

The Irish Farmers' Association Farm Forestry Section



MASTER FORESTRY CONTRACT



In co-operation with the
Irish Timber Growers' Association



THE DEPARTMENT OF
AGRICULTURE, FOOD &
RURAL DEVELOPMENT
AN ROINN TALMHAÍOCHTA,
BIA AGUS FORBARTHA TUAITHE

Notice to User

1. Disclaimer

The Irish Farmers' Association (IFA), the Minister for Agriculture and Food, the European Union and the Irish Timber Growers' Association (ITGA) or their agents will not accept any liability or responsibility in regard to any defects or omissions in this Master Contract.

2. Legal/Taxation Advice/Contract Duration

The IFA and ITGA would advise all potential users of this Contract to contact their own Solicitor for the purposes of obtaining independent legal advice and to ensure that the Master Contract is amended to suit the circumstances of their own particular situation. In addition it is recommended that users should consider contacting their accountants in relation to Tax Clearance Certificates and possible VAT requirements. Where a potential user of this Contract believes that it is in his/her best interest to secure the services of a Contractor for the purposes of management/maintenance of his/her plantation over a period longer than the duration of this Master Contract (which in the normal course terminates on payment of the second installment of the Afforestation Grant) it is of course open to him/her to negotiate a suitable contractual arrangement with a Contractor. In any such circumstances he/she should also seek independent legal advice before entering into any commitment.

3. Insurance

Potential users of this Contract should review their Insurance Policies to see whether or not the policy will cover and indemnify the scope of work and possible liabilities that may arise as a result of this Contract.

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This Contract made the

day of

Year

Between

of

(hereinafter called “the Employer” which expression shall where the context so admits or requires include his successors in title and assigns) of the one part and having its registered office / carrying on business at:

(hereinafter called “the Contractor” which expression shall where the context so admits or requires include its successors in title and assigns of the other part.)

DELETE EITHER A OR B AS APPROPRIATE

(A Whereas the Employer is the beneficial owner of lands specified in the First Schedule hereto and)

(B Whereas the Employer, with the consent of and at the direction of the beneficial owner (hereinafter called the “Land Owner”) of the lands specified in the First Schedule hereto, (the said written Consent having been signed by the said Land Owner and attached to the Sixth Schedule hereto.)

:- has agreed to employ the Contractor to develop, plant, manage and maintain for the purpose of forestry establishment on said lands in accordance with the Approved Specifications attached as the Third Schedule hereto and to a standard acceptable by the Department of Agriculture and Food for the purposes of Afforestation Grant Scheme and Forest Premium Scheme approval. The Employer in consideration of the Contractor entering into this Contract hereby licenses the Contractor, its agents, employees and nominees to enter on to the Forestry Lands for the sole purpose of the Contractor carrying out its obligations arising under this Contract.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

In this Contract the following expressions shall have the following meanings unless otherwise indicated in the Contract.

- a) “Department” means the Department of Agriculture and Food or the Department for the time being responsible for the administration of the Afforestation Grants and Forest Premium Scheme.
- b) The “Forestry Lands” means the lands more particularly described in the First Schedule hereto.
- c) “Grant Scheme” shall mean the Afforestation Grant Scheme administered by the Department or any subsequent amendment thereof.
- d) “Premium Scheme” shall mean the Forest Premium Scheme administered by the Department or any subsequent amendment thereof.
- e) “The Schemes” shall mean the two said schemes administered by the Department or any subsequent amendment thereof.

- f) "Grant Approval" shall mean approval by the Department for the purposes of the Grant Scheme and/or the Premium Scheme, such approval being in the form of a letter issued by the Department.
- g) "Afforestation Grant" shall mean the Afforestation Grant paid pursuant to the Grant Scheme.
- h) Words importing the masculine gender only shall include feminine, neuter and common genders and words importing the singular number only shall include the plural number and vice versa.

2. Grant Approval

It shall be a condition precedent to this Contract that the Employer shall obtain Grant Approval under the Grant Scheme from the Department in respect of the Forestry Lands.

