

Basic Elements of a Timber Sale Contract

About 85 percent — 13 million acres — of Missouri's forestland is owned by private landowners. Each year many of these individuals receive significant income from harvesting timber (Figure 1). However, too many Missouri landowners make the mistake of entering into an oral logging agreement on a handshake. Memory and recollection are not good tools for helping parties resolve conflicts. A written contract reviewed by an attorney is essential. A contract ensures that both the seller and the buyer have a clear understanding of the terms of the logging project, including the timber harvesting practices to be used. A reputable logger will understand the need for a contract.

One way to find a reputable logger is to check the Missouri Logging Council website for certified master loggers. Missouri Master Loggers are dedicated professionals who have invested their time and money to ensure that Missouri's trees are harvested correctly. The rigorous, performance-based certification program aims to protect the land and its resources through a thorough evaluation of loggers' harvesting and business practices. A master logger will work with you to craft a mutually acceptable timber sale contract. **If a logger attempts to talk you out of using a timber sale contract, you are talking to the wrong logger.**

Negotiating a timber sale contract with a logger is actually the next-to-last step in successfully marketing timber. MU Extension publication G5051, *Selling Timber: What the Landowner Needs to Know*, explains the steps in the marketing process and why each is important. Taking the first step, working with a professional forester, ensures that by the time you reach the contract phase you will know what provisions you want in the contract and you'll be negotiating with a reputable logger.

Entering into a contract with the buyer

The basic purpose of a contract is to ensure that each party knows what it can expect from the other — in a format that makes the expectations enforceable in court.

A contract is a **written**, legally binding agreement that details the responsibilities of each party. To be enforceable in court, a contract must satisfy very specific requirements. Simply having the word "contract" in big bold letters across



Figure 1. More than 500 million board feet of timber is harvested annually across Missouri.

the top of a document does not make it a legally enforceable contract.

To ensure a document fulfills the specific requirements of a contract, have your attorney review any contract that you and a buyer agree upon before you sign it. With a legal contract, your attorney will be able to defend your rights in court if problems arise.

Many sample timber sale contracts are available. Your professional forester should have a general template for one, and some buyers might have their own. However, because each timber sale and each owner is different, consider any sample contract as only a starting point.

All contract stipulations should be stated in the timber sale request for bid so that all buyers are bidding based on the same information. Once you have selected the successful bidder, negotiating the contract

Disclaimer

This guide is not a legal document and does not contain legal advice. The contracting information presented here is for educational purposes only. Every timber sale agreement is unique, and negotiations for a contract depend on the particular situation. When you sell your timber, you should consult your professional forester to help you plan the harvest, value the timber to be sold, and understand the provisions usually included in a timber sale contract. It is equally important for you to seek the advice of an attorney who can prepare the contract. Neglecting to consult either of these professionals can cost you substantially more money and time if any problems arise.

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provides an opportunity for you and the buyer to discuss important issues, such as how the harvesting operation will occur, and to identify and clarify any aspects of the sale that concern you.

During the negotiation process, keep a check sheet of points that you and the buyer have agreed upon. Use this check sheet later to ensure that everything you agreed upon during the negotiations appears in the written contract. If any agreements you made with the buyer during negotiations are not written into contract, those agreements are not likely to be enforceable.

Your preparation, in consultation with a professional forester, should result in a contract that is neither lengthy nor complicated, and limit a knowledgeable lawyer's time reviewing it to a couple of hours. The attorney fees will be a minor cost of the overall timber harvesting project. By paying for a binding timber sale contract, you get the comfort of knowing your interests are protected. The cost of a simple contract is only a fraction of potential costs of property damage, liability claims, or a dispute over timber sales proceeds.

Lastly, any oral changes negotiated after the final contract has been signed will likely also not be enforceable unless the contract was amended to include them.

Provisions to include in a timber sale contract

A typical timber sale contract contains the following information:

- the name and address of the seller
- the location and boundaries of the sale identified on a plat sheet or aerial photo
- a description of the timber to be sold: estimated volume, number of trees, and species
- which timber will and will not be cut
- the selling price
- terms of payment
- time allowed to complete the logging operation

Other contract provisions may explain agreements between seller and buyer, such as property damage, penalties, liabilities, insurance, subcontracting, procedures for settling disputes, and extensions or suspensions.

