

**WESPLY (DARDANUP)
AGREEMENT
AUTHORIZATION.**

No. 17 of 1975.

AN ACT to authorize the execution of an Agreement between the State and Westralian Plywoods Pty. Ltd. relating to the establishment of a particle board manufacturing industry near Dardanup, and for incidental and other purposes.

[Assented to 13th May, 1975.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Wesply* Short title.
(Dardanup) Agreement Authorization Act, 1975.

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Execution of
Agreement
authorized.

2. The execution by the Premier of the State of Western Australia acting for and on behalf of the State and by Westralian Plywoods Pty. Ltd. of an Agreement in or substantially in accordance with the form set out in the Schedule to this Act is hereby authorized.

Executed
Agreement
to operate
and take
effect.

3. When the Agreement referred to in section 2 of this Act is duly executed by all the parties thereto, the Agreement shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

THE SCHEDULE.

S. 2.

THIS AGREEMENT is made the _____ day of _____
One thousand nine hundred and seventy five

BETWEEN: THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT O.B.E., M.L.A. Premier of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the one part and WESTRALIAN PLYWOODS PTY. LTD. a company incorporated under the Companies Act, 1961 of the said State and having its registered office therein at 80 Sunbury Road Victoria Park (hereinafter called "the Company" which expression shall where the context so admits or requires extend to and include the successors of the Company including where the context so admits the assignees or appointees of the Company under clause 23 hereof) of the other part.

WHEREAS:

- A. The State has established substantial pine plantations in the Metropolitan area and in the South West of the said State. Approved forestry practice requires that these forests be periodically thinned and such thinning now produces substantial quantities of chiplogs and sawmill residues and the quantity thereof will progressively increase. Chiplogs and sawmill residues are raw materials used in the production of particle board, a product at present manufactured by the Company at its Kewdale factory which is not now nor in the future capable of using all of the chiplogs and sawmill residues available for such production from the pine plantations.
- B. It is in the interests of the State that chiplogs and sawmill residues be fully utilised and processed within the said State and accordingly the State agreed to enter into negotiations with the Company for the establishment of a particle board factory in the Dardanup area.
- C. It is desirable for economy of operation and to utilise the quantity of chiplogs and sawmill residues estimated by the Conservator to be available for particle board manufacture, that the factory be built with a designed capacity considerably in excess of the present market for particle board.

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- D. The Company before establishing the factory requires (inter alia) to be assured of the availability of certain facilities and services to operate the factory and of the State's support by way of guarantees for the repayment of moneys to be advanced to construct the factory and that it will be able to procure a continuous supply of chiplogs and sawmill residues within economic distances of the factory and has requested the State to assist in these matters.
- E. The State—recognising that the Company's undertaking will promote and assist the State's policy of decentralization of industry, that the expansion of particle board manufacture will promote the efficient development of the pine plantations, and that there are transport and other factors peculiar to the nature of the Company's undertaking which require special rights—has agreed to give effect to the premises by entering into this Agreement.

NOW THIS AGREEMENT WITNESSETH—

Inter-
pretation.

1. (1) IN this Agreement unless the context otherwise requires—

“advise” “apply” “approve” “approval” “consent” “certify” “direct” “notice” “notify” “request” or “require” means advise, apply, approve, approval, consent, certify, direct, notice, notify, request or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“Agreement” “hereof” “herein” and “hereunder” include this Agreement as from time to time added to varied or amended;

“associated Company” means—

(a) any Company notified by the Company to the Minister which has a paid-up capital of not less than \$500 000 and is incorporated in the said State and which

(i) is promoted by the Company for all or any of the purposes of this Agreement and in which

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the Company holds not less than 51 per centum of the issued ordinary share capital or,

(ii) is related within the meaning of Section 6 of the Companies Act, 1961 to the Company or any company related to the Company; and

(b) any other company which the Minister approves as an associated company for the purposes of this Agreement and which is associated directly or indirectly with the Company in its business or operations hereunder;

“chiplogs” means softwood logs suitable for the manufacture of particle board;

“Conservator” means the Conservator of Forests appointed by the Governor of the State of Western Australia under the Forests Act, 1918;

“cubic metre” means cubic metre of chiplogs true volume under bark;

“date of commencement” means the date on which this Agreement is executed by all the parties hereto;

“factory” or “the Dardanup factory” means the factory and all necessary ancillary buildings, works, plant and equipment and services for the production of particle board referred to in clause 2 hereof;

“forest officer” means any person appointed to be an officer of the Forests Department;

“Forests Department” or “Department” means that Department established under the Forests Act, 1918;

