



Western Australia

## **Wood Chipping Industry Agreement Act 1969**

The Act was repealed by the *Statute Law Revision Act 2006* s. 3(1)  
(No. 37 of 2006) as at 4 Jul 2006 (see s. 2).



Western Australia

## Wood Chipping Industry Agreement Act 1969

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## Wood Chipping Industry Agreement Act 1969

**An Act to approve an agreement between the State of Western Australia, the W.A. Chip & Pulp Co. Pty. Ltd. and Bunning Timber Holdings Ltd. relating to the establishment and carrying on of a wood chipping industry and other purposes.**

**1. Short title**

This Act may be cited as the *Wood Chipping Industry Agreement Act 1969*<sup>1</sup>.

**2. Interpretation**

In this Act —

**“the Agreement”** means the Agreement a copy of which is set out in the First Schedule, and if the Agreement is amended in accordance with the provisions thereof, includes the Agreement as so amended from time to time;

**“the Variation Agreement”** means the Agreement a copy of which is set out in the Second Schedule.

*[Section 2 amended by No. 34 of 1973 s. 2.]*

**3. Approval of the Agreement**

The Agreement is approved.

**3A. Ratification of Variation Agreement**

The Variation Agreement is ratified.

*[Section 3A inserted by No. 34 of 1973 s. 3.]*

**4. By-laws**

By-laws may be made for the purposes of, and in accordance with clause 7 of the Agreement, and the by-laws —

- (a) shall be published in the *Gazette*;
- (b) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the order making them;
- (c) may prescribe penalties not exceeding \$100 for a breach of any of the by-laws;
- (d) are not subject to section 36 of the *Interpretation Act 1918*<sup>2</sup>, but shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Gazette*; and
- (e) may be altered or repealed as provided in clause 7 of the Agreement.

## The Schedules

*[Heading inserted by No. 34 of 1973 s. 4.]*

### First Schedule

*[Heading inserted by No. 34 of 1973 s. 4.]*

#### WOOD CHIPS AGREEMENT

AN AGREEMENT under seal made the 28th day of June One thousand nine hundred and sixty-nine BETWEEN THE HONOURABLE CRAWFORD DAVID NALDER, M.L.A. Acting Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and instrumentalities thereof from time to time (hereinafter referred to as “the State”) of the first part W.A. CHIP & PULP CO. PTY. LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 49 Charles Street, Perth, in the said State (hereinafter called “the Company” which term shall include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under Clause 31 hereof) of the second part and BUNNING TIMBER HOLDINGS LTD. a company incorporated as aforesaid and having its registered office at 49-61 Charles Street, Perth, aforesaid (hereinafter called “the Guarantor” which term shall include the successors of the Guarantor) of the third part.

WHEREAS the parties hereto desire to enter into this Agreement with the objects of: —

- (a) the establishment and carrying on in the vicinity of Manjimup of a wood chipping industry;
- (b) the transport by rail to and export through the port of Bunbury of not less than five hundred thousand (500,000) tons per annum green weight of wood chips; and
- (c) the investigation in due course of the feasibility of the establishment of a pulp mill and other installations for the processing of wood chips into unbleached wood pulp;

and to do all acts matters and things to attain and facilitate the abovementioned objects.

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NOW THIS AGREEMENT WITNESSETH and the parties hereto  
COVENANT AND AGREE with one another as follows: —

**Definitions<sup>3</sup>**

1. In this Agreement subject to the context —

“access channel” means the channel to be dredged as hereinafter provided to provide access for shipping to the new inner harbour at the port of Bunbury;

“berth” means the new dolphin berth to be constructed in the new inner harbour at the port of Bunbury;

“chipping mill site” means the land in the vicinity of Diamond in the said State comprising approximately sixty-five (65) acres or thereabouts delineated and edged in red and shown on the plan marked “A” and initialled on behalf of the parties hereto for the purposes of identification (other than the public roads shown on such plan) and such other land as the parties may agree upon from time to time;

“commencement date” means the date on which the Minister signifies in writing that he is satisfied as to the matters referred to in Clause 2 hereof;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and the Guarantor and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“Port Authority” means the Bunbury Port Authority constituted by the *Bunbury Port Authority Act 1909*;

“production area” means the land the subject of a licence granted to the Company under the provisions of paragraph (a) of subclause (1) of Clause 4 hereof;



- “Railways Commission” means the Western Australian Government Railways Commission constituted pursuant to the *Government Railways Act 1904*;
- “ratifying Act” means the Act referred to in subclause (1) of Clause 3 hereof;
- “stockpile area” means the land at the port of Bunbury in the said State delineated and edged in red and subject to survey shown on the plan marked “B” and initialled on behalf of the parties hereto for the purposes of identification and such other land as the parties may agree upon from time to time;
- “the State” or “the said State” means the State of Western Australia;
- “this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;
- “ton” means a ton of two thousand two hundred and forty (2,240) lbs;
- “unbleached wood pulp” means wood pulp in which the natural colour has not been further reduced by a chemical process;
- “wood chips” means chips of marri, karri, jarrah or other species approved pursuant to the Forest Produce (Chipwood) License referred to in paragraph (a) of subclause (1) of Clause 4 hereof and which are of a size and quality normally specified for the production of wood pulp;
- “work sites” includes the production area chipping mill site stockpile area any railway track and sidings constructed and maintained by the Company for the purposes of this Agreement and the land comprised in or the subject of any lease license or easement granted or given hereunder;
- “year 1” means the year next following the date on which wood chips are first consigned for carriage on the State’s railway between Diamond and Bunbury and “year” followed immediately by any other numeral has a corresponding meaning;
- reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in

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substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

marginal notes shall not affect the interpretation or the construction of this Agreement<sup>3</sup>.

**This Agreement Conditional<sup>3</sup>**

2. (1) Upon the execution of this Agreement the State shall be obliged to introduce and sponsor the Bill mentioned in Clause 3 hereof and if so requested by the Company shall be obliged to proceed with the design and specifications of the berth provided for in subclause (1) of Clause 6 hereof but no other provision hereof shall be of any effect unless and until the Company at some time prior to the 30th day of June, 1969 establishes to the reasonable satisfaction of the Minister, and the Minister signifies in writing that he is so satisfied, that: —

- (a) the Company has entered into or intends to enter to contracts or arrangements satisfactory to the Company and the State for the sale by the Company of wood chips;
- (b) the Company has obtained or will obtain any export license or licenses required under Commonwealth law for any wood chips intended for export; and
- (c) the Company has made or is about to make arrangements satisfactory to the Company and the State for financing the works referred to in Clause 8 hereof and that the Company proposes to proceed with such works.

(2) The date of the 30th day of June, 1969 mentioned in subclause (1) of this Clause may be extended to the 15th day of August, 1969 if the Company produces evidence to the reasonable satisfaction of the Minister that such extension is necessary.

**Ratifying Act<sup>3</sup>**

3. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to ensure its passage as an Act prior to the 31st day of October, 1969, or such later day as the parties hereto may agree upon. If the Bill is not so passed as an Act before the 31st day of October, 1969 (or such later day (if any) as the parties hereto may agree

upon) this Agreement shall be of no force or effect and none of the parties hereto shall have any claim against the other or others of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.

(2) If the Bill to ratify this Agreement is passed as an Act before the 31st day of October, 1969 (or such later day as aforesaid) the following provisions of this Clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely —

- (a) the State and any Ministers of the State herein mentioned or referred to shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder; and
- (b) the State may by agreement acquire or compulsorily take or resume as for a public work within the meaning of the *Public Works Act 1902* any land or any estate or interest in land which in the opinion of the State is reasonably required for the objects of this Agreement and may thereafter dispose of or deal with the same in accordance with or for the purposes of this Agreement apart from the provisions of that Act or any other Act AND when any land is to be so compulsorily taken or resumed under the powers conferred by this paragraph the provisions of subsections (2) to (7) inclusive of Section 17 and Section 17A of the *Public Works Act 1902* shall not apply to or in respect of the land or to the taking thereof except that notice of intention to take or resume the land shall be given in accordance with the provisions of paragraph (b) of subsection (2) of section 17 of the said Act.

4. (1) As soon as conveniently may be after the coming into operation of the ratifying Act and the signification by the Minister of his being satisfied as to the matters mentioned in Clause 2 hereof the State shall on the written application of the Company cause to be granted to the Company under the provisions of the *Forests Act 1918* —

**Production Area**<sup>3</sup>

- (a) a Forest Produce (Chipwood) License to fell cut and remove trees in and from the area delineated on the plan attached to the said license which shall be for a period commencing on the date of the

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application for a license and ending fifteen (15) years after the date of the first export of wood chips and be in the form of the schedule hereto and shall be granted on and subject to the special conditions therein contained; and

**Chipping Mill Site<sup>3</sup>**

- (b) a lease of the chipping mill site on the following terms and conditions namely: —
- (i) for a term of seventeen (17) years from the commencement date;
  - (ii) at a rental computed at the rate of two dollars (\$2.00) per acre per annum PROVIDED HOWEVER that no rental shall be payable in respect of any land comprised in the chipping mill site which is acquired taken or resumed by the State for the purpose of such site under the provisions of paragraph (b) of subsection (2) of Clause 3 hereof where the Company reimburses the State for the costs of such acquisition taking or resumption under the subsequent provisions of this Clause;
  - (iii) subject to the payment by the Company of the royalty provided in the said Forest Produce (Chipwood) License and to the due and punctual performance by the Company of its obligations hereunder; and
  - (iv) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

The Company on demand shall pay to the State a sum sufficient to reimburse the State for the cost of acquiring taking or resuming any land required for the chipping mill site and any necessary rail access thereto. The State shall endeavour to acquire take or resume any such land at reasonable cost.

**Extension of Area of Chipping Mill Site<sup>3</sup>**

(2) The Company may at any time during the continuance of this Agreement submit application to the State to have added to the area of the lease of the chipping mill site such further area as is specified in the said application for the purpose of extending the Company's operations under or for the

purposes of this Agreement and the State shall, having regard to the reasonable requirements of the Company's operation, and the overall development of the area and its use by other parties cause such further area to be added to the area of the lease of the chipping mill site and the rental payable under sub-paragraph (ii) of paragraph (b) of subclause (1) of this Clause shall be adjusted accordingly. The State shall not unreasonably withhold its approval of such application.

