



Sale and Purchase Agreement – Harvestech Series 3000 Pull-through Delimber

Serial No. _____

Sale Price: _____

Delivery Date: _____

Warranty Expiry Date: _____

Contractor Details

Company Name:

Owner Name/s: Owner Name/s:

Company

Partnership

Sole Trader

Office / Residential Address:

Postal Address (if different from above):

Contracting to: Equipment Insurer:

Bank: Branch:

Owner Telephone Contact Numbers

Name:

Tele Office: Tele Fax: Tele Home:

Tele Cell: Email Address:

Manager/Foreman Contact Numbers

Name:

Tele Office: Tele Fax: Tele Home:

Tele Cell: Email Address:

Likely Payment Method

Cash Bank Goughs Finance UDC AGC Other

Would like Harvestech Industries Ltd to arrange finance

Signed by Harvestech Industries Ltd:

Signed by Contractor:

Harvestech Agent's
signature

Harvestech Agent's full
name (please print)

Authorised Person's
signature

Person's full name
(please print)

Date: _____

Date: _____

Warranty

WARRANTY TERMS AND CONDITIONS

- 1.1 Harvestech Industries Ltd expressly warrants this Delimber to be free from operational defects in workmanship and materials for a period of one year from date of delivery, as stated in this contract.
- 1.2 This express warranty does not include failure caused by improper operation, or maintenance, accident, damage, misuse, abuse, non-Harvestech modifications or use of parts, to the Delimber, normal wear and tear or any other event, act, default or omission outside Harvestech's control.
- 1.3 If the product fails during normal and proper use within the warranty period Harvestech will repair or replace the faulty parts, use new or refurbished parts to that as originally supplied, solely at Harvestech's discretion.
- 1.4 Improper operation, accident, damage, misuse, or abuse, whilst not expressly limited to, covers the grapple striking the Delimber, using the grapple to either directly open the knives or to charge the spiked drive roller, lifting the Delimber by other than the lifting bar or by a chain attached to lifting eyes and failure to operate or carry out maintenance checks as per the Maintenance Manual supplied.
- 1.5 The Contractor is required to contact Harvestech on **0800 445 445** to arrange warranty service.
- 1.6 Unless with prior approval from Harvestech, Harvestech will not accept charges or liability for any freight arranged by the Contractor.
- 1.7 Any service outside the scope of this warranty shall be at Harvestech's or Harvestech's service agent's normal rate and terms then in effect. Harvestech will confirm with the Contractor these rates and terms prior to any non-warranty repair.
- 1.8 The express warranty is only valid in New Zealand.

Conditions of Sale

OWNERSHIP

- 2.1 The Contractor is required to pay Harvestech the full purchase price within 30 days of the 'Delivery Date' stated on the first page of this contract.
- 2.2 Ownership of the Delimber shall not pass to the Contractor until the Contractor has paid for the Delimber in full.
- 2.3 If the Contractor fails to pay on or before due date, Harvestech reserves the right to charge the Contractor interest at the Default Rate, being the base lending rate charged by Harvestech's bank, plus 5% per annum, from the due date until payment.
- 2.4 Harvestech supplies the Delimber to the Contractor on terms on the condition that the Company has a PMSI (Purchase Money Interest and Inventory as defined in the PPSA) in the Delimber.
- 2.5 If the Contractor sells the goods prior to payment for the same to Harvestech, the Contractor will pay the proceeds arising from that dealing into an account with records so that those proceeds remain identifiable and traceable to that dealing and the Delimber.

- 2.6 The Contractor irrevocably gives Harvestech and its agents the right to enter upon the Contractor's site or premises, without giving notice, and without being in any way liable to the Contractor or to any person or company claiming through the Contractor, if the Company has sufficient cause to exercise its rights under section 109 of the PPSA (Personal Property Securities Act 1999 and associated regulations).
- 2.7 The Buyer will assist the Company by completing any formalities or providing any information required by the Company such that the Company may establish and maintain the best security position that it is entitled to under the PPSA.
- 2.8 The Contractor, in accordance with section 148 of the PPSA, waives its right to receive a verification statement.
- 2.9 The Contractor must advise Harvestech immediately of any conditions, which may affect the Contractor's ability to pay on time.

CARE OF DELIMBER

- 3.1 Until such time as the Contractor has paid Harvestech for the Delimber in full the Contractor will:
 - a. At all times keep and maintain the Delimber in good order and repair.
 - b. Not make any alterations to or modify the Delimber without the prior consent of Harvestech.
 - c. Not adjust or tamper with any settings or adjustments unless under instruction of a Harvestech agent.
 - d. Will ensure that the Delimber is insured for the full insurable value at all times against fire, accident and theft.
 - e. Will keep the Delimber when not in use stored in a safe place either on site or in secured premises.

PREVENTION OF DAMAGE OR LOSS TO DELIMBER

- 4.1 Until such time as the Contractor has paid Harvestech for the Delimber in full the Contractor must do everything reasonable to prevent damage, beyond reasonable normal wear and tear, to or the loss of the Delimber including without limitation:
 - a. Allowing only properly experienced excavator/skidder operators to operate the Delimber.
 - b. Using, storing and maintaining the Delimber in accordance with the requirements contained within the Delimber Maintenance Manual and the reasonable instructions of an authorised Harvestech agent.
 - c. Using the Delimber only for the purposes for which it is built and designed.
 - d. Not removing the Delimber from the delivered site without first notifying Harvestech.
 - e. Avoiding the grapple striking the Delimber.
 - f. Not using the grapple to either directly open the knives or charge the drive roller.
 - g. Only moving the Delimber by lifting on the lifting bar or chain attached to lifting eyes.
 - h. Carry out all maintenance checks as per the provided Maintenance Manual.