“forest produce” and “timber” have the same respective meanings as in the Forests Act, 1918;

“goods” means chattels of every description;

“industry” includes the manufacture by the Company of particle board and allied products and any inflexion or derivation of that word has a corresponding meaning;

“Kewdale factory” means the factory which the Company carries on at Kewdale;

“loading points” mean such places within the forest as shall be selected by the Conservator after consultation with the Company and which so far as possible shall be selected so as to minimise distance between the place where the softwood trees are felled and the loading point whilst providing reasonable access to and use by vehicles transporting chiplogs to the factory or the Kewdale factory (as the case may be);

“long term bond rate” means the interest rate payable in respect of an Australian Government Public Loan having the longest currency exceeding 5 years being raised in Australia at the date of the funding of the loan referred to in paragraph (c) of sub-clause (1) of clause 3 of this Agreement or, if none is being raised at that date, in respect of the Australian Government Public Loan having the longest currency exceeding 5 years last raised in Australia prior to that date;

“metropolitan area” has the same meaning as in the Town Planning and Development Act, 1928;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of this Agreement;

“pine plantations” means the existing pine plantations coloured green on the Forests Department map attached hereto and initialled by or on behalf of the parties hereto for the purposes of identification and all future plantations under the control of the Conservator and within economic distance of the factory or the Kewdale factory;

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“said State” means the State of Western Australia;

“sawmill residues” means softwood sawdust and off-cuts from softwood logs produced in the process of sawmilling softwood timber from the pine plantations;

“softwood timber” or “softwood” means timber of the genus pinus;

“stumpage” means the value of chiplogs as they stand in the pine plantations immediately before being cut;

“works site” includes all that piece of land being portion of each of Boyanup Agricultural Area Lots 353 and 354 and being Lot 2 on Diagram 46933 and being the whole of the land comprised in Certificate of Title Volume 1388 Folio 535;

“year” means a calendar year commencing on the 1st day of January.

(2) Marginal notes shall not affect the interpretation or construction hereof.

Reference in this Agreement to an Act shall include the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

2. The Company hereby covenants with the State that within the 6 months next following the date of commencement the Company will commence to erect and thereafter will diligently proceed with the continuation and establishment on the works site of a factory and all necessary ancillary buildings works, plant, equipment and services for the production of particle board estimated to cost \$12 000 000 (including working capital) and designed to produce and capable of producing not less than 17 cubic metres per hour (on a 19 millimetre basis) of particle board and shall within 24 months after the commencement thereof complete the construction and establishment of the factory on the works site. In the construction and equipment of the factory and in the operation of the works carried out on the works site the Company shall at all times and from time to time comply with the requirements of all Acts and regulations thereunder and accepted modern practice in relation to factories for the production of particle board and its allied products.

Company
to erect
factory.

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Loans
to the
Company.

3. (1) Subject to the provision of sub-clause (2) of this clause the State will guarantee (pursuant to the provisions of the Industry (Advances) Act, 1947) repayment of the following loans and payment of interest thereon to be made to the Company for the purpose of the construction of the factory, namely

- (a) a series of loans from the Superannuation Board in the said State aggregating the sum of \$4 500 000 each for a term not exceeding 25 years from the respective days of the funding (such loans complementing a loan for the sum of \$1 500 000 which has been advanced by the said Superannuation Board on a like basis),
- (b) loans from the Australian and New Zealand Banking Group Limited of such sum or sums as shall be required to provide bridging finance to the Company pending advances being made as mentioned in paragraph (a) of this clause. Interest thereon will not exceed $1\frac{1}{2}$ per centum above the prime overdraft rate charged by the said Bank from time to time,
- (c) a loan from the said Bank for the sum of \$1 000 000 for a term not exceeding 5 years to be made not before the loans referred to in paragraph (a) of this clause have been expended by the Company. The liability of the State as guarantor for the interest payable thereon shall not exceed the long term bond rate as hereinbefore defined plus $1\frac{1}{2}$ per centum, and
- (d) subject to satisfactory compliance by the Company with the terms and conditions of the mortgages and charges given in respect of the loans mentioned in paragraphs (a) (b) and (c) of this clause a loan of \$1 000 000 from a lender approved by the State in substitution for the loan mentioned in paragraph (c) of this clause for a term which when aggregated with the elapsed term of the loan for which it is substituted shall not exceed 25 years.

(2) The giving of the guarantees in respect of the loans referred to in sub-clause (1) of this clause are conditional upon the Company first executing in favour of the State or its nominee such mortgages and charges over such of the Company's real and personal property and in such form and containing such covenants and provisions as the State requires and their respective registration in the relevant

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offices of registration in such priority as the State determines AND the Company will do all such acts matters and things as are required to so effect registration or as are incidental thereto.