(3) If on the expiration of the period of the Forest Produce (Chipwood) License there are then available adequate resources of suitable species of timber —

- (a) such license may be renewed for such further period and on such special conditions as the Minister may in his discretion determine; and
- (b) subject to such renewal of the Forest Produce (Chipwood) License the lease of the chipping mill site shall be renewed for such term as will enable such lease to expire on the same day as the renewed license shall expire.

(4) The *Forests Act 1918* shall be deemed to be so amended varied and modified as to enable the said license and lease and any renewals thereof to be granted on the terms and conditions aforesaid.

### **Stockpile Area at Port<sup>3</sup>**

5. (1) As soon as conveniently may be after the coming into operation of the ratifying Act and the signification by the Minister of his being satisfied as to the matters mentioned in Clause 2 hereof the State shall on the written application of the Company cause the stockpile area to be reclaimed.

(2) Upon the completion of the reclamation the State shall on the written application of the Company cause the stockpile area to be leased to the Company on the following terms and conditions: —

- (a) for a term co-terminous with the term of the lease of the chipping mill site;
- (b) at a rental computed at the rate of two hundred dollars (\$200.00) per acre per annum;

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- (c) the due and punctual performance by the Company of its obligations hereunder;
- (d) the grant in favour of the Company of a license —
  - (i) to enable the Company to erect a conveyor to convey wood chips from the stockpile area to the berth; and
  - (ii) for the purpose of the servants workmen agents and contractors of the Company entering upon the land the subject of the license to enable them to construct use and maintain that conveyor at all times;
- (e) that the cost of any boundary survey required by the State be paid by the Company; and
- (f) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

(3) The State will endeavour to ensure that no use is made of land in the proximity of the stockpile area likely to contaminate wood chips stockpiled thereon PROVIDED THAT no failure by or inability of the State to ensure as aforesaid shall be deemed to be a breach of this Agreement on the part of the State or to involve the State in any liability to the Company.

**State's Obligations<sup>3</sup>**

6. (1) The State shall: —

**Design of Berth<sup>3</sup>**

- (a) as soon as practicable after the execution of this Agreement and notwithstanding that the Bill referred to in Clause 3 hereof has not been introduced and subject to the provisions of paragraph (b) of subclause (2) of this Clause at the request of the Company proceed with the design and specifications of the berth which design and specifications shall be mutually agreed by the State and the Company;
- (b) subject to the performance by the Company of its obligations under subclause (2) of this Clause —

**Construction of Berth**<sup>3</sup>

- (i) as soon as possible after the completion of the design and specifications construct or cause to be constructed the berth AND complete such construction not later than twenty-four (24) months after the commencement date;
- (ii) dredge the berth to a depth of thirty-six (36) feet below Bunbury Port Datum the access channel to a bottom width of four hundred (400) feet and to a depth of thirty-six (36) feet below Bunbury Port Datum the turning basin to a bottom width of twelve hundred (1,200) feet and a depth of twenty-five (25) feet below Bunbury Port Datum AND use its best endeavours to complete such dredging not later than twenty-four (24) months after the commencement date;

**Loading Facilities — License**<sup>3</sup>

- (c) upon request in writing by the Company cause the Company to be granted a license to use the berth for the construction of such bulk loading facilities for the Company's exclusive use as are reasonably required by the Company therefor and shall not acquire (save as provided by paragraph (c) of Clause 24 hereof) any property in the bulk loading facilities by reason of being affixed to the berth;

**Priority to ships loading wood chips**<sup>3</sup>

- (d) provided that the Company complies strictly with the provisions of paragraph (d) of subclause (2) of this Clause and at all times uses methods and facilities approved by the Minister for the loading of wood chips all ships requiring the berth for the purpose of loading wood chips produced from the production area and chipping mill site shall be entitled at all times to the use of the berth in priority to all other ships.

**Company's obligations**<sup>3</sup>

- (2) The Company shall: —

**Contribution to cost of reclamation and dredging**<sup>3</sup>

- (a) pay to the State the sum of two million nine hundred thousand dollars (\$2,900,000) (being part of the estimated cost of the

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reclamation of the stockpile area and the dredging of the berth turning basin and access channel) by the instalments and at the times hereinafter specified, namely: —

- (i) one million dollars (\$1,000,000) thirty (30) days after the commencement date;
  - (ii) one million dollars (\$1,000,000) twelve (12) months after the commencement date; and
  - (iii) the balance of nine hundred thousand dollars (\$900,000) twenty-four (24) months after the commencement date;
- (b) if the Company's request to the State under paragraph (a) of subclause (1) of this Clause is made before the commencement date submit to the Minister at the time such request is made evidence satisfactory to the Minister of the availability of not less than one million dollars (\$1,000,000) of the said sum of two million nine hundred thousand dollars (\$2,900,000);
- (c) construct the bulk loading facilities referred to in paragraph (c) of subclause (1) of this Clause together with any necessary foundations supports trestles and pilings with a minimum capacity approved by and to the satisfaction of the Minister in accordance with the plans and specifications therefor approved in writing by the State and in particular in such manner that the loading or unloading of cargoes for other persons who may from time to time require the use of the berth shall not be unduly restricted while wood chips are not being loaded at the berth AND the Company shall in the event of it removing the whole or any part of the bulk loading facilities restore to the satisfaction of the State that part of the berth used or occupied by the bulk loading facilities or to which the same was affixed;
- (d) at all times and from time to time —
- (i) give reasonable notice to the Port Authority of the periods respectively required at the berth by ships engaged in transporting wood chips;
  - (ii) give not less than eight (8) days notice to the Port Authority of the respective dates and times a ship is expected to arrive at and depart from the berth;



- (e) throughout the continuance of this Agreement subject to and in accordance with by-laws made pursuant to Clause 7 hereof and which shall include provision for reasonable charges and subject to paragraph (d) of subclause (1) of this Clause allow the State and third parties to use the Company's bulk loading and other facilities at the berth provided that such use does not unduly prejudice or interfere with the Company's operations hereunder;
- (f) at all reasonable times at the request of the State whilst the berth is being designed and the specifications being drawn make available on the Company's behalf a person for consultation with the officers servants or agents of the State in respect of the design of the berth or of the specifications therefor.

**By-laws<sup>3</sup>**

7. At the reasonable request of the Company from time to time the Minister shall recommend to the Governor in Executive Council that he make alter or repeal as may be desirable by-laws in respect of the management or use of any of the Company's facilities that have been constructed pursuant to this Agreement. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the State may reasonably require or in the event of there being any dispute as to the reasonableness of such requirement then as may be decided by arbitration hereunder.

**Establishment and Expenditure<sup>3</sup>**

8. (1) Subject to the provisions of subclause (2) of this Clause the Company shall within three (3) years next following the commencement date and at a cost of not less than eleven million dollars (\$11,000,000) (inclusive of the Company's contribution of two million nine hundred thousand dollars (\$2,900,000) to the cost of reclamation and dredging as provided for in subclause (2) of Clause 6 hereof) construct install establish and provide on the work sites a chipping mill and all other necessary ancillary works buildings plant equipment and services designed to produce transport by rail to the berth and load into ships at the berth not less than five hundred thousand (500,000) tons green weight of wood chips per annum.

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(2) If after written submission by the Company the Minister is satisfied that a capital expenditure by the Company of a lesser sum than eleven million dollars (\$11,000,000) is sufficient to enable the Company to carry out its obligations under subclause (1) of this Clause and otherwise under this Agreement the Minister may in his absolute discretion approve such lesser sum as sufficient for the purposes of this Agreement.

(3) Plans and specifications for the said mill and all such works buildings plant equipment and services shall be submitted to the Minister not later than six (6) months after the commencement date.

(4) Within two (2) months after receipt of any of the said plans and specifications the Minister shall give to the Company notice either of his approval thereof or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new plans and specifications to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the plans and specifications or new plans and specifications (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company but the Minister shall in any notice to the Company disclose his reasons for any such alteration or condition. Within one (1) month of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within one (1) month thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within one (1) month after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of one (1) month cease and determine (save as provided in paragraphs (b) and (c) of Clause 24 hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

**Wharfage<sup>3</sup>**

9. (1) Subject to the provisions of subclause (2) of this Clause the Company shall throughout the continuance of this Agreement pay to the Port Authority a wharfage charge of fifteen (15) cents on every ton of wood chips loaded into ships at the berth.

**Escalation of wharfage<sup>3</sup>**

(2) The wharfage charge payable under subclause (1) of this Clause shall, if the Port Authority in its absolute discretion requires, on the 1st day of January, 1975 and at the beginning of every third year thereafter, be increased by a sum equal to the amount by which the wharfage charge then payable on minerals metallics and earthy products at Bunbury shall exceed thirty (30) cents per ton (being the amount of such charge at the date hereof).

(3) The exercise of the discretion conferred on the Port Authority by subclause (2) of this Clause shall not give rise to any dispute or difference referable to arbitration under Clause 26 hereof.

**Other Charges<sup>3</sup>**

10. The State may make or cause to be made against vessels using the berth the usual charges from time to time prevailing in respect of the usual services rendered to vessels by the State or any agency instrumentality or local or other authority in or of the State and may charge vessels using the berth such conservancy and pilotage charge or dues as are payable from time to time pursuant to the provisions of any Act.

**Inspection of Records<sup>3</sup>**

11. Throughout the continuance of this Agreement the Company shall permit a nominee of the State to inspect at all reasonable times the books of account and records of the Company relative to the production of wood chips on the chipping mill site and any sale or export thereof from the berth and to take copies or extracts therefrom so far as is necessary for the purpose of ensuring the Company's compliance with its obligations under Clause 22 hereof and for determining the revenue payable in respect of wood chips produced and sold or exported hereunder.

**Housing<sup>3</sup>**

12. Such housing services and facilities as may be necessary for the proper and reasonable accommodation health and recreation of workers employed by the Company and of contractors engaged in carrying out the Company's obligations under this Agreement shall be provided by the Company at its expense and without cost to the State.