3. Tax Clearance

- 3.1 Both the Employer and Contractor confirm that they will comply with Tax Clearance procedures as required by the Department for the purposes of the Schemes and the Contractor will produce a tax clearance certificate if so requested by the Employer.

4. Extent of Work – Contractor

- 4.1 The Contractor will undertake all the work required for the duration of this Contract, more detailed specifications being annexed to the Approved Specifications which constitutes the Third Schedule hereto.
- 4.2 Save where as otherwise provided in the Approved Specifications the following will apply:-
 - 4.2.1 All work is to be done to a standard acceptable to the Department for the purposes of payment under the Schemes and is to be in accordance with Grant Approval issued by the Department and the Contractor undertakes to comply with the most recent Forestry Schemes Manual, Code of Best Forest Practice –Ireland and the guidelines published by the Department as set out in the Second Schedule hereto and with any amendment to same and with any other guidelines issued by the Department from time to time.
 - 4.2.2 The Contractor undertakes to plant in number and at a spacing acceptable to the Department a species of trees approved of by the Department.
 - 4.2.3 The Contractor will adequately fence and protect the forestry plantation and the fencing used is to be of a standard approved of by the Department.
 - 4.2.4 The Contractor will be responsible for ensuring that the Forestry Lands are eligible for payment of the second installment of the Afforestation Grant by the Department by ensuring that:-
 - a. the forestry plantation has been maintained to achieve satisfactory establishment.
 - b. that there is an adequate number of healthy trees surviving to ensure the quality of the forest crop.
 - c. that drainage is still effective on the forestry lands.
 - d. that the condition of the gates and fences surrounding the forestry lands is satisfactory .
 - e. such other standard conditions that may be required by the Department from time to time are complied with.
- 4.3 The Contractor undertakes to indemnify the Employer against any loss of payments

that may be made by the Department under the Schemes owing to the Contractor's negligence, breach of duty (including statutory duty) in the performance of its obligations arising under this Contract.

4.4 The Contractor undertakes to commence planting () weeks after the issue of the Grant Approval. In the event that Grant Approval issues outside the recommended season for planting the species of tree/s provided for in the Contract then the Contractor will commence planting as soon as practicable after the new season commences.

4.5 The Contractor shall be entitled to sub-contract work required to be done under this Contract and shall ensure that any such sub-contractors are capable of carrying out the work required under this Contract.

4.6 The Contractor undertakes to fully comply with the Code of Practice for Managing Safety and Health in Forestry Operations as published by the Health and Safety Authority as may be amended from time to time.

5. Employer's Responsibilities

5.1 The Employer will maintain the forestry plantation and will keep and maintain the fencing erected in pursuance of Section 4.2.3 after the date of payment of the second installment of the Afforestation Grant, unless otherwise agreed between the parties hereto.

5.2 The Employer will ensure that any livestock belonging to the Employer and any activities conducted by or on behalf of the Employer will not interfere with the operations of the Contractor required under this Contract.

5.3 The Employer agrees to indemnify the Contractor from and against all actions, suits, costs and damages arising out of loss or damage to the Forestry Lands or death, injury, loss or damage to any person or property arising from or caused by the negligence of the Employer, its servants or agents.

5.4 The Employer undertakes to indemnify the Contractor against any loss of payments that may be made by the Department under the Schemes owing to the Employer's negligence, breach of duty (including statutory duty) in the performance of its obligations arising under this Contract.

6. Liability

6.1 The Contractor will arrange and put in place prior to the commencement of the works proper and adequate insurance cover for Employers and Public Liability in respect of the Contractor's use of the Forestry Lands for and during the duration of this Contract.

6.2 The Contractor shall further arrange at its own cost to provide, for the duration of the Contract, fire insurance to cover the cost of any Capital loss only arising from any such fire and it is hereby agreed that the Employer / Contractor will make an application to the Department under the relevant scheme (if any) for Grant Assistance towards the costs of re-planting the Forestry Lands.

6.3 The Contractor shall at the Employers request produce the insurance documents in relation to Section 6.1 and 6.2 above.

