

# NON CONSUMER

## USER TERMS AND CONDITIONS

The following Terms and Conditions will apply to your use of the Website and the Service and form part of the contract between you and us. Please read these Terms and Conditions carefully before you start to use the Website and/or the Service. If you do not agree to these Terms and Conditions, please refrain from using the Website and/or the Service.

If you wish to submit a Bid you should also review, and ensure that you are happy with, the Lot Information and Conditions (and, in particular, the Purchase Terms and Conditions) as these will form part of the legally binding contract entered into between us if your Bid is accepted by us.

The Delta Website is a site operated by BiP Solutions Ltd (hereinafter "**BiP**") on our behalf. Delta is a secure, managed. Compliant audited service. Delta provides a collaborative environment and tools for users to publish and share information, and to interact.

BiP is committed to delivering a quality service to you and BiP's customer service department operate a helpdesk. The helpdesk is available to users and may be accessed by:

- a) Phoning 0845 270 7050; or
- b) Emailing at [Helpdesk@delta-esourcing.com](mailto:Helpdesk@delta-esourcing.com)

during working hours

### 1 Definitions

In these Terms and Conditions:

"**Administrator**" means the person responsible for managing Website users of a Business;

"**Bid**" means a bid for one or more Lots submitted by a Bidder;

"**Bid Page**" means the detail page describing the Lots in the Event in question;

"**Bidding Rules**" means the bidding rules which apply to a particular Lot, as indicated on the relevant Bid Page;

"**Business**" means an organisation acting in the course of a trade who wishes to register Customers and Registered Viewers to use the Website and the Service;

"**Closing Date**" means the date and time for cessation of bidding indicated on the Bid Page for the Event in question;

"**Customer**" means a person who has applied for and successfully registered as a user of the Website who is authorised to submit Tenders and Bids for and on behalf of a Business in order to purchase the Goods from the Seller and who is not a Registered Viewer;

"**Event**" means the sale of one or more Lots posted by the Seller on the Website, the format of which will be shown on the Bid Page;

"**Lot**" means an individual quantity of timber listed for sale by the Seller as part of an Event;

"**Lot Information and Conditions**" means the detailed information and conditions relating to a Lot, including the relevant Purchase Terms and Conditions, which are available against each Lot;

"**Purchase Contract**" has the meaning given in Condition 5.6;

**"Purchase Terms and Conditions"** means the specific terms and conditions relating to the relevant Lot, as set out in the Lot Information and Conditions;

**"Registered Viewer"** means a user of the Website who has been registered for and on behalf of a Business solely with rights to access and view the Website, and not as a Customer;

**"Seller"** or **"we"** or **"us"** means the Natural Resources Body for Wales (Natural Resources Wales), Tŷ Cambria, Newport Road, Cardiff CF24 0TP and **"our"** shall have a corresponding meaning;

**"Service"** means the online bidding and purchase service offered on the Website;

**"Terms and Conditions"** means these terms and conditions;

**"Users"** means Businesses, Customers and Registered Viewers; and

**"Website"** means the BiP website dedicated to the Seller for electronic sales.

## 2 Application

- 2.1 These Terms and Conditions supersede any previously issued terms and conditions for the Website and/or Service, with the exception of the Bidding Rules, Lot Information and Conditions, Purchase Contract and the Purchase Terms and Conditions.
- 2.2 If there is a conflict between the terms contained in these Terms and Conditions, the Bidding Rules, the Lot Information and Conditions, the Purchase Contract and the Purchase Terms and Conditions, [these Terms and Conditions shall prevail].
- 2.3 No variation of these Terms and Conditions, the Bidding Rules, the Lot Information and Conditions, the Purchase Contract or the Purchase Terms and Conditions shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.
- 2.4 Each Bid by the Customer to the Seller shall be an offer to purchase subject to these Terms and Conditions.
- 2.5 Marketing and other promotional material relating to the Website and/or Service are illustrative only and do not form part of these Terms and Conditions.

