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Principal Chief Conservator of Forests (WL) &
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Sub: KF&WLD – Timber Extraction Works – Deviating from Standard Agreement Conditions – Enforcing of conditions provided in Kerala Forest Department Code and Kerala Financial Code – Ratification of Defects - reg

It has come to the notice of the undersigned that while executing agreement with contractors for extraction of timber and firewood and delivery of the same to depots from Government plantations, some officers are deviating from the standard agreement conditions to be followed for the execution of the work as provided in Kerala Forest Department Code Vol.III Appendix XX which is also violation of Kerala Financial Code Vol.I Chapter III Article 51. In this connection, attention is invited to Chapter III – expenditure, article 51 (i), (ii) and (ix) of Kerala Financial Code Vol.I where it has been categorically stated that any deviation from standard agreement conditions should be got approved by the Government legal officers. Article 51 (ii) says that before incorporating a new condition apart from what is appearing in the code, the authority should seek legal and financial advice as there are specific and defiant code provisions governing the agreement. If the aforesaid conditions are not complied with the legal requirements of financial and legal advice such action is illegal and ultravires. Similarly, Kerala Forest Department Code Vol. I para 10-8-2 (ii) categorically specifies that “No contract involving an uncertain or indefinite liability, or any condition of an unusual character, or on which there are definite rules should be entered into without the previous sanction of the competent legal and financial authority”.

Further, sub para (iii) says that “contract should be executed on one or other of the standard forms, but they may be modified to suit any particular local requirements and nature of work involved, with the permission of the Chief Conservator of Forests who must not hesitate to consult the legal

advisers of the Government and ascertain their views, as regards the legal phraseology and issues involved”.

Further, sub para (iv) stipulates that “care must be taken to frame all agreements and obtain the concurrence of the legal advisors of the Government as regards their contents and wording in proper phraseology, both in original form as well as in any modified form, so that, in the event of a dispute the agreement should be maintainable in the court of law”.

It is to bring to the notice of all subordinate officers not to enforce an unfair or unreasonable contract or an unfair or unreasonable clause in a contract entered into between parties who are not equal in bargaining powers. Fixing penalty deviating from KFC Vol. I Chapter III Article 51 and KFDC Vol.III Appendix XX is unreasonable and unfair. Incorporating of additional conditions and deleting of standard conditions without proper sanction regarding legal and economic implications may give way to protected correspondences and litigations putting the department in the defense. Therefore, in the wake of the aforementioned, it is informed that parties to the contract, i.e., the Government and the contractors, if affected adversely on account of deviations from the approved agreement conditions appearing in the Kerala Forest Code without proper sanction from the Government legal offices as provided in Kerala Financial Code Article 51, such adverse effects should be rectified and in future, the codal provisions must be strictly adhered to.



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To

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