6.4 The Contractor agrees to indemnify the Employer from and against all actions, suits, costs and damages arising out of injury, death or loss incurred by any employee, servant, agent, invitee or sub-contractor of the contractor or any third party or any destruction or damage to any property caused by the negligence, breach of duty including statutory duty of the contractor, its servants or agents and further agrees to indemnify and keep indemnified the Employer in respect of all such actions, suits, costs and damages in respect of any such loss, injury, death or damage.

7. Force Majeure

7.1 If the performance or observance of either party hereto of any of its obligations under this Contract is prevented or hindered or any failure on the part of either party to perform or observe its obligations is caused by reason of Force Majeure then such a failure shall not constitute a breach of the Contract.

7.2 The expression "Force Majeure" shall mean any occurrence or circumstances or a combination thereof beyond the control of the party concerned and shall include but shall not be limited to the following:

Acts of God or forces of nature, strikes, lockout or other industrial disturbances, acts of war, civil disturbances.

8. Arbitration

8.1 Subject to Section 8.3 below any dispute or difference arising between the parties hereto with regard to this Contract or the rights, duties or liabilities of any party hereunder or with regard to the construction of any of the clauses of this Contract or as to any act or thing to be done in pursuance thereof or arising out of anything herein contained during the continuance of this Contract or by any act of either of the parties hereto or otherwise shall be referred to a single arbitrator to be appointed by agreement between the parties, or in the case of difference, an arbitrator to be appointed by the President for the time being of the Law Society of Ireland at the instance of the party first applying to the said President and this shall be deemed a reference within the provision of the Arbitration Act 1954/1998 or any subsequent statutory modification thereof.

8.2 The decision of the arbitrator shall be binding on all parties.

8.3 Disputes between the parties for simple contract debt will not be referred to an arbitrator but will be referred to the relevant Court.

9. Notices

9.1 Any notice required to be given by either party under the terms of this Contract will (save as otherwise provided) be given by delivery of ordinary post or facsimile (confirmed by ordinary post) addressed to the party to whom it is intended at its last known place of business/residence/registered office.

9.2 Every notice shall be deemed to have been received and given at the time of delivery and if sent by ordinary post when in the ordinary course of transmission it should have been delivered to the address to which it was sent or within 72 hours after the date of dispatch.

10. Termination

10.1 Without prejudice in particular to Section 12 and to other provisions contained within this Contract if:-

10.1.1 Either party is in material breach of the obligations and agreements on its part contained in this Contract and/or;

10.1.2 Subject to 10.1.3, payment of any sum due by the Employer to the Contractor under this Contract remains unpaid for a period of () days after same become due unless such said sums are due to be paid by the Department to the Contractor on foot of the Mandate as set out in the Fifth Schedule hereto and the delay is not due to the fault of the Employer and/or;

- 10.1.3 In the event that the sum due to the Contractor is to be paid out of sums to be received by the Employer from the Department under the Grant Scheme and such sum remains unpaid for a period of () days after same is paid by the Department to the Employer and/or;
- 10.1.4 Either party becomes insolvent, commits an act of bankruptcy, or goes into liquidation or has a Receiver, Examiner or other similar official appointed in respect of all or a substantial part of its business
- 10.2 Then the innocent party may forthwith, without notice, terminate this Contract. Any such termination shall be without prejudice to the rights of the parties accrued to the date of termination and without prejudice to any other legal remedies that may be open to that party.
- 10.3 It is hereby agreed that the party terminating the Contract will notify, within 10 days, in writing the Department of said termination.

11. PAYMENT (DELETE A OR B AS APPROPRIATE)

A Direct Payment

- 11.1 The consideration payable by the Employer to the Contractor for providing the services as provided for within this Contract shall be the sum of € to be paid in the manner as set out in the Fourth Schedule hereto.