## 3 Registration

- 3.1 Use of the Service and the Website is only available to persons who are capable of forming legally binding contracts under applicable law.
- 3.2 We reserve the right to accept or refuse any application for registration as a Customer or Registered Viewer at our discretion.
- 3.3 You may apply to register as a Customer or Registered Viewer. Only a duly registered Customer may submit Bids. A Registered Viewer may access and view the Website but has no authority to submit Bids.
- 3.4 By registering as a Customer you agree that you have read these Terms and Conditions, that you understand these Terms and Conditions and that you are bound by these Terms and Conditions in your use of the Service and the Website.
- 3.5 Following acceptance of first application for registration for a Business, you will be regarded as the Administrator. You will have sole responsibility for the administration and maintenance of all Customers and Registered Viewers for your Business. It will be the Administrator's responsibility to disable the accounts of Customers and Registered

Viewers no longer required. We will send you an email validating your registration and confirming your username and password.

- 3.6 Users are solely responsible for maintaining the confidentiality of usernames and passwords and shall immediately notify us of any unauthorised use of a username or password. We retain the right to disable any username or user password at any time if, in our opinion, you have failed to comply with any of the provisions of these Terms and Conditions.

#### 4 Use of the Service

- 4.1 Access to the Service is entirely at the discretion of the Seller and we reserve the right to temporarily or indefinitely suspend the availability of the Service and/or the Website temporarily or permanently without prior notice.
- 4.2 There may be circumstances where the Seller is willing to accept Bids from a particular Customer for individual Lots, but subject to an overall limit on volume bought in relation to a particular Event. Any such Customer will be required to advise the Seller of the limit before the opening time for bidding.
- 4.3 The Customer agrees to comply with any Bidding Rules or any other guidelines relating to use of the Service posted on the Website from time to time.
- 4.4 You acknowledge and confirm that you have registered to use the Website and/or the Service for purposes related to your trade, business or profession and not as a consumer, and that any Purchase Contracts which you enter into are, and will be, entered into by you for purposes related to your trade, business or profession. You hereby agree to waive all rights which you may have under Regulations 9(1), 9(2) and 11(1) of the Electronic Commerce (EC Directive) Regulations 2002.
- 4.5 We may change, suspend or discontinue any aspect of the Service (including availability of any part of the Service) for any reason whatsoever, without notice. In addition, we reserve the right, at our sole discretion, to correct any errors or omissions in any part of the Service and/or the Website.
- 4.6 You are solely responsible for all usage of the Website and the Service using your username and/or your password. Your authorisation to use the Service and the Website is personal. You are obliged to complete those transactions that occur using your username and password, whether such transactions are authorised or unauthorised.
- 4.7 You undertake and warrant to the Seller that:
- 4.7.1 you are legally capable of entering into binding contracts;
  - 4.7.2 you are not contracting as a consumer (i.e. you are seeking to contract for purposes related to your trade, business or profession);
  - 4.7.3 all information supplied by you to the Seller is, and shall be, true and accurate;
  - 4.7.4 no frivolous or vexatious Bids will be posted using your username and password;
  - 4.7.5 you will make no attempt to manipulate the bidding process at any time;
  - 4.7.6 any Bid posted using your username and password is and will be posted with your actual authority; and
  - 4.7.7 no Bid or other material posted on the Website or otherwise provided by you shall be discriminatory, obscene, illegal or infringe the intellectual property of any third

party or shall contain viruses, worms, trojans or other items of a destructive nature.