Contracts should also dictate adherence to best management practices (BMPs), which may include conditions when logging will not be permitted (generally, wet weather); location of roads, skid trails and log landings; protection of remaining timber and property; and erosion control measures, such as reseeding of disturbed areas (skid trails and landings) and construction of water bars.

A contract may include a provision for a performance bond supplied by the buyer. A bond guarantees that if the buyer causes damage or fails to fulfill any of the conditions of the contract, you can be compensated for monetary loss up to the amount of the bond.

The contract should address any concerns you have pertaining to the timber sale and the protection of your property. However, keep in mind that seller-oriented contract stipulations usually increase the buyer's costs and may reduce the net selling price of your timber.

Essential items

Although the exact wording may differ, the following items should be covered in all timber sale contracts. *The italic text explains the purpose of each item.*

1. Agreement entered into this _____ day of _____, 20_____, between _____ of _____ hereinafter called Seller, and _____ of _____ hereinafter called Buyer. *This statement specifies the parties to the contract. If you use this type of clause, be sure to stay consistent and refer to the parties throughout the contract as Buyer and Seller. Any deviation from that choice of words to identify the parties may leave the contract unenforceable. Include the buyer's home address or business address if a company*
2. This agreement shall be governed by the laws of the state of Missouri. *This statement declares that Missouri laws will apply and ensures that an absentee landowner or out-of-state buyer knows what state's laws are in effect.*
3. Seller agrees to sell to Buyer, subject to the terms listed below, all of the timber specified below on land owned by Seller located at _____. *A plat book or warranty deed can be used to determine the legal description. A typical description might read, "NW 1/4, Section 23, Township 25 North, Range 14 West, County of Boone, State of Missouri, located on 160, more or less." A map of the property is highly desirable.*
4. Seller is the legal owner of said timber and warrants the title to the timber hereby conveyed against the lawful claims of all third parties. *This statement protects the buyer from unknown third-party claims.*
5. The buyer agrees to cut only those trees marked with _____. Trees marked with an "X" may be cut if desired. *This provision specifies how the trees to be cut will be identified. Trees can be identified in several ways; for example, all trees marked with blue paint on both trunk and stump (Figure 2), or all trees within a marked boundary are to be cut. If paint is to be used in marking, be sure to specify the color and also that the paint mark be made below the level of the stump. Inclusion of these specifics provides some insurance against the cutting of unmarked trees. In most sales involving a professional forester, some trees that have no commercial value but need to be removed for the health of the forest will be marked with a painted "X" and can be taken at the buyer's discretion.*

6. Buyer agrees to pay Seller: **(Use a or b.)**

a. The total sum of \$_____ for said timber.

This phrasing is standard for a lump-sum sale. In a lump-sum sale, the seller is paid a fixed amount, or lump-sum, for the designated timber. This fixed amount may be determined through direct negotiation with one buyer or through competitive bidding by several prospective buyers. Although buyers base their bids on an estimate of the volume to be harvested, the total dollar amount received by the seller is independent of the volume of timber actually removed. Landowners are generally recommended to use this sales method and to do so in conjunction with competitive bidding.

b. The following price for each unit of timber stumpage removed: (dollar amount or percentage of share) per (unit: 1,000 board feet, cord, ton or post) for (species and product class) .

Under a sale-by-unit, -scale or -share method, the designated trees are felled and measured, or scaled, to determine volume. The seller is then paid a specified price per unit or some percentage of the amount paid to the buyer by the mill where the logs are delivered. Since the unit rate will usually vary among species, size and product classes, the contract must include an item-by-item listing. For each line item, specify who will determine what product classes and how much of each product class were removed — the buyer or the mill where the logs were delivered, and how will the amount be determined — weight, piece count, or Doyle or International log scale volume. This sales method is more difficult to administer than a lump-sum sale because obtaining an accurate production tally can be tricky.

7. Buyer shall transfer a down payment to Seller for due consideration for and upon execution of this contract of \$_____.

A down payment can range from 10 to 50 percent. Many small-scale buyers use their profit from a previous sale to bid on future sales. A smaller down payment for a large-volume or high-quality sale enables them to bid on your sale.