4. (1) The Conservator has supplied the Company with his best estimates of the availability of chiplogs and sawmill residues from the pine plantations for each of the years during the term of this Agreement.

(2) On the 31st day of December in each year during the continuance of this Agreement the Company shall deliver to the Conservator an estimate of its requirements for the next ensuing 6 years.

(3) The Conservator shall as far as is practicable control the pine plantations and the disposal of sawmill residues so as to ensure that (consistent with, in his opinion, approved forestry practice) the quantities of chiplogs and sawmill residues agreed between the Conservator and the Company (pursuant to sub-clause 4) of this clause) are available to the Company and the State shall not sell or dispose of or cause to be sold or disposed of chiplogs or sawmill residues or enter into contracts or cause any contracts to be entered into for such sale or disposal which would prevent or be likely to prevent the Company being supplied with its requirements therefor in full (up to the maximum aggregate quantity referred to in paragraph 5 (b) of this clause) at both the factory and the Kewdale factory.

(4) The Company and the Conservator shall from time to time during each year confer as to the respective requirements of the Company for chiplogs and sawmill residues and as to the availability of the respective quantities likely to be required by the Company in the next following year. On or before the 30th day of June in each year, agreement shall be reached as to the respective quantities of chiplogs and sawmill residues to be supplied by the Conservator to the Company during the next following year. In default of agreement the matter shall be determined by arbitration.

(5) During the continuance and subject to the provisions of this Agreement:—

(a) the State shall supply to the Company (without the Company being under any obligation to obtain any permit or licence from the Conservator) from the pine plantations the respective quantities of chiplogs and sawmill residues agreed upon or determined from time to time in respect of each year pursuant to the provisions of subclause (4) of this clause;

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- (b) The maximum aggregate quantity of chiplogs and sawmill residues which the State shall be obliged to supply to the Company pursuant to sub-clause (4) of this clause in any year will not exceed 330 000 cubic metres. As regards any difference in any year between that maximum aggregate quantity and the aggregate quantity so agreed or determined pursuant to that subclause the State undertakes not to sell or dispose of that difference for the manufacture of particle board.

Specifi-
cations of
Chiplogs.

5. The Company shall not be bound to accept any chiplogs which—

- (a) are not sound clean and free from rot doze blue stain and charcoal;
- (b) are not sufficiently straight for the manufacturing processes for the time being employed in the industry;
- (c) are less than the length agreed from time to time by the Conservator and the Company, or
- (d) are less than 100 millimetres small end diameter or more than 350 millimetres in butt end diameter both measured over bark.

Conser-
vator's
rights and
obligations.

6. The Conservator is responsible, under the Forests Act, 1918 for the management and control of the pine plantations including the periodic thinning of the pine plantations the felling of timber therein, the extraction and classification of the produce into chiplogs, fencing material and saw logs of various size classes and quality classes. It is agreed that it is in the best joint interest of the Conservator and the Company to encourage the utmost economy in felling, extraction and cartage systems. The State undertakes that the Conservator (by virtue of this Agreement) shall from time to time as occasion requires after consultation with the Company as to the terms and conditions thereof call tenders for such felling, extraction and cartage of same to loading points within the pine plantations. The Conservator shall not accept any tender for the supply of chiplogs to the Company unless before acceptance the tender has been considered jointly by him and the Company. The Conservator is hereby empowered to accept any tender which in his opinion gives effect to the principles set out in this clause.

7. (1) As to all chiplogs made available to and accepted by the Company for the purpose of the manufacture of particle board the Company shall pay to the State in respect thereof:—

Price of
Chiplogs
and
Sawmill
Residues.

- (a) the several rates of stumpages set out in the Schedule hereto;
- (b) the costs and expenses of felling, extraction and cartage of chiplogs to the loading points at the rates or prices set out in the tenders respectively accepted therefor; but if such tender includes logs other than chiplogs then as otherwise agreed or failing agreement as determined by arbitration;
- (c) 5 percentum of the costs and expenses referred to in paragraph (b) of this clause as representing the costs:
 - (i) directly incurred in controlling and supervising the work of contractors engaged in the felling, extraction and cartage of chiplogs to the loading points, plus
 - (ii) 15 percentum of the costs referred to in sub-paragraph (i) of this paragraph to cover overheads and other indirect costs associated with such work.