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**Rail transport<sup>3</sup>**

13. The Company shall —

- (1) use the Bunbury-Northcliffe railway line for the transport of all wood chips from the chipping mill site to the stockpile area;
- (2) supply to the Railways Commission in writing not later than twelve (12) months prior to the date of commencement of year 1 details of the tonnage of wood chips the Company will require to be railed from the chipping mill site to the stockpile area in that year AND agree with the Railways Commission the pattern of working including weekly and monthly despatches and the hours of working;
- (3) supply to the said Railways Commission in writing not less than three (3) months before the beginning of every succeeding year of operation hereunder details of the estimated tonnages of wood chips the Company will require to be railed as aforesaid in the ensuing year of operation AND agree with the Railways Commission the pattern of working including weekly and monthly despatches and the hours of working;
- (4) subject to approval of plans and specifications by the said Railways Commission construct and maintain to such standards as the Railways Commission may specify any additional railway track reasonably required to connect the chipping mill site with the Bunbury-Northcliffe railway including all necessary loops spurs and sidings at the loading point and also at the stockpile area. The Company shall at all times permit the Railways Commission to use such loops spurs and sidings provided such use does not unreasonably interfere with the operations of the Company;
- (5) provide and maintain staffed loading and unloading facilities of sufficient capacity to ensure that at the appointed times specified by the Railways Commission pursuant to subclauses (2) and (3) of this Clause the Company shall have available for immediate haulage fully loaded and trimmed wagon trains at the chipping mill site and completely empty trains at the stockpile area;
- (6) notwithstanding the provisions of subclause (5) of this Clause, install equipment of sufficient capacity to ensure that the minimum average rate of loading trains at the chipping mill site exceeds three hundred

- (300) tons per hour and that the minimum average rate of unloading trains at the stockpile area exceeds four hundred (400) tons per hour;
- (7) perform all terminal services except wagon servicing and ensure that all wagons are correctly loaded and trimmed at the chipping mill site and completely emptied at the stockpile area;
- (8) provide all locomotives wagons brakevans and bogies including spares and replacements in accordance with designs and specifications approved by the said Railways Commission and sufficient to operate full train loads on shuttle services running on predetermined time tables so as to achieve the tonnages provided for in Clause 14 hereof; PROVIDE THAT until the annual tonnage exceeds three hundred thousand (300,000) tons the Company shall be obliged to supply only wagons including spares and replacements approved as aforesaid.

The equipment required to transport five hundred thousand (500,000) tons at the freight rates referred to in subclause (1) of Clause 15 hereof is — 2 x 2000 HP locomotives, 39 wagons including spares, 3 brakevans and 6 spare bogies.

If the Company desires to base its operations on a pattern that will vary the equipment required to transport five hundred thousand (500,000) tons per annum it shall first submit in writing to the Railways Commission details of its proposed new operational pattern including any variations in equipment and subject to the approval in writing of the Railways Commission of the proposed new operational pattern as submitted by the Company or as amended by the Railways Commission and also subject to any variation in the freight rates referred to in subclause (1) of Clause 15 hereof required by the Railways Commission the Company shall be entitled to continue its operations on the basis of the pattern submitted or as amended by the Railways Commission (as the case may be). At the expiration or determination of this Agreement such locomotives wagons brakevans and bogies shall become the absolute property of the State which shall not be obliged to pay any compensation to the Company in respect of the acquisition of the said locomotives wagons brakevans and bogies;

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- (9) install such equipment as to ensure that in no instance shall the gross loaded weight of any wagon exceed sixty-four (64) tons; and
- (10) trim all wagons for safe travel as directed by the Railways Commission. If the Railways Commission in its absolute discretion considers that spillage of wood chips during transit is excessive or if in the opinion of the Company the wood chips are being contaminated during transit the Company shall provide tarpaulins and shall sheet the wagons prior to despatch to the satisfaction of the Railways Commission and at the Company's cost in all things.

**Minimum tonnages<sup>3</sup>**

14. The Company during each of the years later mentioned in this Clause shall consign for carriage on the State's railway between Diamond and Bunbury an amount of wood chips not less than that hereinafter indicated with regard to the year in question, namely —

Year 1 — 300,000 tons

Year 2 — 400,000 tons

Year 3 — and every year thereafter whilst wood chips only are produced under and for the purposes of this Agreement — 500,000 tons.

If a pulp mill is established as provided in Clause 19 hereof the question of minimum tonnages of wood chips and freight rates for the carriage thereof over the Diamond-Bunbury railway will be renegotiated by the State and the Company.

**Railway Freight rates<sup>3</sup>**

15. (1) The Company shall throughout the continuance of this Agreement pay to the State on all wood chips transported by rail from Diamond to Bunbury freight at the following rates: —

- (a) until the tonnage transported exceeds three hundred thousand (300,000) tons in any year as aforesaid —
  - (i) the M class rate from time to time applying pursuant to the *Government Railways Act 1904* less ten (10) per cent; and
  - (ii) terminal haulage charges as determined by the Railways Commission;

- (b) when the tonnage transported exceeds three hundred thousand (300,000) tons in any year as aforesaid —

Column 1	Column 2
Tons per year	Rate per ton expressed in dollars and cents
Up to but not exceeding —	
350,000	2.75
400,000	2.65
450,000	2.55
500,000	2.45
Tons per year exceeding —	
500,000	2.35

In the above Schedule the rate to apply to the aggregate tonnage actually transported shall be the rate appearing in Column 2 opposite the tonnage in Column 1 which is the nearest above the actual tons transported except that the total amount payable on account of freight in any year as aforesaid pursuant to this paragraph shall not exceed that which would be payable for the minimum requirement for the next lower freight rate shown in Column 2.

- (2) The rates set out in subclause (1) of this Clause are SUBJECT to —
- (a) the rail loading point for the wood chips being situated approximately six (6) miles south of the Manjimup railway yard and adjacent to Diamond on the Bunbury-Northcliffe railway; and
- (b) the provisions of subclause (6) of Clause 13 hereof and also the provisions of subclause (3) of this Clause.
- (3) The parties hereto acknowledge and agree that —
- (a) the freight rates payable under paragraph (b) of subclause (1) of this Clause have been calculated and based on —
- (i) the average hourly rate of wages payable to a first class locomotive driver a first class guard and a track repairer on the 14th day of May, 1968; and
- (ii) the prices of distillate and steel rails prevailing on that day;

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as follows: —

- (i) average hourly rate = 127.875 cents being the average of the following weekly rates of wages payable for a forty (40) hour week namely —

First class locomotive driver — \$60.90

First class guard — \$51.00

Track repairer — \$41.55;

- (ii) price of distillate — 20.4 cents per gallon;

- (iii) price of steel rails — \$95.45 per ton;

and

- (b) the freight rates payable under paragraph (b) of subclause (1) of this Clause shall be adjusted up or down (as the case may be) as at the 1st day of July, 1970 and thereafter half yearly proportionately to the average hourly rate of wages payable and the prices of distillate and steel rails prevailing on the date of the adjustment and in accordance with the following formula —

$$F1 = F + .75F \left\{ \frac{(.80HRI - HR)}{HR} + \frac{(.05DI - D)}{D} + \frac{(.15SRI - SR)}{SR} \right\}$$

WHERE

- (i) F1 = New freight rate.  
(ii) F = Agreement freight rate.  
(iii) HR = Average hourly rate as at 14/5/68.  
(iv) HRI = New average hourly rate.  
(v) D = Price of distillate per gallon delivered to the public at North Fremantle as at 14/5/68.  
(vi) DI = New price distillate.



(vii) SR = Price of steel rails per ton f.o.w. Fremantle as ascertained from price schedule of Australian Iron and Steel Pty. Ltd. as at 14/5/68.

(viii) SRI = New price steel rail.

(4) Freight shall be calculated on railway weighbridge weights unless an alternative method of weighing is agreed on by the parties BUT SUBJECT NEVERTHELESS to a minimum charge calculated on the basis that for each train the average load of each wagon of approved design supplied by the Company is not less than forty-six (46) tons of wood chips.

(5) The Company shall pay all freight and other charges in the month following that in which the service is performed.

(6) If: —

- (a) the needs of the Company reasonably require the operation between noon on Saturday and midnight on Sunday of trains additional to those already operating under the agreed patterns of working referred to in subclauses (2) and (3) of Clause 13 hereof; and
- (b) such needs do not arise solely from any failure or inability on the part of the Railways Commission to provide the services necessary to operate trains under such agreed patterns; and
- (c) the Railways Commission agrees to provide the necessary services for the additional trains

the Company will reimburse the State for any additional wages which are payable as a consequence.

### **Carriage at Company's risk<sup>3</sup>**

16. Unless the parties agree otherwise all wood chips shall be carried at the risk of the Company and subject to the by-laws made under the *Government Railways Act 1904*.

### **Cost of maintenance<sup>3</sup>**

17. (1) Subject to the provisions of subclause (2) of this Clause the Railways Commission at its own cost shall service and maintain to a reasonable

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standard all locomotives and rolling stock provided by the Company for the purposes of this Agreement.

(2) When in the opinion of the Railways Commission any locomotive or other item of rolling stock is no longer capable of being satisfactorily serviced or maintained the Company shall subject to the provisions of subclause (3) of this Clause upon the written request of the said Commission and at the cost of the Company replace such locomotive or other item with one approved by the said Commission.

(3) If any request under subclause (2) of this Clause is made within the period of the initial Forest Produce (Chipwood) License referred to in paragraph (a) of subclause (1) of Clause 4 hereof and the Company considers such request is unreasonable the Company may elect by notice in writing to the Railways Commission within one (1) month of receipt of the request either: —

- (a) to pay only the same proportion of the replacement cost of such locomotive or other item as the unexpired period of the said license bears to the full period thereof (in which event the balance of such cost shall be paid by the Railways Commission); or
- (b) to refer to arbitration as hereinafter provided any dispute or difference as to the reasonableness of the said Commission's request.

If the Company fails or omits to elect as aforesaid it shall pay the full replacement cost as provided by subclause (2) of this Clause.

**Water Bunbury<sup>3</sup>**

18. (1) Notwithstanding any other provision of this Agreement the Company accepts full responsibility for the negotiation and completion of all necessary contracts and arrangements with the Bunbury Port Authority for the supply of water to the stockpile area AND will duly and punctually perform and carry out all the obligations of the Company under such contracts and arrangements and otherwise in regard to the said water supply.