8. Method and time of payment shall be as follows: _____.

In lump-sum sales, the seller should require the balance be paid in full before harvesting operations begin. If due to the size of the buyer's operation, the buyer is unable to secure the necessary funds to pay for the entire tract of timber, the sale may be broken into smaller cutting blocks, with the buyer paying in advance for each cutting block based on the bid price and the timber volume tallied in that block.

In sale-by-unit sales, the buyer and seller should establish either a payment schedule wherein the buyer makes weekly or biweekly payments as the timber is harvested and scaled.

9. All timber marked or products included in this contract, until paid for in full, shall remain the property of Seller. *This provision protects the seller from buyer's failure to pay.*



Figure 2. A common practice for marking trees for harvest is to paint them with a specified color on both the trunk and the stump.

10. This agreement will be in effect from _____, 20____ to _____, 20____, after which time the contract is null and void, unless written extension is granted by Seller before the natural termination of this contract. If no extension is granted, all rights to remaining uncut timber return to Seller.

The buyer should be given a reasonable period of time to harvest the timber. However, if no termination date is established, the contract can continue indefinitely, with the buyer harvesting growth in addition to the original volume. Furthermore, extensions may be necessary due to poor logging conditions. In some circumstances resulting in an extension, additional compensation to the seller may be in order.

11. Buyer shall hold and save Seller harmless from any and all liability on account of any claim whatsoever for wages, supplies, equipment, damage, and injury to persons or property arising in connection with any activity conducted or undertaken by the buyer or the buyer's agents or employees under the terms of this contract.

This provision helps protect the seller from liability for the buyer's operation.

12. It is understood by both parties that Buyer is an independent contractor and not an employee of Seller. *This provision helps protect the seller from liability for workers' compensation, unemployment insurance and other government-mandated benefits.*

13. If required by state law, the buyer shall be covered by workers' compensation and public liability insurance, and shall provide proof of insurance coverage for the duration of the contract to Seller upon execution of the contract.

This provision helps protect the seller from liability for the buyer's operation .

14. Seller may suspend operations, including removal of cut timber, if conditions of the contract are violated.

Violations of conditions of the contract are sufficient grounds for termination.

This provision helps protect the seller from a buyer's failure to follow agreed-upon terms and conditions.

15. Any modifications or amendments to this contract must be written, dated, signed and witnessed.

This statement is included to ensure that both parties agree to any changes to the contract.

16. Buyer may not transfer or subcontract any part of this contract without prior written approval of Seller under the same conditions, signatures and witnesses mentioned above.

This statement helps protect the seller from unknown third-party interests and maintains the integrity of the original contract.

17. This agreement shall be binding on the heirs, administrators, executors, successors or assigns of both parties.

This provision ensures that the agreement continues to operate notwithstanding the death a party to the agreement.

18. In witness whereof, the parties hereto have executed this agreement this _____ day of _____, 20____.

The buyer and seller should sign and date the contract and have it witnessed by at least two impartial observers. Having the contract notarized is an additional protection that you should consider. Both parties should be provided with their own copy of the signed agreement. A signed copy should also be provided to the consulting forester, if one has been used.

Other important considerations

The items in this section should be considered for inclusion in any timber sale contract. Depending on the circumstances, some of these items may be as essential as those listed in the previous section. Others may not be needed and should not be included simply as a matter of course.

Keep in mind that the number and nature of these provisions could make a sale unattractive to some buyers and cause other buyers to submit a lower bid in order to cover the costs they will incur meeting the terms of the contract. You may want to prioritize your check sheet and consult with your professional forester and attorney on the pros and cons of these provisions.

To avoid any misunderstandings or hard feelings, these special provisions should be included in all advertisements of the sale, and potential buyers should be provided a copy of the proposed contract when they come to inspect the sale area.

19. Before beginning harvesting operations, Buyer shall post a performance bond with _____ in the amount of \$_____.

A performance bond (over and above the sale price) of \$500 minimum and up to 10 percent of the sale value on large sales

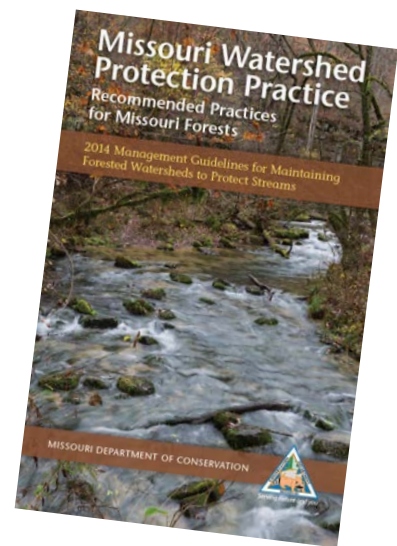


Figure 3. Adherence to timber-harvesting best management practices should be specified in the contract.