Should circumstances arise which render the provisions of this paragraph unfair or inequitable either party may from time to time request the other party to amend the said percentage of 5 percentum so as to reflect a fair and equitable reimbursement of the costs referred to in sub-paragraphs (i) and (ii) of this paragraph. If the parties fail to agree as to the amount of adjustment the question shall be referred to arbitration. No such request shall be made prior to the 1st January, 1982 and no request shall be made at intervals of less than 3 years.

(2) The Company shall pay to the State a fair and reasonable price for all sawmill residues made available to and accepted by the Company bearing in mind the prices prevailing at the time for similar raw materials elsewhere in Australia.

(3) Any damage to roads or tracks within the pine plantations resulting from the cartage of chiplogs and sawmill residues by the Company or its contractors shall be repaired by the Company at its own expense to the satisfaction of the Conservator.

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Company's
Obligation
to take or
pay for
Chiplogs.

8. (1) Subject to the provisions of clause 24 hereof the Company shall be bound in each year to take delivery of the quantity of chiplogs agreed or determined pursuant to clause 4 hereof provided that if it takes less than 90 per centum of such quantity in any year, the Company shall pay stumpage to the State on the deficiency at a rate equal to the stumpage rate payable in that year under clause 7 hereof.

(2) If the Company during either or both of the 2 years next following any year in which it takes less than 90 per centum of the aforesaid quantity takes chiplogs in excess of the said quantity agreed or determined as aforesaid the stumpage payable on such excess shall be reduced by the amount of stumpage paid in respect of the deficiency.

Default by
Company
in payment
of stumpage,
rates, costs
and
expenses.

9. The following provisions shall apply with respect to stumpage rates and costs and expenses payable under this Agreement—

- (a) the stumpage rates shall be payable at such times after the amounts have been ascertained and in such manner as the Conservator from time to time determines;
- (b) if any sum in respect of stumpage rates or any of the costs and expenses referred to in paragraphs (b) and (c) of clause 7 (1) hereof remains unpaid for 30 days after the Conservator has demanded payment thereof the State may, without limiting the obligations of the Company under clause 8 hereof by notice in writing to the Company suspend its right to obtain softwood timber under this Agreement until payment is made.

Determin-
ation of
Quantity of
Chiplogs.

10. (1) The quantity of chiplogs upon which the stumpage is payable shall be:—

- (a) determined in such manner and by such method (allowance being made for bark) as may be agreed upon from time to time by the Conservator and the Company and failing agreement within the 30 days next following the delivery of the chiplogs (the subject of measurement) to the place referred to in sub-clause (2) of this clause by such method as is normal in the forestry industry for the ascertainment of the quantity of chiplogs as the Conservator directs provided that if in the reasonable opinion of the Company the method so directed by the Conservator is for technical reasons inaccurate with respect to chiplogs then the method shall be determined by arbitration;

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- (b) accurately recorded in writing by the Company in such manner as the Conservator reasonably directs and no chiplogs shall be removed from the place referred to in sub-clause (2) of this clause until the measurement has been completed and so recorded and within the 7 days next following the last day of each fortnight the Company shall furnish to the Conservator a return in writing showing the quantity of chiplogs upon which stumpage is payable for that fortnight.

(2) The place at which the quantity of chiplogs is to be measured shall be as fixed by the Conservator from time to time after consultation with the Company and no chiplogs shall be removed therefrom until such measurement has been completed and recorded.

(3) If the stumpage so payable is to be determined by weight—

- (a) the Company shall provide a weighbridge of a pattern which meets the requirements of the Weights and Measures Act, 1915 and shall while this Agreement remains in force have the weighbridge maintained and periodically verified and stamped in accordance with the provisions of that Act;
- (b) at all times while the weighbridge is in accurate working order the quantity of softwood timber upon which stumpage is payable under this Agreement shall be determined by weighing in on the weighbridge; and
- (c) at all times while the weighbridge is not in accurate working order the quantity of chiplogs upon which stumpage is payable under this Agreement shall be determined in such manner as may be agreed upon by the Conservator and the Company or failing agreement within 14 days as the Conservator may direct.

11. If any of the softwood plantations comprising the pine plantations are damaged or destroyed by fire disease or other cause to such an extent that it is impracticable for the State to comply with the provisions of clause 4 hereof or if by reason of anything beyond its control the State is prevented from complying with those provisions the Company shall have no claim against the Crown in right of the State or the Conservator for the non-fulfilment of its obligations under those provisions so far as non-fulfilment is due to any such cause.

Suspension if
Plantation
damaged.

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Company
to comply
with
Forests
Act, 1918.