**Water Supply to Chipping Mill Site<sup>3</sup>**

(2) The State recognises that the Company may for its successful operation at the chipping mill site wish to develop a water supply independent of the existing Manjimup supply and will so far as is practicable permit the Company to develop such a supply subject to and in accordance with the provisions set out in subclause (3) of this Clause.

(3) When the Company desires to develop its own water supply for the purpose aforesaid it shall before commencing any such development immediately submit to the Minister for Works in duplicate its proposals (which shall include all plans and specifications) in respect of the water supply which it desires to develop and shall also give to the said Minister such further information and plans in respect of the proposed water supply as the Minister from time to time requires. Within two (2) months after receipt of the Company's proposals and such further information and plans which he may require the Minister shall inform the Company in writing either —

- (a) that he has approved of the Company's proposals as submitted by the Company or as amended by him whereupon the Company shall be at liberty (subject to the provisions of subclause (4) of this Clause) to proceed with the development of the water supply in the manner submitted or as amended by the Minister (as the case may be); or
- (b) that he has disapproved of the Company's proposals as originally submitted or as amended or qualified by any further information or plans (as the case may be).

(4) Before the Company commences to proceed with the development of the water supply referred to in subclause (3) of this Clause the Company shall enter into a Deed of Covenant with the State in such form as the Minister for Works in his absolute discretion determines covenanting to indemnify the Crown in right of the State against all claims costs and expenses which may at any time or times be made against the Crown in right of the State in respect of that water supply or arising out of or incidental to or in consequence of the water supply.

(5) In the event that the Minister disapproves of the Company's proposals pursuant to subclause (3) of this Clause the State will upon three (3) months notice given to it by the Company make available to the Company under the provisions of the *Country Areas Water Supply Act 1947* from the water supply scheme at Manjimup to a point on the boundary of the chipping mill site to be mutually agreed on by the State and the Company a quantity of water sufficient for the normal operations of the chipping mill SUBJECT TO the Company first paying to the State the cost of any extensions of the existing mains required to provide such supply PROVIDED THAT should the company require water for use in connection with an hydraulic debarker or some other equipment or process requiring an abnormally large supply of water all matters arising out of or connected with such supply including any necessary

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apportionment of the cost of such supply as between the State and the Company shall be negotiated between the State and the Company.

**Pulp<sup>3</sup>**

19. (1) The Company will with all due diligence investigate in detail the feasibility and economic viability of establishing a pulp mill and other installations (in this Clause and in Clause 21 hereof called “the processing plant”) within the area having a radius of one hundred and thirty (130) miles from Manjimup for the processing into unbleached wood pulp of a quantity of the wood chips produced by the Company pursuant to this Agreement from the production area and if necessary from any further or alternative sources of supply in the Manjimup-Pemberton and Collie-Bunbury areas which may be made available to the Company under the provisions of Clause 21 hereof.

(2) The Company shall keep the Minister fully informed at least half yearly commencing within one quarter after the date of first shipment of wood chips from Bunbury as to the progress and results of the Company’s investigations under subclause (1) of this Clause and will submit to the Minister not later than two (2) years from the date of such shipment the final results thereof.

(3) If the final results of the Company’s investigations under subclause (1) of this Clause show the processing plant to be neither feasible nor economically viable the Company shall if required by the Minister so to do undertake such further studies and provide such further reports at such time or times as the Minister may reasonably require in the light of any significant changes occurring in the costs or techniques of production or the availability of markets. The Minister may at any time and from time to time in his absolute discretion and irrespective of whether or not there have occurred any significant changes in the costs or techniques of production or the availability of markets undertake or cause to be undertaken such other studies or investigations as he considers either necessary or desirable in regard to the matters referred to in subclause (1) of this Clause or arising out of or connected therewith.

(4) If the final results of the Company’s investigations under subclause (1) of this Clause or of any further study undertaken by the Company under subclause (3) of this Clause show the processing plant to be feasible and economically viable the Company will at the same time (or within such extended time as the Minister may approve) submit detailed proposals for such plant in accordance with the provisions of subclause (5) of this Clause.

(5) Such proposals shall include the location area layout design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) at the Company's cost of each of the following matters namely —

- (a) the processing plant which shall have an annual capacity of not less than one hundred thousand (100,000) tons of unbleached wood pulp and shall be in production not later than three (3) years after the Company's proposals are approved or deemed after reference arbitration to be approved by the Minister;
- (b) water supply and effluent disposal schemes adequate for the requirements of the processing plant including the employment and retention by the Company of expert consultant engineers who shall be required to collaborate closely with the State to design and develop such schemes; and
- (c) any other works services or facilities proposed or desired by the Company.

(6) Within two (2) months after receipt of the Company's proposals in accordance with the provisions of subclause (5) of this Clause the Minister shall give to the Company notice either of his approval thereof or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company but the Minister shall in any notice to the Company disclose his reasons for any such alteration or condition. Within one (1) month of the receipt of the notice the Company may elect by notice to the Minister to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within two (2) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (subject to the provisions of paragraphs (b) and (c) of Clause 24 hereof as varied by the provisions of subclauses (15) and (16) of this Clause) but if the question is decided in favour

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of the Company the Minister shall be deemed to have then approved the proposals of the Company as varied by the award.

- (7) In any of the following events namely —
- (a) if the Company fails to keep the Minister fully informed in the manner provided by subclause (2) of this Clause as to the progress and results of its investigations under subclause (1) of this Clause; or
  - (b) if the Company fails to submit either —
    - (i) the initial report and proposals as required by subclauses (1) (2) (4) and (5) of this Clause; or
    - (ii) any further reports and proposals required at any time or times by the Minister under subclause (3) of this Clause; or
  - (c) if as the result of —
    - (i) the initial study undertaken by the Company under subclause (1) of this Clause; or
    - (ii) any of the further studies undertaken by the Company under subclause (3) of this Clause; or
    - (iii) any study undertaken by or furnished to the Minister under subclause (3) of this Clause

the Minister is of the opinion that the production of unbleached wood pulp within the area aforesaid is feasible and economically viable but the Company is unwilling or unable to undertake such production; or

- (d) proposals having been submitted by the Company and approved by the Minister in the manner provided in subclause (6) of this Clause the Company fails to commence construction of the processing plant; or
- (e) having commenced such construction the Company fails to continue and complete the same with all due diligence so as to enable production of unbleached wood pulp to commence within the time limited by paragraph (a) of subclause (5) of this Clause

this Agreement shall cease and determine (subject to the provisions of paragraphs (b) and (c) of Clause 24 hereof as varied by the provisions of subclauses (15) and (16) of this Clause) upon notice in that behalf by the Minister to the Company.

(8) The Minister shall in any notice given to the Company pursuant to the provisions of subclause (7) of this Clause disclose the reason or reasons for his decision. Within one (1) month of the receipt of the notice the Company may elect by notice to the Minister to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Company then unless the Company within two (2) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (subject to the provisions of paragraphs (b) and (c) of Clause 24 hereof as varied by the provisions of subclauses (15) and (16) of this Clause) but if the question is decided in favour of the Company the notice given by the Minister pursuant to subclause (7) of this Clause shall be void and of no effect.

**Third Party<sup>3</sup>**

(9) The Company being in default under any of the preceding provisions of this Clause the State may at any time give to the Company notice that some other Company or party (hereinafter called "the Third Party") has agreed to establish within the area referred to in subclause (1) of this Clause a processing plant using wood chips produced under the Forest Produce (Chipwood) License granted under this Agreement (which establishment shall also include the assumption by the Third Party of all the rights and obligations of the Company hereunder in regard to the production of wood chips) on terms not more favourable on the whole to the Third Party than those proposed by or available to the Company hereunder in which event this Agreement shall (subject to the provisions of paragraphs (b) and (c) of Clause 24 hereof as varied by the provisions of subclauses (15) and (16) of this Clause) cease and determine as at the date by which the Third Party has substantially established such processing plant or such other date mutually agreed by the Company the State and the Third Party.

(10) Except as provided in subclause (9) of this Clause this Agreement will continue in operation subject to compliance by the Company with its obligations hereunder.

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**“Substantial Establishment”<sup>3</sup>**

(11) The Third Party shall have substantially established a processing plant when and not before that party’s processing plant has the capacity to produce one hundred thousand (100,000) tons of unbleached wood pulp per annum and the Minister has notified the Company that he is satisfied that that party will proceed bona fide to operate its processing plant.

**Terms “not more favourable”<sup>3</sup>**

(12) In determining whether for the purposes of subclause (9) of this Clause the terms granted by the State to some company or party are not more favourable on the whole than those proposed by or available to the Company regard shall be had inter alia to all the obligations which would have continued to devolve on the Company had it proceeded with the production of unbleached wood pulp including its obligations to produce transport by rail and export wood chips to pay rent and royalty and (in the event of the establishment of a processing plant by a third party pursuant to subclause (9) of this Clause) to termination of rights as therein provided if the Company’s proposals for the processing plant are not brought to fruition and also to the need for the other company or party to reimburse the Company in the manner provided by subclause (16) of this Clause and to pay on a fair and reasonable basis for or for the use of any other property accruing to or acquired by the State under paragraph (c) of Clause 24 hereof and made available by the State to that company or party and also to any additional or equivalent obligations to the State assumed by that company or party.

**Supply of wood chips by others<sup>3</sup>**

(13) If at the date upon which this Agreement ceases determines pursuant to subclause (9) of this Clause the Company remains under any obligation for the supply of wood chips arising out of a contract or contracts entered into by the Company with the consent of the Minister the State will at the written request of the Company BUT SUBJECT NEVERTHELESS to the provisions of subclause (14) of this Clause ensure that the Third Party is obligated to discharge such remaining obligations to supply wood chips in accordance with such contract or contracts on a basis which is fair and reasonable as between the Company and the Third Party.

(14) The undertaking given by the State under subclause (13) of this Clause is conditional upon the continued compliance by the Company with its



obligations hereunder until the date upon which this Agreement ceases and determines pursuant to subclause (9) of this Clause.