provides evidence and assurance that the buyer will not cause unusual damage or cut trees not in the sale. The bond holder should be mutually agreed-upon third party. The bond can work as a joint deposit by the buyer and seller in a local bank, or it can also be a surety bond purchased through the buyer's insurance agent. In either case, the bond is returned to the buyer upon satisfactory completion of the sale.

20. If any unmarked merchantable timber of any kind is cut, it will be removed and paid for by the buyer at the rate of three times the value for trees of the same species, size and grade. The rate will be determined by the Missouri Timber Price Trends published quarterly by the Missouri Department of Conservation. Upon payment of appropriate compensation to Seller, the severed tree becomes the property of Buyer.

Additional trees may need to be cut to construct logging roads, etc. If so, it is only proper that the seller be compensated for the additional timber. The usual penalty for cutting unmarked trees without permission is triple the stumpage rate. Such penalties will vary by species, size and quality of the timber and serve to protect the seller from buyer carelessness.

21. The buyer agrees to follow the timber-harvesting best management practices referenced in the Missouri Department of Conservation publication *Missouri Watershed Protection Practice*.

Best management practices ensure that timber is harvested in an environmentally friendly and sustainable manner (Figure 3).

22. Seller may temporarily halt skidding or hauling operations that, in Seller's opinion, cause or are likely to cause extraordinary damage to trails or roads. The number of working days Buyer's operations are halted for this reason shall be added to the term of the contract. *This provision protects the seller's property from damage as a result of, for example, logging in wet weather conditions.*

23. In the event of dispute over the terms of this contract, final decision shall rest with a reputable person to be

mutually agreed upon by the parties to this contract; and in case of further disagreement, with an arbitration board of three persons, one to be selected by each party to this contract and a third to be selected by the first two members of the board. Costs of arbitration shall be shared equally by Buyer and Seller.

*This statement establishes procedures for settling potential disputes, but is **not** a requirement for the contract. Some parties want to have this arbitration clause in the contract to allow a method of resolving a dispute without going to court. Be wary about giving up your rights to a court judgment when a problem arises with the contract. You may not be protected by the full power of the courts if you agree to resolve any disputes in arbitration.*

24. The buyer must remain within the sale area designated by Seller.

Make sure the boundaries are adequately marked.

25. Buyer has the right to access Seller's land for harvesting purposes. If Buyer has to cross a third party's property to enter Seller's land, Seller must clear the right of access with the third party.

The seller is responsible for providing legal access to the standing timber even if it means paying for a temporary easement. The buyer has no legal standing to secure access. The access agreement should be in writing.

26. The location of all roads, landings and decking areas must be agreed upon by Buyer and Seller before operations begin, and the details of this agreement are included in this contract.

The parties to the contract should discuss and agree upon which areas and how much area will be used. To ensure the buyer and seller have a clear idea of what they have agreed upon, a map indicating those areas can be included in the contract (Figure 4).

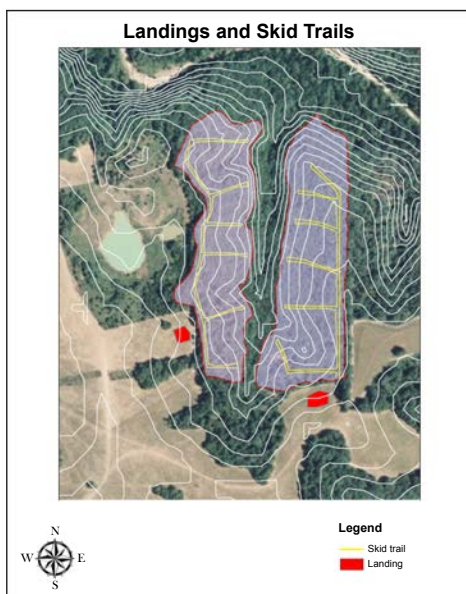


Figure 4. A harvest plan map showing the location of skid trails and log landings should be included in the contract.