12. Save as varied or modified by this Agreement the Company shall comply with the provisions of the Forests Act, 1918.

Electricity.

13. (1) The State will, within 3 months of the receipt of a written request from the Company cause 50 cycle 440 volts 3 phase power to be supplied to the works site, sufficient for the construction of the factory referred to in clause 2 hereof, and within 8 months of the receipt of a written request from the Company provide a 22 000 volt power line to the works site for the operation of the works, and within a further 6 months provide a second 22 000 volt line to the site in order to provide a duplicate supply.

(2) The State, appreciating the importance to the Company of an assured reliable and continuous supply, will use its best endeavours to provide such a supply.

(3) The supply of power to the Company pursuant to this clause shall be on the Commission's usual conditions and practice and at the appropriate tariffs prescribed from time to time.

Water.

14. (1) The Company estimates that for its requirements for the factory it will require approximately 3 tonnes of water per hour for manufacturing purposes and would also require a reserve supply for general purposes and fire fighting. The Company will construct suitable storage facilities to satisfy these requirements.

(2) The Company shall at its cost and in collaboration with the State search for underground water within the works site. Where appropriate the Company shall employ and retain experienced groundwater consultants and shall furnish copies of the reports of such consultants to the Minister as they become available.

(3) If the investigations referred to in sub-clause (2) of this clause establish the availability of suitable underground water, the State by virtue of the provisions of this Agreement shall cause the Company to be granted a license or licenses under the provisions of the Rights in Water and Irrigation Act, 1914 to construct and develop wells (in this clause referred to as "the wells") and draw therefrom on such terms and conditions as the Minister approves during the continuance of this Agreement such quantities of water

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(subject to its continued availability) as is sufficient to meet the Company's water requirements as aforesaid. No charge shall be made by the State for water drawn by the Company under the provision of this sub-clause.

(4) (a) If the search for underground water within the works site fails to provide adequate water at a reasonable depth or if the wells within the works site prove or are likely to prove inadequate to supply the water requirements of the Company for the industry carried on on the works site, the parties hereto shall agree on a programme which shall be carried out by the State to search for, establish and develop adequate supplies of water outside the works site. The cost thereof (including the provision of all necessary bores, pipelines, fittings, equipment and facilities) shall be borne by the Company.

(b) The State shall supply the Company with sufficient water to meet the water requirements of the Company for the industry carried on on the works site, which is not obtainable from the wells developed pursuant to sub-clause (3) of this clause.

(5) The State shall with all reasonable expedition construct the works required for the purposes of sub-clause (4) of this clause. The State may in its discretion develop any district or regional water supply or construct any works to a greater capacity than that required to supply the Company's water requirements but in that event the cost of the system as so enlarged shall be shared by the parties hereto in such manner as may be agreed to be fair and equitable in all the circumstances.

(6) The Company shall pay the State for water supplied to it pursuant to the provisions of sub-clause (4) of this clause and consumed on the works site a fair price to be negotiated between the parties having regard to the actual cost of operating and maintaining the supply and provision for replacement of the water supply facilities.

15. The State will ensure that regard will be given to the Company's reasonable requirements for natural gas in any future supply system developed and controlled by the State provided that:

Natural
Gas.

(i) the supply authority has (having due regard to the supply of gas available from the gas reserves) allocated a proportion of the reserves for uses such as that proposed by the Company;

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- (ii) the supply authority is satisfied that the construction of a pipeline passing within reasonable proximity of the factory is warranted and has received reasonable notice of the Company's requirements to ensure such pipeline has adequate capacity to supply the Company;
- (iii) the Company pays for gas supplied to it by the supply authority in accordance with the supply authority's standard tariffs and conditions.

Disposal
of wastes.

16. The Company shall dispose of all waste materials that result from the Company carrying on the business of producing particle board at the works site so as to prevent the pollution of the soil on the works site and the Company shall with all due expedition comply with any reasonable direction which the Minister may from time to time give or cause to be given with regard to such disposal.

Preference
to local
industry.

17. So long as the Company is the sole manufacturer of particle board in the State of Western Australia and the quality and price of its particle board is in the opinion of the Minister comparable to the quality and price (including freight) of other particle board which is available within the said State or can be delivered at Perth or such other place as the Minister nominates within such period as the State stipulates the State will in respect of its requirements of particle board give exclusive preference to the particle board manufactured by the Company on such terms and conditions as the Minister directs.

Transport
construction
materials
by road.