(15) In the event of determination of this Agreement pursuant to subclause (9) of this Clause and the exercise by the State of its right or option under subclause (c) of Clause 24 hereof to purchase machinery equipment removable buildings bulk loading facilities including the conveyor or any of them the valuation required to be made under that subclause shall be on the basis of such machinery equipment removable buildings bulk loading facilities including the conveyor or any of them remaining in situ and at a value which has regard for their use in a going concern but which will not exceed their written down value arrived at by normal accounting depreciation procedures as distinct from any special depreciation allowances provided under Commonwealth Income Tax legislation.

(16) On the determination of this Agreement pursuant to subclause (9) of this Clause the State shall reimburse to the Company or ensure that the Third Party shall reimburse to the Company the residual portion as at that date of the expenditure of the Company on civil engineering works approved by the State under or for the purposes of this Agreement as shall be calculated on the basis that such expenditure would be amortized over a period of ten (10) years from the date of the first shipment of wood chips from Bunbury. For the purposes of this subclause “expenditure on civil engineering works” means moneys paid by the Company to the State pursuant to paragraph (a) of subclause (2) of Clause 6 hereof and all expenditure of the Company on or in connection with approved works or installations other than: —

- (a) the cost of the machinery equipment removable buildings and bulk loading facilities including the conveyor referred to in subclause (15) of this Clause; and
- (b) the locomotives wagons brakevans and bogies referred to in subclause (8) of Clause 13 hereof.

**Extension of time<sup>3</sup>**

20. The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by the State or the Company to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either the State or the Company or both and an

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award in favour of the Company may in the name of the State grant any further extension of time for that purpose.

**State's further obligations in regard to pulp<sup>3</sup>**

21. (1) The State recognises that in the event that the processing plant is established by the Company pursuant to Clause 19 hereof —

- (a) the source of supply constituted by the production area will not be adequate to enable the Company to
  - (i) maintain its contracts for the sale of wood chips; and
  - (ii) process a quantity of wood chips sufficient to produce not less than one hundred thousand (100,000) tons per annum of unbleached wood pulp; and
- (b) large quantities of potable water will be required by the Company for the purposes of the processing plant.

(2) On completion of the construction of the processing plant and on written application by the Company the State shall —

- (a) make available to the Company for the period of the license referred to in paragraph (b) of this subclause further or alternative sources of supply as follows —
  - (i) in the Manjimup-Pemberton area — a variety of timber species to be approved by the Conservator of Forests sufficient to produce a maximum of one hundred and fifty thousand (150,000) tons green weight of wood chips per annum;
  - (ii) in the Collie-Bunbury area — a variety of timber species to be approved by the Conservator of Forests sufficient to produce a maximum of two hundred and twenty-five thousand (225,000) tons green weight of wood chips per annum;
- (b) cause to be granted to the Company under the provisions of the *Forests Act 1918* a further Forest Produce (Chipwood) License over such portions of the areas referred to in sub-paragraphs (i) and (ii) of paragraph (a) of this subclause for such period and on such special

conditions (including the payment of royalty) as the State shall determine;

- (c) at the cost of the Company in all things for the purposes of and subject to the provisions of paragraph (b) of subclause (5) of Clause 19 hereof —
- (i) make available to the Company at a point on the boundary of the processing plant site to be mutually agreed by the State and the Company such quantity of potable water as will meet the reasonable requirements of the Company in regard to the processing plant. The charges to be imposed by the State for such water shall be negotiated by the State and the Company. The decision of the Minister for Works shall be final in all matters in dispute in regard to water (other than the charges aforesaid) and shall not be referable to arbitration under Clause 26 hereof; and
  - (ii) grant to the Company a license to construct and operate at the Company's cost in all things a liquid effluent disposal system. Such license shall specify operating conditions and chemical composition and discharge point of the final effluent from the system. The Company shall comply with all laws of the State relating to the prevention or creation of any nuisance or danger to health in respect of gaseous effluents from the processing plant and all other works and shall take all practicable steps and use modern techniques to minimise the emission of odours and other noxious gaseous effluents from such plant and works.

**F.O.B. price<sup>3</sup>**

22. (1) The Company shall use its best endeavours to obtain for the wood chips the highest f.o.b. price possible.

(2) For the purposes of this Clause "f.o.b. price" means the price for wood chips from the work sites the subject of any shipment or sale and payable by the purchaser or purchasers thereof to the Company less all export duties taxes and fees payable to the Commonwealth on the export of the wood chips and all costs and charges properly incurred and payable by the Company from the time the wood chips are shipped to the time the same are delivered and accepted by the purchaser or purchasers including —

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- (a) ocean freight;
- (b) marine insurance;
- (c) port and handling charges at the port of discharge;
- (d) all costs properly incurred in delivering the wood chips from port of discharge to the purchaser as evidenced by relevant invoices;
- (e) all weighing sampling inspection and representation costs;
- (f) all shipping agency charges after shipment; and
- (g) all import taxes imposed or levied by the country of the port of discharge.

**Export Licence<sup>3</sup>**

23. If at any time or times under Commonwealth law an export license is required by the Company for the export of wood chips then on written request by the Company the State shall make representation to the Government of the Commonwealth of Australia for the grant to the Company of a license or licenses under Commonwealth law for the export of wood chips in such quantities and at such rate or rates as shall be reasonable having regard to the tonnage of wood chips being produced by the Company at such time or times as a license is so required and to all contracts made or likely to be made by the Company for the export or supply of wood chips from the work sites and to the price or prices to be paid or proposed to be paid under such contracts.

**Default<sup>3</sup>**

24. The parties hereto covenant and agree with each other as follows —
- (a) that in any of the following events namely if the Company fails in any year after the 30th day of June, 1975 or the expiration of three (3) years from the date of first shipment of wood chips whichever is the later to produce five hundred thousand (500,000) tons of wood chips or if the Company makes default in the due and punctual performance of any of the covenants agreements or obligations to the State herein or in any lease sublease easement license or other right granted under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given by the State to the Company

(or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the Arbitration Award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company abandons or repudiates its operations under this Agreement or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice given to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted or demised hereunder or pursuant hereto PROVIDED HOWEVER that if the Company fails to remedy any default after notice is given to the Company specifying the default or within the time fixed by the Arbitration Award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by its agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand made by the State;

**Effect of determination of Agreement<sup>3</sup>**

- (b) that on the cessation or determination of this Agreement —
  - (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company to in or under any lease license easement or right granted or demised hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of an antecedent breach or default under this Agreement AND the Company shall without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any lease license easement or right granted or demised hereunder or pursuant hereto AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he

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- may from time to time nominate the true and lawful attorney of the Company to execute the transfer or surrenders aforesaid;
- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
  - (iii) save as aforesaid and as provided in paragraph (c) of this Clause none of the parties hereto shall have any claim against the other with respect to any matter or thing in or arising out of this Agreement;
- (c) that on the cessation or determination of any lease license easement or right granted or demised hereunder or pursuant hereto by the State to the Company the improvements and things constructed on the relevant land other than machinery equipment and removable buildings and the bulk loading facilities including the conveyor constructed on or affixed to the berth shall remain or become the absolute property of the Crown without compensation (save as provided by subclause (16) of Clause 19 hereof) and freed and discharged from all mortgages and encumbrances and the Company will do such things and execute such documents (including surrenders) as the State may reasonably require to give effect to this provision AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Company to do those things and to execute those documents (including surrenders). In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its machinery equipment and removable buildings or any of them from the work sites or the bulk loading facilities including the conveyor from the berth the Company shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three (3) months thereafter to purchase at valuation in situ the said machinery equipment removable buildings and the bulk loading facilities including the conveyor or any of them. Such valuation will be mutually agreed or in default of agreement shall be made by such competent valuer as the parties hereto may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by

each party or by an umpire appointed by such valuers should they fail to agree.

**State's further obligations<sup>3</sup>**

25. The State further covenants with the Company that the State —

**No discriminatory taxes or charges<sup>3</sup>**

- (a) except as provided in this Agreement shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's business hereunder nor shall the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;

**Rating<sup>3</sup>**

- (b) will ensure that notwithstanding the provisions of any Act (other than the *Country Areas Water Supply Act 1947*) or anything done or purported to be done under any such Act as aforesaid the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate; and

**No Resumption<sup>3</sup>**

- (c) subject to the performance by the Company of its obligations hereunder shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purposes of this Agreement (other than the locomotives wagons brakevans and bogies referred to in

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subclause (8) of Clause 13 hereof) nor any of the lands (save and except the production area) the subject of any lease or license granted to the Company in accordance with the terms of this Agreement AND without such consent (which shall not be arbitrarily or unreasonably withheld) the State will not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands (save and except the production area) which may unduly prejudice or interfere with the Company's operations hereunder.

**Arbitration<sup>3</sup>**

26. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variations thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition as to the rights duties or liabilities of any party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895* PROVIDED THAT except where this Agreement makes express provision for arbitration hereunder this Clause shall not apply to any case where the Minister or the State is by this Agreement given either expressly or impliedly a power or discretion to approve consent direct determine or otherwise act in any particular way.

**Variation<sup>3</sup>**

27. The parties hereto may from time to time by mutual agreement in writing add to vary or cancel all or any of the provisions of the Agreement or any lease license easement or right granted or demised hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

**Force majeure<sup>3</sup>**

28. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible



for the performance of such obligations including delays or any such temporary suspension or failure as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways abnormal tides and waves fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the wood chip industry) to profitably sell wood chips or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

**Indemnity<sup>3</sup>**

29. The Company will indemnify and keep indemnified the State and its servants agents (including all Ministers of the Crown in right of the State of Western Australia) and contractors in respect of all actions suits claims demands or costs arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's chipping mill, stockpile area, sidings, conveyor system, bulk loading facilities or other works or services the subject of this Agreement or any plant apparatus or equipment associated therewith.

**Compliance with Laws<sup>3</sup>**

30. Subject to this Agreement the Company in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by it shall comply with and observe the laws for the time being in force in the State of Western Australia.

**Assignment<sup>3</sup>**

31. (1) Subject to the provisions of this Clause the Company may at any time with the prior written consent of the Minister —

- (a) assign mortgage charge sublet or dispose of to any company or person the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and

**First Schedule**

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- (b) appoint any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder

subject however to the assignee or the appointee executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters so assigned or the subject of the appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company unless the Minister otherwise agrees shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease license easement grant or other title the subject of an assignment under the said subclause (1).