## 5 Events

- 5.1 Following acceptance by the Seller of your application for registration as a Customer, you shall be entitled to bid for Lots at an Event, in accordance with the Bidding Rules and subject to these Terms and Conditions.
- 5.2 Events posted on the Website, and the individual Lots within each Event, are in the form of an "invitation to treat". The following steps should be taken in order to make a Bid to purchase a Lot:
  - 5.2.1 you must first of all have registered through the Website as a Customer, and your application for registration as a Customer must have been accepted by us (and not suspended); and
  - 5.2.2 you must have selected a particular Lot and have made a Bid through the Website prior to the relevant Closing Date, in respect of that particular Lot, in accordance with the bidding instructions set out on the Website.
- 5.3 If and when your Bid is placed, you will have the opportunity of withdrawing your Bid (in order to correct any input errors, or otherwise) by following the procedure detailed in the bidding instructions set out on the Website. A Bid posted by you shall (unless withdrawn prior to the relevant Closing Date) constitute a binding offer for the Lot(s) in question, capable of acceptance by us in whole or in part, subject to the Bidding Rules and any volume limit specified by a Customer. No contract will exist between us unless and until we accept your Bid in accordance with the procedure set out below.
- 5.4 Each Event shall close without the need for notice to be given to Customers at the Closing Date, or of Bids being accepted (as the case may be).
- 5.5 The Seller shall be under no obligation to accept the highest or any Bid. Acceptance of Bids shall be entirely at the sole discretion of the Seller. Where no satisfactory Bid is received by the Seller the Seller may, at its sole discretion, either re-advertise the relevant Lot(s) (either as one Event, separately or as part of other Events), or approach an individual Customer or Customers and attempt to negotiate a sale. While any such approach shall be at the discretion of the Seller, the initial approach will normally be to the Customer offering the highest price in the initial Bids.
- 5.6 Acceptance by the Seller of the successful Bid for a Lot shall be notified in accordance with Condition 12 by email to the Customer in question, normally within twenty-four hours of: the Closing Date; or of the Bid being accepted; or on completion of negotiations (as the case may be). Such notification of acceptance shall create a binding purchase contract ("**Purchase Contract**") between the Seller and the successful Customer and such contract shall be deemed to incorporate the Lot Information and Conditions including the relevant Purchase Terms and Conditions.
- 5.7 Unless otherwise requested the Seller will notify unsuccessful Customers by email, normally within twenty-four hours of the Closing Date.
- 5.8 We will not file a copy of these Terms and Conditions specifically in respect of your Bid. We reserve the right to vary or update these Terms and Conditions from time to time, and we cannot therefore guarantee that the version which you have agreed to in relation to any particular Bid made by you will remain accessible. We recommend that you print and retain a copy of these Terms and Conditions for future reference.

## 6 Termination

- 6.1 We expressly reserve the right to terminate any 'Business' right to use the Service and the Website and any Registered Viewer or Customer account at our discretion, for any reason and without notice.
- 6.2 In addition, you may notify us via the Website if you wish to terminate your use of the Website and/or the Service.
- 6.3 For the avoidance of doubt, you will remain bound by these Terms and Conditions until we confirm our acceptance of termination under Condition 6.2. It is solely the responsibility of the Administrator to remove Customers and Registered Viewers once their use of the Website and/or the Service is terminated.

## 7 Liability

- 7.1 Except in respect of death or personal injury caused by the Seller's negligence, or as expressly provided in these Terms and Conditions (or to the extent to which it would be illegal or unlawful for us to exclude, or attempt to exclude, our liability) the Seller shall not be liable to Users by reason of any representation (unless fraudulent), or any implied warranty, condition or other term or any duty at common law or as a result of breach of contract and the Seller hereby excludes liability to the fullest extent permitted by law. Without prejudice to the foregoing generality, the Seller shall have no liability for any of the following:
  - 7.1.1 indirect losses which occur as a side effect of the main loss or damage, including without limitation, loss of profit, contract, information, anticipated savings or opportunity; or
  - 7.1.2 interruption to the Service (including any failure to send any notification to a User) or access to the Website.
- 7.2 Given the nature of the world wide web, which is beyond the reasonable control of the Seller, the Seller does not guarantee that the Website or the Service will be available continuously and free from faults. In addition, we may need to carry out maintenance of the Website from time to time and/or to suspend operations but in doing so shall attempt to keep any disruption to a minimum where possible.
- 7.3 Users accept full responsibility for the protection of their computer systems including hardware, software and stored data from viruses, worms, trojans or other items of a disruptive nature which may be downloaded or otherwise received from the Website. You must not attempt to interfere with the proper working of the Website or the Service and, in particular, you must not attempt to circumvent security, tamper with, hack into or otherwise disrupt any computer system, server, website, router or any other internet connected device.
- 7.4 Where the Seller communicates with or sends notifications to you by email, we will use reasonable endeavours to communicate information as soon as practicable, however Users hereby acknowledge that email deliveries may be delayed or lost, but the Seller accepts no liability in respect of any delay or loss in the receipt by the User of any notifications.