18. (1) If during the construction of the factory or any substantial extension thereof the Company demonstrates to the satisfaction of the Commissioner of Transport that the services provided by the Railways Commission do not meet the reasonable requirements of the Company the Commissioner of Transport shall under the provisions of the Transport Commission Act, 1966 issue licences on the application of the Company or its nominee in respect of commercial goods vehicles for them to carry goods by road for such construction or extension under the terms of the Transport Commission Act, 1966.

Transport
Arrange-
ments.

(2) The State shall cause the Commissioner of Transport to grant on the application of the Company or its nominee made by it from time to time licences under the Transport Commission Act, 1966 to operate the commercial

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goods vehicles the subject of those applications for the carriage of the undermentioned goods on the respective routes:

Goods	Routes Between
(a) all chiplogs and sawmill residues for use at the factory	the pine plantation known as State Forest No. 16 and pine plantations and sawmills wholly or partly south of that plantation
(b) all chiplogs and sawmill residues for use at Kewdale factory	the pine plantations and sawmills north of State Forest No. 16
(c) all adhesives for use in or incidental to the manufacture of particle board at the factory or the Kewdale factory	the respective places in the said State where the Company takes delivery of adhesives and the factory or the Kewdale factory and between the factory and Kewdale factory or <i>vice versa</i>
(d) 70 percentum of such particle board and allied products (collectively called "products" in this clause) wholly or partly manufactured by the Company at the factory as are for transport to the metropolitan area	the factory and any place or places within the metropolitan area.

(3) If the Company is transporting from its factory to places within the metropolitan area any of its products wholly or partly manufactured by the Company in its factory the Company shall transport by the rail service provided by the Railways Commission not less than 30 percentum of those products PROVIDED THAT when and as often as the Company demonstrates to the satisfaction of the Commissioner of Transport that:

- (a) the cost of transportation of those products to their destination on a door to door basis using rail service (either wholly or in part)

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exceeds by 15 percentum the cost of the transportation of the same products exclusively by road, or

- (b) the rail service in respect of those products is of lesser quality than the carriage by road of the same products by a commercial goods vehicle,

the State shall then cause the Commissioner of Transport on the application of the Company or its nominee forthwith to grant the Company for the period of one year a licence for a commercial goods vehicle to carry that 30 percentum of its products from its factory to places within the metropolitan area.

(4) If the Company is exporting beyond the boundaries of the said State any of its products (wholly or partly) manufactured by the Company in its factory the Company shall transport by the standard gauge rail service provided by the Railways Commission not less than 50 percentum of those products in each year during the continuance of this Agreement unless the Company demonstrates to the Commissioner of Transport that:

- (a) the cost of transportation of those products to their destination on a door to door basis using rail service (either wholly or in part) exceeds the cost of the transportation of the same products by other means of transport; or
- (b) the rail service in respect of those products is of lesser quality than that provided by other means of transport.

(5) Nothing in this clause shall lessen prejudice or affect the right of the Commissioner of Transport to grant a license in respect of a commercial goods vehicle for a route or an area specified thereon for the transport of goods manufactured either wholly or partly by the Company either at the factory or Kewdale.

(6) During the continuance of this Agreement the State shall ensure that the Commissioner of Transport shall not grant or suffer or permit to be granted a license under the Transport Commission Act, 1966 in respect of a commercial

goods vehicle the operation of which would in any manner directly or indirectly nullify lessen prejudice or abrogate from any of the rights or benefits of the Company under the provisions of any one or more of sub-clauses (1) (2) and (3) of this clause.

(7) Any nominee of the Company under sub-clauses (1) (2) and (3) of this clause shall be of such character and financial stability and have such qualifications as meets the approval of the Commissioner of Transport.

19. (1) The Company shall for the purposes of this Agreement as far as it is reasonably and economically practicable—

Use of
local
professional
labour
services
and
materials.

- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;
- (c) when calling for tenders and letting contracts for work materials, plant, equipment and supplies ensure that Western Australian suppliers, manufacturers and contractors are given reasonable opportunity to tender or quote; and
- (d) 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 services are equal to or better than obtainable elsewhere.

(2) The Company shall from time to time during the currency of this Agreement when requested by the Minister submit a report concerning its implementation of the provision of sub-clause (1) of this clause.

20. The State covenants with the Company that the State shall— zoning.

- (1) ensure that the works site and any lands adjacent thereto now or hereafter used or held by the Company for industrial purposes and that any licence or easement granted under or pursuant to statute or this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company

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hereunder for industrial purposes may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order;

No discriminatory rates.

- (2) except as provided in this Agreement not impose nor permit nor suffer 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 operation of the Company in the conduct of the industry at the works site nor will 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 or intended to be granted under this Agreement;

Rating.