**Notice<sup>3</sup>**

32. Any notice consent request or other writing authorised or required by this Agreement to be given shall be deemed to have been duly given by the State or the Minister if signed by the Minister the Minister for Transport the Minister for Forests the Minister for Works or by any senior officer of the Public Service of the said State acting by the direction of a Minister and forwarded by prepaid registered post to the Company or the Guarantor at their respective registered offices for the time being in the said State and by the Company if signed on its behalf by any person or persons for the time being appointed by it for the purposes of this Clause and forwarded by prepaid registered post to the Minister at his office in Perth AND any such notice consent or writing shall be deemed to have been duly given on the day on which it would be delivered in the ordinary course of post.

**Power to extend periods<sup>3</sup>**

33. Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

**Relevant Law**<sup>3</sup>

34. (1) This Agreement shall be interpreted according to the law for the time being in force in the said State.

(2) All payments made or to be made under this Agreement shall be made in the State of Western Australia in Australian currency unless otherwise agreed. All sums mentioned herein are in Australian currency.

**Expiration of Agreement**<sup>3</sup>

35. This Agreement shall expire on the expiration or sooner determination of the Forest Produce (Chipwood) License and the lease of the chipping mill site including the renewals thereof but without prejudice to the right of action of any party hereto in respect of any breach of the covenants agreements and conditions herein contained.

**Stamp duty exemption**<sup>3</sup>

36. The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable on —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease license easement or right granted or demised hereunder or pursuant hereto.

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than seven (7) years from the date hereof.

**Guarantee**<sup>3</sup>

37. Notwithstanding any addition to deletion or variation of the provisions hereof or any time or other indulgence granted by the State to the Company whether before or after the commencement date and whether or not notice thereof is given to the Guarantor by the State the Guarantor hereby guarantees to the State the due performance by the Company of all obligations of the Company to be performed hereunder prior to the commencement date and also the due payment by the Company of the first instalment of one million dollars (\$1,000,000) under subparagraph (i) of paragraph (a) of subclause (2) of Clause 6 hereof.

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**SCHEDULE**

WESTERN AUSTRALIA

*FORESTS ACT 1918*

*WOOD CHIPS AGREEMENT ACT 1969*

FOREST PRODUCE (CHIPWOOD) LICENSE

LICENSE No. ....

THIS IS TO CERTIFY THAT pursuant to the provisions of an Agreement made the                    day of                    1969 BETWEEN the State of Western Australia of the first part W.A. CHIP & PULP CO. PTY. LTD. whose registered office is situated at 49 Charles Street, Perth in the said State (in the Agreement and hereinafter called "the Company" which term shall include the successors and permitted assigns of the Company) of the second part and BUNNING TIMBER HOLDINGS LTD. whose registered office is situated at 49-61 Charles Street, Perth, aforesaid (in the Agreement called "the Guarantor") of the third part (which Agreement was ratified by the *Wood Chips Agreement Act 1969*) the Company is hereby licensed for a period commencing on the                    day of                    19    and expiring fifteen (15) years after the date of the first export of wood chips under or for the purposes of the said Agreement to fell cut and remove each year during the currency hereof a quantity of MARRI KARRI JARRAH or other species of timber not suitable for saw-milling or other special purposes as defined by the Conservator of Forests (hereinafter called "the Conservator") measured in the round sufficient to produce five hundred thousand (500,000) tons green weight of chips per annum on and from the area delineated on the plan in the Schedule hereto for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the provisions of the *Forests Act 1918* and the regulations thereunder in force for the time being (as modified by the said Agreement).

This license is granted subject to the following special conditions: —

1. The Company shall and will use the area bona fide exclusively for the purposes of the said Agreement.
2. Subject to the payment of the royalty hereby reserved and the observance and performance by the Company of the terms covenants and conditions contained in the said Agreement and the conditions herein contained, this

license shall continue in force for the period stated unless suspended or forfeited and cancelled in the meantime for breach of the conditions herein.

3. The Company shall pay to the Conservator or officer authorised by him a royalty of one dollar and seventy-seven cents (\$1.77) for each and every one hundred (100) cubic feet of log timber measured in the round obtained under this license.

Such royalty shall be payable forthwith as accounts are rendered from time to time by or on behalf of the Conservator to the Company; PROVIDED THAT if payment be made within the calendar month following the month during which the timber was obtained a discount will be allowed thereby reducing the royalty payable hereunder to one dollar and fifty cents (\$1.50) per hundred (100) cubic feet. In lieu of volume measurement a conversion factor to weight may be used to simplify and reduce cost of measurement.

4. The royalty payable under this license will apply for the first five (5) years from the commencement of production of chips. Thereafter it may be reviewed and adjusted every five (5) years in the light of royalty payable generally on hardwoods cut for other purposes and having regard to the F.O.B. price of wood chips at the time of review compared with the F.O.B. price of wood chips at the commencement of exports. For the purposes of this condition "F.O.B. price" shall have the same meaning as in Clause 22 of the said Agreement.

5. The Company shall at the end of each calendar month complete returns showing all timber obtained under this license and such other information as may be required by regulations, and such returns, verified by statutory declaration, shall be forwarded to the Forest Officer in Charge within three (3) days of the close of each month.

6. After commencement, operations shall be carried on continuously unless exempted by the Conservator.

7. All log timber obtained under this license shall be chipped at a plant approved by the Conservator to be erected on the chipping mill site referred to in Clause 1 of the said Agreement. No alterations which may affect the capacity or efficiency of the plant as approved shall be made without the prior approval of the Conservator.

8. The Company shall submit to the Conservator annually plans showing approximately the area over which it is desired to conduct felling operations

**First Schedule**

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during the following twelve (12) months, and the main haulage routes proposed to be used from such areas to the mill. The cutting section and haulage routes shall be subject to the approval of the Conservator, and when approved, all logging operations shall conform with such approval.

9. The Company shall from time to time, as required by the Conservator, confine its operations to certain defined coupes within the said area. Such defined coupes shall be cut out to the satisfaction of the Forest Officer in Charge before a further coupe is made available for cutting.

When logging operations have been completed on any coupe to the satisfaction of the Forest Officer in Charge, such coupe shall thereupon be closed to further cutting by the Company.

The right is reserved to the Conservator to excise from the license area at any time without compensation to the Company in respect thereof any area that has been cut over by the Company for chipwood timber and any area which may be required for roads, railways, or any other works of public utility or convenience.

10. The Company shall exercise strict supervision and control over the operations of all timber workers and other persons employed under the terms of this license with a view to preventing any breach of the Forests Act or Regulations and avoiding damage to regrowth and other standing timber during felling and hauling operations.

11. All trees on the area suitable for chipwood with the exception of those marked or otherwise indicated by a Forest Officer for retention shall be felled, cut and utilised.

12. All trees cut into or felled or otherwise available under this license shall be utilised with the minimum of waste, down to minimum length of seven (7) feet and minimum diameter of nine (9) inches, to the satisfaction in all respects of the Forest Officer in Charge.

13. The tops of any felled trees which fall close to other potentially useful trees reserved for cutting shall be snigged back therefrom by the Company into open places to the satisfaction of the Forest Officer in Charge. Avoidable or unreasonable damage to growing trees from felling, snigging, loading and hauling operations shall be paid for by the Company at rates as assessed by the Conservator, not exceeding the rate currently applying for that type of forest produce.

14. The Forest Officer in Charge may prohibit the use of any roads or tracks for log hauling or may give directions from time to time regarding the roads or tracks on or by which the timber cut under this license may be removed or taken through any part of State Forest and such directions shall be observed by the Company. Any damage to existing roads or tracks resulting from the felling or removal of timber by the Company shall be repaired by the Company at its own expense to the satisfaction of the Forest Officer in Charge.

Where dispute arises with shared use of roads under the control of the Conservator, the Conservator shall be the sole arbiter and his decision shall be final.

15. The Company is hereby authorised to fell, cut and remove such forest produce as herein provided on pastoral or other leases or holdings within the said license area which do not confer on the lessees or holders the right to forest produce, with full and free liberty to the Company, its servants, workmen and agents, with or without conveyances, at all reasonable times to enter upon, depart from and pass over such pastoral or other leases for such purpose; provided always that the authority hereby given shall not relieve or be deemed to relieve the Company from liability to lessees or holders in respect of any actionable damage caused by the Company, its servants, workmen or agents upon such pastoral or other leases or holdings aforesaid.

16. This license shall not be construed as authorising the Company to cut through, break down or otherwise interfere with any fencing or other improvements erected upon or adjacent to the license area.

17. The Company shall at its own expense and without delay —

- (a) remove from all roads and tracks through or adjacent to the license area or from any land the property of an adjoining owner, all logs or other debris of any description; and
- (b) make good any damage to fences, telephone lines or other improvements,

resulting directly or indirectly from its operations.

18. The Company shall keep closed all gates used by it, and shall take all necessary action to prevent the ingress or egress of stock into or from any area within the license area enclosed by fences which may have been damaged as a result of its operations.

**First Schedule**

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19. The Company shall not fell any trees on areas under cultivation or established pasture within the license area except with the written concurrence of the owner or occupier of any such areas.

20. The right is reserved to the Conservator to direct the disposal of logs suitable for sawmilling or other special purposes in such quantities and under such conditions as he may from time to time determine.

21. The Company when working on any catchment area shall observe and comply with the by-laws of the Department of Water Supply Sewerage and Drainage and take all action necessary in order to prevent the pollution of the catchment area and shall observe such requirements as may be prescribed from time to time by the Department of Water Supply Sewerage and Drainage or any authorised officer of that Department.

22. This license shall not be transferred without the consent in writing of the Conservator.

23. The Company shall observe and comply with the provisions of the *Bush Fires Act 1954*, and the amendments thereof and the regulations thereunder and in force for the time being. Any breach of the said Act and/or regulations shall be a breach of the conditions of this license.

24. The Company shall take all such necessary precautions as may be indicated by a Forest Officer to prevent the occurrence or spread of fires within the license area and shall be liable to the Conservator for damage caused within the said area or on any State Forest, Timber Reserve or Crown land by any fire on or extending from the said area during the currency of this license unless the Company can prove to the satisfaction of the Conservator that such fire or fires, without any act or omission on the part of the Company, originated outside the license area and/or arose through some cause beyond its control.