## 8 Data Protection and Confidentiality

- 8.1 Details of Bids received are confidential and information contained in Bids shall not be divulged by the Seller to other Customers other than as set out in this Condition 8. An unsuccessful Customer will, upon request, be advised by email of the reason why his/her Bid was unsuccessful, of the name of the successful Customer and of average prices for the sale (and/or, in the discretion of the Seller, the price paid by the successful Customer), but no other Bid information will be divulged to such an unsuccessful Customer.

- 8.2 Users acknowledge that all or any information provided by them to the Seller whether during registration, an update of registration or within particular Bids, may contain data protected by the Data Protection Act 1998 and Users confirm that they have no objection to the display of and dealing with any such information for the purpose of the Service. The Users warrant that they have obtained all necessary consents in respect of the use of any such data which relates to third parties and its disclosure to the Seller. The Seller will process any personal data or other information submitted by Users in accordance with these Terms and Conditions and the Seller's privacy and cookie policy – details of which are available at <http://www.forestry.gov.uk/forestry/inf-d-52ybs4>. By using the Website and/or the Service, you consent to such processing by the Seller and you warrant that all data provided by you is accurate.
- 8.3 The Seller may use information provided by a User to contact the User by email, text message, telephone or post with information on the Website and/or Service. Users may advise the Seller at any time that they do not wish their information to be used for such purposes by contacting the Seller via the Website.
- 8.4 The Seller may use information provided by Users to compile, use and to provide third parties with, aggregate statistics about the Service and related site information, but these statistics will not contain information about Users from which Users could be identified.

## 9 Freedom of Information

You acknowledge that we may receive requests from third parties to disclose certain information in terms of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. Where we feel that such disclosure is necessary to enable us to meet our obligations under the said Act or Regulations, we will endeavour to advise you prior to disclosing the information to the relevant third party. You hereby acknowledge that any disclosure by us under the said Act or Regulations will not constitute a breach of Condition 8.1 or of any of our other obligations under these Terms and Conditions.

## 10 General

- 10.1 The Seller may amend, modify or supplement these Terms and Conditions, and the Purchase Terms and Conditions, at any time by posting the amended, modified or supplemented terms on the Website. The amended, modified or supplemented Terms and Conditions and/or Purchase Terms and Conditions shall be automatically effective five days after being posted on the Website. The foregoing shall not affect any transactions which are in progress as of the date and time of such amendment, modification or supplementing, which transactions shall continue to be governed by the previous Terms and Conditions and relevant Purchase Terms and Conditions.
- 10.2 Nothing in these Terms and Conditions or a Purchase Contract shall create, or be deemed to create, a partnership or a relationship of employer and employee between the Seller and the Users.

## 11 Governing Law and jurisdiction

These Terms and Conditions, use of the Website and the Service shall be governed by and construed in accordance with the applicable law of the country where the Event takes place. The courts of the Country where the Event takes place shall have non-exclusive jurisdiction.

## 12 Notices

Save as otherwise provided, notices under these Terms and Conditions shall be in writing and may be served by either sending the notice by email or by post addressed to the other party at the address provided on website or such other address as that party shall from time to time give to the other party for the purpose of service of notice hereunder and every such notice shall be deemed to have been served as follows: if served by post, at the expiry of four days after

despatch; or if sent by email at 10.00am local time on the next normal business day of the recipient following despatch and in proving service it shall be sufficient to show in the case of an email that no failed delivery notice is received and in the case of a letter that the same was duly addressed, pre-paid and posted in the manner aforesaid.

## 12 Complaints and concerns

If you have any complaints, or any concerns about any material which appears on the Website, please use the Website contacts

## 13 Cookies

Like most interactive websites, the Service uses cookies to enable us to retrieve User details for each visit. Cookies are used in some areas of the Service to enable the functionality of this area and ease of use for those Users visiting. The Seller uses cookies in accordance with the Seller's privacy and cookie policy – details of which are available at <http://www.forestry.gov.uk/forestry/infd-52ybs4>.

## 14 No partnership or agency

The Users and the Seller are independent persons and are not partners, principal and agent or employer and employee and these Terms and Conditions do not establish any joint venture, trust fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither the Users nor the Seller shall have, nor shall represent that they have, any authority to make any commitments on the other's behalf.