- (3) ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of the works site and any lands (freehold or leasehold) adjacent thereto acquired or held by the Company for the purposes 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 the unimproved value thereof and no such lands shall be subject to any discriminatory rate as against the Company as a party to this Agreement;

No resumptions.

- (4) having regard to the particular nature of the industry proposed to be established by the Company under this Agreement and during the currency hereof not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any estate, right, title or interest in the works site or any lands adjacent thereto acquired or held by the Company for the purposes of this Agreement the resumption of any of which would unreasonably impede the existing or projected activities of the Company nor will the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State as aforesaid any road

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right of way or easement of any nature or kind whatsoever over or in respect thereof without the consent of the Company first having been obtained which consent shall not be arbitrarily or unreasonably withheld.

21. 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. Environ-
mental
protection.

22. (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 licence 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. Variation.

(2) The Minister shall cause an agreement made pursuant to sub-clause (1) of this clause in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within the 12 sitting days next following its execution.

(3) Either House may, within 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.

23. (1) Subject to the provisions of this clause the Company may at any time— Assignment.

(a) assign mortgage charge sublet or dispose of to an associated company as of right and any other company or person with the consent of the Minister the whole of its rights hereunder the works site and the Kewdale factory and of the obligations of the Company hereunder; and

- (b) appoint as of right an associated company or with the consent of the Minister 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—

- (i) to the Company first obtaining the written consent thereof from the mortgagee referred to in each mortgage and charge referred to in clause 3 hereof; and
- (ii) to the assignee or (as the case may be) 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 (as the case may be) the subject of the appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to sub-clause (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 the securities referred to in clause 3 hereof.

Delays.

24. (1) This Agreement shall be deemed to be made subject to any delays in the performance of obligations hereunder and to the temporary suspension of continuing obligations hereunder which may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from Act of God, force majeure, earthquakes, floods, storms, tempests, wash-aways, 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) acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors delays of contractors and delays due to overall Australian economic conditions or factors, which could not reasonably

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have been foreseen and delays due to overall economic conditions in Australia or any other country from which the finance or a substantial portion of the finance required to enable the Company to discharge its obligations under this Agreement is to be provided or to which a substantial portion of the products of the Company is intended by the Company to be sold, inability to sell or otherwise dispose of particle board profitably or to prices for the products of the Company falling below profitable levels, PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall minimise the effect of the said causes as soon as possible after their occurrence.

(2) Nothing in this clause shall lessen prejudice or affect the immunity given to the State and the Department under the provisions of clause 11 hereof.

25. (1) Notwithstanding any provision of this Agreement (but subject to sub-clause (2) of this clause) the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Power to
extend
periods.

(2) The provisions of sub-clause (1) of this clause shall not apply to clause 31 hereof.

26. Except where otherwise specifically provided in this Agreement any dispute or difference between the parties hereto arising out of or in connection with this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties hereto 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 this clause shall not apply to any case where the State or the Minister is by this Agreement expressly or impliedly given a discretionary power.

Arbitration.

27. The Company shall indemnify and keep indemnified the State and its agents servants and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to this Agreement or relating to

Indemnity.

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its operations hereunder or 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 works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Default.

28. In any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein which the State considers material and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration then 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 shall abandon or repudiate its operations under this Agreement or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and thereupon the rights of the Company hereunder shall cease and determine.

Effect of
cessation
or deter-
mination of
Agreement.

29. On the cessation or determination of this Agreement—

- (a) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;
- (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties hereto shall have any claim against another of them with respect to any matter or thing in or arising out of this Agreement.

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30. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its nominated office for the time being in the said State and by the Company if signed on its behalf by any person or persons authorised by the Company or if signed by its solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister AND except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Notices.

31. (1) This Agreement shall remain in force for a period of 25 years commencing on the date of commencement or until sooner determination in accordance with the provisions hereof.

Term of Agreement.

(2) The expiration or determination of this Agreement shall not affect the enforcement of any right obligation or liability theretofore acquired accrued or incurred.

32. (1) Provided the Company is not then in default under this Agreement the State shall in the first 3 months of the last year of this Agreement if the Company seeks a further Agreement to assure to it supplies of chiplogs and sawmill residues for the continuance of the manufacture of particle board and the increase of the quantities thereof produced investigate the development of the particle board industry and if satisfied that the Company needs to have supplies of chiplogs and sawmill residues assured to it by a further Agreement enter into negotiations with the Company for that purpose.

Extension of Agreement.

(2) When a further Agreement has been agreed upon the State shall introduce and sponsor a Bill in the Parliament of Western Australia to authorize the execution on behalf of the State of that further Agreement.