25. The Company and all persons employed by it on the license area shall at all times during the term of this license co-operate with officers of the Forests Department in preventing and suppressing bush fires and shall, when called upon by any such officer, act under his instructions in fire fighting or preventing outbreaks of fire. All persons who in response to such demand shall render the assistance required, shall be remunerated by the Conservator at the prescribed rates.

26. As security for the observance and performance of its obligations under this license, the Company has deposited at the office of the Forests Department,



Perth, the sum of One thousand dollars (\$1,000) and a Bond with approved surety for the payment of Twenty thousand dollars (\$20,000).

27. In default of payment by the Company of the royalty hereby reserved or of the due observance and performance by the Company of the terms covenants and conditions contained in the said Agreement or the conditions of this license or the observance by the Company of the provisions of the said Acts and regulations or any of them to which this license is subject, the Conservator may suspend this license for such time as he may think fit, or by notice in writing to the Company, cancel and determine this license, and thereupon the deposit may be forfeited, together with all timber felled or sawn on the said area, and may seize all machinery or other plant the property of the Company, but without prejudice to the rights of the Conservator to recover royalty in arrear, and in respect of any other claims against the Company.

28. If any question shall arise as to the observance and performance by the Company of the conditions of this license, or in case of any dispute in relation to the felling, sawing or removal of timber, or as to the quantity of timber felled or sawn, the same shall be decided by the Conservator, whose decision shall be final.

29. Any notice in writing to the Company may be given to or served on the Company by forwarding the same by prepaid registered post to the Company at its registered office for the time being in the said State AND any such notice shall be deemed to have been duly given or served on the day on which it would be delivered in the ordinary course of post.

30. The Company accepts this license and agrees with the Conservator to observe and perform the conditions and obligations of this license and to pay the royalty hereby reserved.

THE SCHEDULE ABOVE REFERRED TO:

DATED at                                      this                                      day of                                      19

SIGNED by the Conservator of                                      }  
Forests in the presence of:                                      Conservator of Forests

First Schedule

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The Common Seal of W.A.  
CHIP & PULP CO. PTY.  
LTD. was hereunto affixed  
by the Authority of the  
Directors in the presence of: }

IN WITNESS whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED SEALED AND  
DELIVERED by THE  
HONOURABLE  
CRAWFORD DAVID  
NALDER, M.L.A. in the  
presence of — }

C. D. NALDER  
[L.S.]

C. W. COURT,  
Minister for Industrial Development.

A. C. HARRIS,  
Conservator of Forests.

The Common Seal of W.A.  
CHIP & PULP CO. PTY.  
LTD was hereunto affixed  
by the Authority of the  
Directors in the presence  
of — }

C. R. BUNNING  
G. M. BUNNING  
[C.S.]

The Common Seal of  
BUNNING TIMBER  
HOLDINGS LTD. was  
hereunto affixed by the  
Authority of the Directors  
in the presence of — }

C. R. BUNNING  
G. M. BUNNING  
[C.S.]

## Second Schedule

[Heading inserted by No. 34 of 1973 s. 5.]

AN AGREEMENT made the 12th day of July 1973 BETWEEN THE HONOURABLE ALEXANDER DONALD TAYLOR, B.A. M.L.A. ACTING PREMIER of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (hereinafter referred to as "the State") of the first part W.A. CHIP & PULP CO. PTY. LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 255 Adelaide Terrace, Perth, in the said State (hereinafter called "the Company" which term shall include its successors and permitted assigns and appointees) of the second part and BUNNING TIMBER HOLDINGS LTD. a company incorporated as aforesaid and having its registered office at 255 Adelaide Terrace, Perth, aforesaid (hereinafter called "the Guarantor") of the third part.

WHEREAS:

- (a) The State the Company and the Guarantor are parties to the agreement between them defined in section 2 of the *Wood Chipping Industry Agreement Act 1969* (which agreement in the form printed in that Act is hereinafter referred to as "the principal Agreement").
- (b) The parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Words and phrases to which meanings are given under Clause 1 of the principal Agreement (other than the words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in Clause 1 of the principal Agreement.
2. (1) The provisions of this Agreement other than Clause 3 shall not come into operation until the Bill referred to in that Clause has been passed by the Parliament of Western Australia and comes into operation as an Act.  
  
(2) If the said Bill is not passed this Agreement will then cease and determine and neither of the parties will have any claim against the other of them with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

**Second Schedule**

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(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 30th day of September, 1973.

4. The principal Agreement is hereby varied as follows —

- (1) Clause 1 is amended by deleting the definition of “year 1”;
- (2) Clause 4 is amended as to subparagraph (ii) of paragraph (b) of subclause (1) by substituting for the word “subsection” in line eight the word “subclause”;
- (3) Clause 5 is amended as to paragraph (b) of subclause (2) by substituting for the passage “two hundred dollars (\$200.00)” the passage “five hundred dollars (\$500.00)”;
- (4) Clause 6 is amended —
  - (a) by substituting for paragraphs (a) and (b) of subclause (1) the following paragraphs —

**Design of Berth<sup>3</sup>**

- (a) as soon as practicable after the execution of this Agreement at the request of the Company proceed with the design and specifications of the berth which design and specifications shall be mutually agreed by the State and the Company and the parties shall use their best endeavours to complete such design and specifications before the 1st day of November, 1973;
- (b) subject to the performance by the Company of its obligations under paragraph (a) of this subclause and under subclause (2) of this Clause —

**Construction of Berth<sup>3</sup>**

- (i) as soon as possible after the completion of the design and specifications construct or

cause to be constructed the berth AND complete such construction not later than twenty-one (21) months after the completion of such design and specifications;

**Dredging**<sup>3</sup>

- (ii) dredge the berth to a depth of forty (40) feet below Bunbury Port Datum, the access channel to a bottom width of four hundred (400) feet and to a depth of thirty-six (36) feet below Bunbury Port Datum, the turning basin to a bottom width of sixteen hundred (1600) feet and a depth of thirty-six (36) feet below Bunbury Port Datum AND use its best endeavours to complete such dredging not later than twenty-one (21) months after the commencement of such work;

**Additional Dredging**<sup>3</sup>

- (iii) in the event of the Company desiring to use vessels requiring an access channel and turning basin with a greater depth of water than thirty-six (36) feet below Bunbury Port Datum and/or a greater bottom width of channel than four hundred (400) feet, pay to the State such sum as is equitable having regard to the proposed use of such additional facilities by all persons including the Company and the contributions to the cost of such facilities made or to be made by other existing and proposed users of the port of Bunbury; ;

(b) by deleting paragraphs (a) and (b) of subclause (2);

(c) by substituting for the paragraph designations “(c)” “(d)” and “(e)” in subclause (2) the paragraph designations “(a)” “(b)” and “(c)” respectively;

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(d) by substituting for the paragraph designations “(f)” in subclause (2) the paragraph designation “(d)” and by substituting for the passage “therefor.” in the last line of that paragraph the passage “therefor;”; and

(e) by adding to subclause (2) a new paragraph (e) as follows —

**Use of local professional services labour and materials**<sup>3</sup>

(e) as far as it is reasonable and economically practicable —

(i) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;

(ii) use labour available within the said State;

(iii) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and

(iv) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.;

(5) Clause 8 is amended by deleting the passage “(inclusive of the Company’s contribution of two million nine hundred thousand dollars (\$2,900,000) to the cost of reclamation and dredging as provided for in subclause (2) of Clause 6 hereof)”;

(6) Clause 9 is amended —

(a) by substituting for the passage “fifteen (15)” in line four of subclause (1) the passage “forty (40)”;

(b) by substituting for the figures “1975” in line three of subclause (2) the figures “1976”;

- (c) by substituting for the passage “thirty (30)” in line seven of subclause (2) the passage “forty (40)”; and
  - (d) by substituting for the passage “date hereof.” in the last line of subclause (2) the passage “1st day of May 1973.”;
- (7) Clause 10 is amended by adding after the word “dues” in line seven the passage “and any other charge or due (including tonnage rates)”;
- (8) Clause 13 is amended —
- (a) by substituting for the passage “of commencement of year 1” in line three of subclause (2) the words “on which wood chips are first railed”;
  - (b) by substituting for subclause (6) the following subclause —
    - (6) notwithstanding the provisions of subclause (5) of this Clause, install equipment of sufficient capacity to ensure that the train turnround times at the chipping mill site and at the stockpile area are acceptable to the Railways Commission; ;
  - (c) by substituting for subclause (7) the following subclause —
    - (7) ensure that all wagons are correctly loaded at the chipping mill site and completely emptied at the stockpile area ; and
  - (d) by substituting for subclause (8) the following subclause —
    - (8) provide sufficient wagons (subject to the provisions of Clause 17(2) hereof) including spares and replacements in accordance with designs and specifications approved by the said Railways Commission to carry all its requirements hereunder. At the expiration or determination of this Agreement such wagons shall become the absolute property of the State which shall not be obliged to pay any compensation to the Company in respect of the acquisition of the said wagons; ;
- (9) Clause 14 is deleted and the following clause substituted —

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**Minimum Tonnage<sup>3</sup>**

14. The Company shall, during the continuance of this Agreement, unless the Railways Commission otherwise determines, consign by rail all its requirements of wood chips (being not less than 500,000 tons in any year) from the chipping mill site to the stockpile area.

If a pulp mill is established as provided in Clause 19 hereof the question of minimum tonnage of wood chips and freight rates for the carriage thereof by rail will be renegotiated by the State and the Company. ;

(10) Clause 15 is amended —

(a) by substituting for subclauses (1) (2) and (3) the following subclauses respectively —

**Railway Freight Rates<sup>3</sup>**

(1) The Company shall throughout the continuance of this Agreement pay to the State on all wood chips transported by rail from the chipping mill site to the stockpile area freight at the following rates: —

Over 500,000 tons and up to 750,000 tons per year — \$2.25 per ton on the total tonnage transported.

Over 750,000 tons per year — \$2.20 per ton on the total tonnage transported.