27. Seller shall be informed _____ days in advance of when the harvest will begin and within _____ days of completion that the harvest has ended.
This period is usually no more than a few days and can be as little as one day. This provision keeps the seller better informed about what is happening on the property.

28. Seller and Seller's consulting forester have the right to inspect the sale area at any time.

This provision allows the seller to check the adequacy of the logging job being performed on his land.

29. Buyer and Buyer's employees shall exercise care at all times against the starting and spreading of fires in the sale area and surrounding areas.

This provision helps protect the seller from loss due to fire.

30. Neither Buyer nor Seller is liable for payments or performances due to uncontrollable events such as fires and floods.

"Uncontrollable" is the key word here. If events occur due to the buyer's action or negligence, then the buyer is usually liable. Conversely, if the buyer is not at fault, then a contract extension may be an option to consider.

Special provisions

This section provides landowners with some specific provisions that may apply to their specific situations. Include only those special provisions that are important to you after consulting your professional forester. **Remember that too many special provisions may cost the buyer money, which could mean less money to you for your timber.**

31. Stump heights may not exceed _____ inches.
A stump height no greater than 12 inches on the uphill side is standard.
32. As much as possible, Buyer shall protect from damage all future crop trees not marked for sale under the terms of this contract.
This stipulation ensures the future commercial value of the remaining forest.
33. Trees may not be left hanging on other trees. All hung trees or spring poles must be released, dropped or pulled to the ground.
This is a safety provision (Figure 5).
34. When necessary, roads and trails must be opened or built before the skidding operation begins.
This provision provides an incentive to the buyer to become familiar with the terrain and plan the harvesting operation accordingly.
35. Roads shall be left free of tree tops and limbs and in equal or better conditions than found.
This provision relates to access.

36. Logging will not be done during wet weather.
The goal of this statement is to prevent excessive disturbance of the soil in the forest and rutting of the haul roads in the harvest area. Responsible loggers know not to log in wet weather.
37. All activities associated with logging (e.g., felling, skidding and hauling of logs) can only be done (date) to (date) .
This provision prevents logging during specific times, such as hunting, growing or fire seasons or crop harvesting.

Items 38 through 46 should be self-explanatory.

38. Damaged fencing will be repaired at the sole expense of Buyer with fencing of like kind of existing fence.
39. No use of surrounding fields will be permitted during the growing season unless written approval is given by Seller under the same conditions, signatures and witnesses mentioned above.
40. Any damage to buildings will be paid at the sole expense of Buyer based on a written estimate obtained by Seller from a contractor for repairing the building to previous condition and quality within 30 days of the delivery of the estimate to Buyer by Seller.
41. All litter created by Buyer or Buyer's agent must be removed from the harvest area.
42. Crop damage shall be paid for by Buyer.
43. Buyers or Buyer's agents are prohibited from carrying firearms and hunting on the property.
44. Buyer agrees in a manner suitable to Seller to either remove logging debris from the loading areas or distribute said debris in the forest to facilitate the replanting of these areas when the logging operation is completed.
45. No fluids such as oil, hydraulic fluid or fuel may be drained from harvesting equipment onto Seller's property.



Figure 5. For your safety, and to avoid future liability issues, the contract should require the buyer to drop all hanging trees to the ground.

46. All tops, cull logs and other logging residues must be removed from streams, watercourses, roads, trails, fields and fences prior to completion of harvesting activities.

Summary

A written contract is essential when selling timber. Consult your professional forester for help negotiating with the buyer and preparing a draft contract. Have your attorney review the contract before closing the deal and signing the document. Make sure the contract accurately and completely represents your understanding of the agreement, that any agreements reached before signing the contract have been written into it, and that you thoroughly understand everything contained in the contract. By following these steps, you will protect your rights, your financial considerations and your share of Missouri's forestland.

Special thanks to all the professional foresters from the following organizations who reviewed the contents of this publication and provided invaluable feedback: Missouri Consulting Foresters Association, Missouri Forest Products Association, Missouri Department of Conservation Forestry Division, and University of Missouri departments of Forestry and Agricultural Economics.

Find a Missouri Master Logger at <http://www.moforest.org/MLC/mmlldirectory.html>.

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- G5051 *Selling Timber: What the Landowner Needs to Know*
 G5055 *Determining Timber Cost Basis*
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