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Exemption
from
Stamp Duty.

33. (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable—

- (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 licence or other right of interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) made in conformity with the provisions of sub-clause (1) of clause 23 hereof.

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

(2) If prior to the date of commencement stamp duty has been assessed and paid on any instrument or other document referred to in sub-clause (1) of this clause the State shall on demand after the date of commencement refund any stamp duty paid on any such instrument or other document to the person who paid the same.

34. The Company shall in a clear and legible form stamp or impress (as the case may require) on all products manufactured by it the insignia.



Made in Western Australia

SCHEDULE.

1. During the several periods set out or referred to in this Schedule the stumpage rates referred to in clause 7 hereof shall be payable at the relevant rates set out and calculated in accordance with the provisions of this Schedule subject to the conditions and in the manner set out in this Agreement.

2. Chiplogs for the Kewdale factory—

(i) from pine plantations north of State Forest No. 16 for the period—

from date of this Agreement to 30th April 1977
—\$3.00 per cubic metre.

(ii) from the pine plantation known as State Forest No. 16 and pine plantations wholly or partly south of that Forest for the period—

from the date of this Agreement to the date of commencement of operations at the Dardanup factory—\$1.50 per cubic metre.

3. Chiplogs for the Dardanup factory for the respective periods—

(a) from the date of commencement of operations at the Dardanup factory to 31st December 1978—\$1.50 per cubic metre.

(b) from 1st January 1979 to 31st December 1980—\$2.00 per cubic metre.

(c) from 1st January 1981 to 31st December 1983—\$2.50 per cubic metre.

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4. (1) Subject to paragraph 5 of this Schedule the stumpage rate payable in respect of—

(i) each of the periods set out in paragraph 3, and

(ii) each successive period of 3 years commencing on—

(a) the 1st May 1977—with respect to chiplogs supplied to the Kewdale factory

(b) the 1st January 1984—with respect to chiplogs supplied to the Dardanup factory

unless agreed upon by the State and the Company (pursuant to sub-paragraph (4) of this paragraph) within the 14 days next following the relevant publication by the Australian Bureau of Statistics of the figures referred to in (I) and (II) of this paragraph

shall be at the rate calculated by varying the rate payable during the relevant preceding period in the same proportion as the average of the proportional variation in the figures at the beginning and end of that preceding relevant period in regard to:

(I) the Average Weekly Earnings per Employed Male Unit: Western Australia; and

(II) the Wholesale Price Index of materials used in building other than home building: Perth: Timber, Board and Joinery.

In respect of the period referred to in paragraph 3(a) of this Schedule the preceding period shall be deemed to be from 31st March, 1974 to the date of commencement of operations at the Dardanup factory.

(2) If the Australian Bureau of Statistics cease to publish the figures referred to in sub-paragraph (I) of this paragraph a new method of calculating any variation in the respective stumpage rates shall be agreed upon by the State and the Company or failing agreement within 30 days shall be determined by the State.

(3) If any variation in the stumpage rates is not determined prior to the commencement of the new relevant period the Company shall continue to pay stumpage rates at the rate payable during the preceding relevant period and as soon as any new rate has been determined an adjustment shall be made retrospectively to the commencement of the new relevant period.

(4) The parties hereto shall confer within the 14 days preceding the expiry of each period in a bona fide effort to reach agreement as to the stumpage rate to be payable for the succeeding period and in so doing shall give full consideration to the economies of growing softwood timber in the pine plantations and all matters incidental thereto.

5. It is acknowledged and agreed by the parties hereto that the stumpage rates payable in respect of the chiplogs used in the Dardanup factory are of a concessional nature as it is anticipated that the bulk of the particle board manufactured at the Dardanup factory will be delivered beyond the boundaries of the said State. The Company shall inform the Conservator from time to time of the distribution of its particle board. Where any change to that marketing pattern occurs whereby in any period there is such a reduction as the Conservator in his opinion considers material in the quantity of particle board delivered beyond the said State compared to the quantity delivered in the preceding period the parties agree that due regard shall be given to such increase in the stumpage rate payable for the succeeding period as the parties hereto agree or failing agreement as shall be determined by arbitration hereunder.

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IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first hereinbefore written.

SIGNED by the said THE
HONOURABLE SIR CHARLES
WALTER MICHAEL COURT,
O.B.E., M.L.A., in the presence
of—

Minister for Industrial Development.

The Common Seal of WES-
TRALIAN PLYWOODS PTY.
LTD. was hereunto affixed in
the presence of—

Director.

Director.

Secretary.