(2) The rates for freight referred to in subclause (1) of this Clause are based on costs prevailing at the 1st day of January 1973 and shall be adjusted on the 1st days of January and July of each year with the new rates becoming effective on and from those dates in accordance with the following formula: —

$$F1 = F + \left[ .6F \left\{ .80 \left\{ \frac{HR 1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR 1 - SR}{SR} \right\} \right\} \right]$$

WHERE:



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- (i) F1 = New freight rate.
- (ii) F = The existing freight rate.
- (iii) HR = The average hourly rate payable as at the 1st day of January 1973.
- (iv) HR1 = The average hourly rate payable as at the date of adjustment.
- (v) D = The wholesale price (duty free) of distillate in Perth as at 1st day of January 1973.
- (vi) D1 = The wholesale price (duty free) of distillate in Perth as at the date of adjustment.
- (vii) SR = Price of heavy steel rails per ton c.i.f. Port of Fremantle as ascertained from price schedule covering despatches from the Broken Hill Proprietary Company Limited and Australian Iron & Steel Proprietary Limited as at 1st day of January 1973.
- (viii) SR1 = The price of heavy steel rails per ton c.i.f. Port of Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 1st day of January 1973 are: —

	Per Hour
1st class driver .....	\$2.4900
1st class guard .....	\$2.1975
Trackman .....	\$1.7075
	<hr/>
	\$6.3950

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Average hourly rate .....	\$2.1317
Price of distillate per gallon — 21.4 cents	
Price of heavy steel rails per ton c.i.f Port of Fremantle —	\$120.00

This formula shall be subject to review by the Railways Commission after consultation with the Company on the 1st day of January 1978 and thereafter at five-yearly intervals.

(3) All commodities other than wood chips carried for the Company by the Railways Commission shall, unless otherwise determined by the Railways Commission, be charged at gazetted rates.; and

(b) by deleting the words “between noon on Saturday and midnight” in line two of paragraph (a) of subclause (6);

(11) Clause 17 is amended —

(a) by substituting for the words “all locomotives and rolling stock” in lines three and four of subclause (1) the words “all wagons”; and

(b) by substituting for subclauses (2) and (3) the following subclauses —

(2) When in the opinion of the Railways Commission any wagon is no longer capable of being satisfactorily serviced or maintained the Company shall subject to the provisions of subclause (3) of this Clause upon the written request of the said Commission and at the cost of the Company (except where such replacement is made necessary solely by the negligence of the Railways Commission) replace such wagon with one approved by the said Commission.

(3) If any request under subclause (2) of this Clause is made within the period of the initial Forest Produce (Chipwood) License referred to in paragraph (a) of

subclause (1) of Clause 4 hereof and the Company considers such request is unreasonable the Company may elect by notice in writing to the Railways Commission within one (1) month of receipt of the request refer to arbitration as hereinafter provided any dispute or difference as to the reasonableness of the said Commission's request. If the Company falls or omits to elect as aforesaid it shall pay the full replacement cost as provided by subclause (2) of this Clause.;

(12) by adding after Clause 17 a new Clause 17A as follows —

**Private Roads<sup>3</sup>**

17A. (1) The Company may construct and use private roads within the production area but —

- (a) the plans and specifications for any such road shall be approved in advance by the State and shall where required by the State be subject to conditions including *inter alia* provision for adequate grade separation or such other reasonable protection as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be at all intersections with public roads and railways;
- (b) the Company shall —
  - (i) minimise the extent of forest clearing required for such road alignments and give to the Conservator of Forests six (6) months prior notice of its intention to build any such road;
  - (ii) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licensees) are excluded from use of any such roads; and
  - (iii) provide fences and stock barriers wherever necessary.

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(2) The Company shall in respect of every road constructed pursuant to subclause (1) of this Clause that is open to or used by the public for passage with vehicles comply with the provisions of the *Road Maintenance (Contribution) Act 1965*.

**Public Roads**<sup>3</sup>

(3) Subject to any restriction that the State may reasonably impose by way of limitation of speeds or loads or the use of railway crossings the Company may use any public roads that may from time to time exist in the area of its operations under this Agreement for the purpose of transporting goods and materials in connection with those operations, but where the Company's operations require the use of a public road that is inadequate for the purpose, or results in excessive damage or deterioration of any public road (other than fair wear and tear) the Company shall pay to the State or local authority concerned (except where and to the extent that the Commissioner of Main Roads or local authority agrees to bear the whole or part of the cost involved) the total cost of any upgrading required or of making good the damage or deterioration.

(4) Where the operations of the Company bring about an increase in the conflict of trains and road vehicles at level crossings to such an extent that an improvement in the level of protection requiring the provision of either flashing lights, boom gates or grade separation is considered by the Minister to be warranted following an investigation, the Company shall pay to the State (except where and to the extent that the Minister agrees to bear the whole or part of the cost involved) the total cost of providing the increased level of protection.;

(13) Clause 18 is amended as to subclause (5) —

- (a) by substituting for the passage “three (3)” in line three the passage “six (6)”; and
- (b) by substituting for the passage “an abnormally large supply of water” in lines fourteen and fifteen the passage “a substantial amount of water necessitating additions to the existing water supply scheme at Manjimup”;

- (14) Clause 19 is amended —
- (a) by substituting for paragraph (b) of subclause (5) the following subclause —
    - (b) water supply and effluent disposal schemes adequate for the requirements of the processing plant (including the employment and retention by the Company of expert consultant engineers who shall be required to collaborate closely with the State to design and develop such schemes) and for the protection of the environment; and; and
  - (b) by deleting the word “locomotives” and the words “brakevans and bogies” in the first line of paragraph (b) of subclause (16);
- (15) Clause 24 is amended by substituting for the figures “1975” in line three of subclause (a) the figures “1979”;
- (16) Clause 25 is amended by deleting the word “locomotives” and the words “brake-vans and bogies” in lines ten and eleven of paragraph (c);
- (17) Clause 27 is deleted and the following clause substituted —

**Variation<sup>3</sup>**

27. (1) The parties may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this Clause constitutes a material or substantial alteration of the rights or obligations of either party, the agreement shall contain a declaration to that effect and the Minister shall cause that agreement to be laid upon the Table of each House of Parliament within the twelve (12) sitting days next following its execution.

**Second Schedule**

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(3) Either House may, within twelve (12) sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if, after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.;

(18) Clause 28 is amended by adding after the word “shall” in line twenty the words “promptly give notice to the other party of the event or events and shall”;

(19) by adding after Clause 30 a new clause 30A as follows —

**Environmental Protection<sup>3</sup>**

30A. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Company hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force.;

(20) Clause 37 is amended by substituting for the passage “date and also the due payment by the Company of the first instalment of one million dollars (\$1,000,000) under subparagraph (i) of paragraph (a) of subclause (2) of Clause 6 hereof.” in lines eight nine ten and eleven the passage “date.”;

(21) The Schedule to the principal Agreement is amended —

- (a) by substituting for the heading “*WOOD CHIPS AGREEMENT ACT 1969*” the heading “*WOOD CHIPPING INDUSTRY AGREEMENT ACT 1969*”;
- (b) by substituting for the passage “49 Charles Street,” in line five the passage “255 Adelaide Terrace,”;
- (c) by substituting for the passage “49-61 Charles Street,” in line ten the passage “255 Adelaide Terrace,”;

- (d) by substituting for the passage “five hundred thousand (500,000)” in line twenty-three the passage “six hundred and seventy thousand (670,000)”;
- (e) by substituting for the passage “one dollar and seventy-seven cents (\$1.77)” in lines two and three of condition 3 the passage “two dollars and forty-eight cents (\$2.48)”;
- (f) by substituting for the passage “one dollar and fifty cents (\$1.50)” in line twelve of condition 3 the passage “two dollars and ten cents (\$2.10)”;
- (g) by adding after the word “routes” in line six of condition 8 the words “so submitted shall be in accordance with a previously agreed five year cutting plan and”;
- (h) by substituting for the last paragraph of condition 9 the following —

The right is reserved to the Conservator to excise from the license area at any time without compensation to the Company —

- (a) any area which the State may require for roads, railways, stream protection, wildlife maintenance, protection of scenic attraction, or any other works of public utility amenity or convenience;
  - (b) any area that has been cut over by the Company for chipwood timber.;
- (i) by substituting for the words “for cutting” in line two of condition 13 the words “from cutting or which fall in watercourses and protected road and stream verges”;
  - (j) by substituting for condition 21 the following condition —
    - 21. The Company when working on any catchment area shall take all action required by the Minister to avoid the pollution (including significant salinity changes) of any such catchment area.; and

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(k) by adding after condition 24 a new condition 24A as follows —

24A. The Company shall at all times when operating in dieback (*Phytophthora cinnamomi*) affected areas comply with the hygiene requirements of the Forest Officer in Charge.

IN WITNESS whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE  
HONOURABLE ALEXANDER  
DONALD TAYLOR, B.A., M.L.A. in the  
presence of —

}

A. D. TAYLOR.

H. D. EVANS,  
Minister for Forests.

The Common Seal of W.A. CHIP & PULP  
CO. PTY. LTD. was hereunto affixed by  
the Authority of the Directors in the  
presence of —

}

(C.S.)

C. R. BUNNING,  
Director.

I. C. KUBA,  
Secretary.

The Common Seal of BUNNING TIMBER  
HOLDINGS LTD, was hereunto affixed by  
the Authority of the Directors in the  
presence of —

}

(C.S.)

C. R. BUNNING,  
Director.

I. C. KUBA,  
Director.

*[Second Schedule inserted by No. 34 of 1973 s. 5.]*



## Notes

- <sup>1</sup> This reprint is a compilation as at 4 March 2005 of the *Wood Chipping Industry Agreement Act 1969* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Wood Chipping Industry Agreement Act 1969</i>	58 of 1969	29 Sep 1969	29 Sep 1969
<i>Wood Chipping Industry Agreement Act Amendment Act 1973</i>	34 of 1973	9 Oct 1973	9 Oct 1973

**Reprint 1: The *Wood Chipping Industry Agreement Act 1969* as at 4 Mar 2005**  
(includes amendments listed above)

**The Act was repealed by the *Statute Law Revision Act 2006* s. 3(1) (No. 37 of 2006) as at 4 Jul 2006 (see s. 2)**

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- <sup>2</sup> Repealed by the *Interpretation Act 1984*.
- <sup>3</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.

## **Defined terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
the Agreement.....	2
the Variation Agreement.....	2