B Mandated Payment

- 11.1 The consideration payable by the Employer to the Contractor for providing the services as provided for within this Contract shall be the estimated sum of €
- 11.2 This estimated sum is to be paid by way of the Employer mandating the first installment and/or the second installment of the Afforestation Grant payable under the Grant Scheme from the Department to the Contractor.
- 11.3 The Employer hereby agrees to sign the mandate form as set out in the Fifth Schedule to this Agreement required by the Department to authorise the payment of said first installment and/or second installment of the Afforestation Grant to the Contractor.
- 11.4 The application for all such Grants shall be made at the expense of the Contractor.
- 11.5 The sum payable pursuant to the Grant Scheme is to be the sum that is paid by the Department pursuant to its Standard schedule of Grant payments and the standard terms and conditions attaching thereto being current at the time of the entering into the Contract by both parties.
- 11.6 The Employer shall be deemed to be the grant recipient for the purposes of the Schemes.
- 11.7 In the event that the first installment and/or the second installment of the Afforestation Grant paid by the Department is different from the estimated sum agreed above at 11.1 then the first installment and/or the second installment of the Afforestation Grant agreed to be paid by the Department under the Grant Scheme as provided for in 11.5 shall be deemed to be the consideration for this Contract unless, following receipt of Grant Approval and before payment of the first installment of the Afforestation Grant, it is agreed between both the Employer and the Contractor that an other sum is to be paid for the Contractor's services. Any such agreement for any such other sum is to be in writing and annexed to this Contract and will be subject to the terms and conditions of this Contract.

First Schedule

Forestry Lands

ALL THAT AND THOSE part of the lands situated in the Townland of

and County of
being part of Folio
consisting of
attached hereto and delineated in red.

in the County of
acres/hectares as more particularly delineated on the map

Second Schedule

Department's Guidelines

1. Afforestation Grant and Premium Schemes Brochure
2. Forestry Schemes Manual
3. Code of Best Forest Practice-Ireland
4. Forestry and Water Quality
5. Forestry and Archaeology Guidelines
6. Forestry and the Landscape Guidelines
7. Forestry and Biodiversity Guidelines
8. Forestry and Arial Fertilisation Guidelines
9. Forest Harvesting and the Environment Guidelines
10. Forest Protection Guidelines
11. Forest Recreation Guidelines
12. Forestry and Environmental Impact Assessment (EIA) Guidelines

Third Schedule

Approved Specifications

Fourth Schedule

Details of Payment

1. Sum payable
2. Timing of payment
 - 2.1 First Instalment of the Afforestation Grant on receipt from the Department
 - 2.2 Second Instalment of the Afforestation Grant on receipt from the Department
3. Method of Payment

Fifth Schedule Mandate

Whereas by way of **CONTRACT** made the _____ day of _____ Year

BETWEEN _____

Of _____
(hereinafter called “the Employer”) of the one part and

having its registered office / carrying on business at

(hereinafter called “the Contractor”)

**AND IN CONSIDERATION OF SAID CONTRACT THE EMPLOYER HEREBY
AUTHORISES AND DIRECTS** that the Minister of the Department do pay:-

1. The First Instalment of the Afforestation Grant due to the Employer.
2. The First and Second Instalments of the Afforestation Grant payments due to the Employer

(*Delete 1 or 2 as applicable)

payable under the Afforestation Grant Scheme in respect of the Employer’s proposed development of Forestry Lands of approximately _____ hectares

at

town land in the County of

direct to _____ of the Contractor.

Sixth Schedule

Consent of Land Owner where the Land Owner is not the Employer

I, _____

Of _____

being the owner of the Lands comprised in the First Schedule hereto do hereby consent to

the use of the said land by _____ (the Employer)
for the purposes of the within Contract and I hereby license the Contractor its agents,
employees and nominees to enter on to the said Lands for the sole purpose of the Contractor
carrying out its obligations arising under this Contract and I hereby agree to be bound by
Sections 13 and 14 of the within Contract.

Signed this _____ day of _____ Year

by the said Land Owner

Witnessed by:

Signed this _____ day of _____ Year

by the said Employer:

Signed Sealed and Delivered

by the said Contractor:

**This project has been grant assisted by
The Department of Agriculture and Food (Forest Service) under
The National Development Plan 2000-2006**