts | Acting Company Secretary: C Dionisio (Ms)