NOTIFICATION OF DAMAGE

- 5.1 Until such time as the Contractor has paid Harvestech for the Delimber in full the Contractor must immediately notify Harvestech of any loss or damage to the Delimber beyond reasonable wear and tear.
- 5.2 Until such time as the Contractor has paid Harvestech for the Delimber in full the Contractor must not undertake repair of damage to the Delimber unless expressly under the direction of Harvestech.

DELMIBER NOT OPERATING AS SHOULD BE

- 6.1 Until such time as the Contractor has paid Harvestech for the Delimber in full the Contractor must immediately notify Harvestech if the Delimber fails to operate as it initially operated when first delivered.

INSPECTION

- 7.1 Until such time as the Contractor has paid Harvestech for the Delimber in full the Contractor will:
 - a. Allow Harvestech or its authorised agents to inspect the Delimber at any reasonable time.
 - b. For the purposes of inspection only allow Harvestech through its representatives, servants, agents or employees to have the right (without giving notice) to enter any site/premises where the Delimber is being operated or kept.
- 7.2 Until such time as the Contractor has paid Harvestech for the Delimber in full, where an inspection reveals damage, in excess of normal wear and tear, and is in need of attention Harvestech may serve written notice on the Contractor specifying the extent of damage and will organise for any necessary repairs to the Delimber to be undertaken.
- 7.3 Under this clause a letter by Harvestech will be prima facie evidence of any need for repair.
- 7.4 The cost of any repair required under this clause shall be the obligation of the Contractor.

HARVESTECH'S LIABILITY

- 8.1 The Contractor may not enter into any obligation on Harvestech's behalf or involve Harvestech in any liability.

INDEMNITY

- 9.1 The Delimber will be at the Contractor's risk at all times and the Contractor will:
 - a. Indemnify Harvestech in respect of any damage to the Delimber or their loss or destruction; and
 - b. Indemnify Harvestech against all claims and costs arising from the Contractor's use or possession of the Delimber.
 - c. Not make any claim against Harvestech for any loss, injury or damage suffered by the Contractor as a result of any breakdown or defect in the Delimber or any accident caused by the Delimber.

CONTRACTOR'S INSPECTION

- 10.1 The Contractor has examined the Delimber before entering into this Agreement and acknowledges:

- a. It complies with the description in this Agreement; and
- b. It's nature and condition meets the Contractor's.

PARTS AND ACCESSORIES

- 11.1 Any accessories or replacements at any time held by the Contractor for use in conjunction with the Delimber or attached to them will become part of the Delimber for the purposes of this Agreement.

CHANGE OF ADDRESS

- 12.1 Until such time as the Contractor has paid Harvestech for the Delimber in full the Contractor must notify Harvestech of any change in the Contractor's address during the Term of this Agreement.

CONTRACTOR'S ACTS OF DEFAULT

- 13.1 Until such time as the Contractor has paid Harvestech for the Delimber in full Harvestech through its representatives, servants, agents or employees to may enter any site or premises or any other place where the Delimber is kept or believed to be kept and retake possession of the Delimber if:
 - a. The Contractor fails to comply with any of the Contractor's obligations in this Agreement.
 - b. The Contractor goes into liquidation or receivership or a resolution to place it in liquidation is passed or proposed or the Contractor is unable to pass the solvency test defined by the Companies Act 1993.
 - c. The Contractor does or omits to do anything which might endanger the safety or condition of the Delimber.
 - d. The Contractor is placed under official management.
 - e. The Contractor enters into a scheme of arrangement with the Contractor's creditors.
 - f. Harvestech learns that the Contractor has made a material false statement when negotiating the Agreement.
- 13.2 Nothing in this clause will release the Contractor from any present or future liability under the terms of this Agreement.

HARVESTECH'S RIGHT TO TERMINATE

- 14.1 Harvestech may terminate this Agreement if the Contractor commits any of the acts of default listed.
- 14.2 The Contractor will then pay Harvestech on demand:
 - a. All costs incurred by Harvestech in taking possession, or attempting to take possession, of the Delimber.
 - b. All costs incurred by Harvestech in enforcing, or attempting to enforce this Agreement.
 - c. All costs incurred by Harvestech to repair damage to the Delimber, beyond reasonable wear and tear.

Dispute Resolution

DISPUTE RESOLUTION

- 15.1 If a party has any dispute with the other party in connection with this Agreement:

- a. That party will promptly give full written particulars of the dispute to the other.
- b. The parties will promptly meet together and in good faith try and resolve the dispute.
- c. If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- d. A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings.

15.2 The mediation procedure is:

- a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
- b. The parties must co-operate with the mediator in an effort to resolve the dispute.
- c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
- d. If the dispute is not resolved within 40 business days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
- e. The terms of settlement are binding on the parties and override the terms of this Agreement if there is any conflict.
- f. The terms of settlement may be tendered in evidence in any subsequent mediation or legal proceedings.

- g. The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.

- h. Either party may commence arbitration proceedings if mediation ceases as above.

15.3 If the dispute is referred to arbitration:

- a. The arbitration will be conducted by one arbitrator appointed by the parties.
- b. If the parties cannot agree on an arbitrator within 7 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
- c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- d. Neither party will unreasonably delay these dispute resolution procedures.

15.4 These dispute resolution procedures do not apply to:

- a. Any dispute arising in connection with any attempted renegotiations of this Agreement; or
- b. An application by either party for urgent interlocutory relief; or
- c. Any provision in this Agreement in respect of which Harvestech's decision is final.

15.5 Pending resolution of any dispute the parties will perform this Agreement in all respects including performance of the matter which is the subject of dispute.