

Sample Dairy Code Compliant Milk Supply Agreement Terms

[Full name of processor party]

[Full name of milk supplier party]

[Drafting Note: the Australian Dairy Products Federation (ADPF) has prepared this template of Sample Dairy Code¹ Compliant Milk Supply Agreement Terms for use by dairy Processors and Farmers to support with negotiating and developing a milk supply agreement that is compliant with the Dairy Code. These Sample Dairy Code Compliant Milk Supply Agreement Terms contemplate negotiation of an agreement in writing and do not cover the situation where parties are recording an unwritten milk supply agreement under the Dairy Code.]

Where certain clauses are highlighted in grey throughout these sample Dairy Code compliant Milk Supply Agreement terms, those clauses are optional under the Dairy Code. Specifics that must be inserted by you are highlighted in yellow. The Drafting Notes explain clauses and options you have throughout these Sample Dairy Code Compliant Milk Supply Agreement Terms.

Lastly, these Sample Dairy Code Compliant Terms are not intended to cover all the matters that will be relevant to the parties' commercial relationship and is not intended to be a whole contract. Dairy Processors and Farmers can agree to additional terms and conditions to this template provided any such terms are compliant with the Dairy Code. It is the responsibility of the parties to ensure that the final contract is compliant with the Dairy Code and that appropriate legal advice is obtained.]

Disclaimer

ADPF recommends that appropriate legal advice is obtained in respect of the matters set out in this document of Sample Dairy Code Compliant Milk Supply Agreement Terms and any final resulting agreement. This document of Sample Dairy Code Compliant Milk Supply Agreement Terms is not a substitute for legal advice. To the extent permitted by law, ADPF disclaims any liability of any kind whatsoever that relates to any use of these Sample Dairy Code Compliant Milk Supply Agreement Terms.

This document was prepared on 2 May 2020 in accordance with the Dairy Code at that point in time. It is a condition of use that you use a version that is obtained directly from ADPF, please contact the Executive Director.

¹ Competition and Consumer (Industry Codes – Dairy) Regulations 2019 (Cth).

Statement of Circumstances

[insert statement of circumstances in easy to read format]

[Drafting Note: under the Dairy Code, Processors are required to publish a standard form of a milk supply agreement by 1 June accompanied by a statement of circumstances about when the Processor would enter into that particular agreement. The Dairy Code does not specify what should be included in a statement of circumstances. Guidance notes from the ACCC recommend that Processors provide at least the necessary information which allows a Farmer to understand the following:

- **'whether the standard form milk supply agreement applies to their specific circumstances (eg production capacity, geographical area);**
- **whether any other circumstances will determine whether the processor will enter into the agreement (eg whether the processor has already met their supply requirements for the coming financial year).'**

Each statement of circumstances for each published standard form milk supply agreement should collectively cover all the circumstances in which the Processor intends to purchase milk in the coming financial year].

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Sample Dairy Code Compliant Milk Supply Agreement Terms



Date

Parties

[Full name of processor party] ACN 123 456 789 of [Address details]
(Processor)

[Full name of milk supplier party] ACN 123 456 789 of [Address details]
(Farmer)

Recitals

- A The Farmer wishes to [exclusively/non exclusively] sell Milk to the Processor on the terms of this Agreement.
- B The Processor wishes to buy Milk from the Farmer on the terms of this Agreement.

The parties agree to the following:

1 Definitions and interpretation

[Drafting note: delete and include additional definitions as required]

1.1 Definitions

In this Agreement:

Business Day means a day that is not a Saturday, Sunday or public holiday in [appropriate location, eg Melbourne, Victoria].

Complaint Handling Procedure means the procedure set out in Part 1 of Annexure D.

Cooling Off Period is defined in clause 2.2.

Dairy Code means the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019* (Cth), as updated from time to time.

Dispute means a dispute between the parties to this Agreement in relation to a matter arising under or in connection with this Agreement.

Exceptional Circumstances has the same meaning as in section 28 of the Dairy Code, namely circumstances that:

- (a) are temporary; and
- (b) involve an extraordinary event (including an emergency or change in market conditions) that:
 - (i) occurs outside of Australia; and
 - (ii) has a highly significant effect on supply, demand or costs in the dairy industry; and

- (iii) is not caused by decisions made by processors.

[Drafting Note: The Dairy Code provides two examples of exceptional circumstances:

- **Example 1: A foreign country unexpectedly restricts the importation of Australian dairy products.**
- **Example 2: There is a trade shock involving one of Australia's major trading partners.]**

Exclusive Supply Agreement means an agreement between the Farmer and the Processor that prohibits the Farmer from supplying milk to another Processor.

Good Faith means good faith within the meaning of the unwritten law as in force from time to time, in relation to the supply of Milk and, without limitation, the factors set out at Annexure A may be taken into account.

Loyalty Payment means an amount payable to the Farmer under this Agreement (as in clause [insert]) because the Agreement is not terminated before the end of the supply period of the Agreement.

Milk means unprocessed milk (within the meaning of the *Dairy Produce Act 1986* (Cth)).

Minimum Price means the lowest price payable, for a period, under this Agreement for Milk supplied during that period, disregarding:

- (a) Loyalty Payments; and
- (b) any possibility of a Unilateral Prospective Stepdown; and
- (c) any fees payable by the Farmer under this Agreement.

Retrospective Stepdown is a variation of this Agreement that reduces a Minimum Price for Milk supplied under this Agreement before the variation occurs.

Specifications means the quality and quantity specifications as set out in Schedule 3.

Term as defined in clause 5.

Tier Pricing means the Minimum Price payable for a specified amount of Milk supplied during a period is greater than the Minimum Price for Milk supplied in excess of the specified amount.

Unilateral Prospective Stepdown means a unilateral variation of this Agreement by the Processor that reduces the Minimum Price for Milk supplied under the Agreement after the variation occurs.

1.2 Interpretation

In this Agreement, headings are for convenience only and do not affect the interpretation of this Agreement and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;

- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (d) a reference to a document or instrument, including this Agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (e) a reference to a party is to a party to this Agreement and includes the party's successors and permitted transferees and assigns and if the party is an individual, includes executors and personal legal representatives;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (g) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement;
- (h) unless otherwise stated, a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (i) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day.

2 Agreement

- 2.1 Subject to clause 2.2, for the Term of this Agreement, the Farmer agrees to **[exclusively/non-exclusively]** supply Milk to the Processor and the Processor agrees to purchase Milk from the Farmer on the terms and conditions of this Agreement.
- 2.2 The Farmer may immediately terminate this Agreement without incurring any liability to the Processor by providing written notice to the Processor within 14 days from the day this Agreement is entered into (**Cooling Off Period**). This clause 2.2 does not allow the Farmer to terminate this Agreement in response to any variation of this Agreement.

[Drafting Note: the Agreement should always specify the volume of milk being supplied except for when the Agreement is exclusive - in which case the Processor must purchase all of the milk supply. This clause is for the avoidance of any doubt and to ensure compliance.]

While the Dairy Code allows exclusive supply agreements to be negotiated and entered into by parties, Processors should consider the competition law issues that may arise - particularly around exclusive dealing - and seek independent legal advice where suitable.]

- 2.3 If this Agreement is an Exclusive Supply Agreement, then:

- (a) there will be no maximum amount of Milk that the Farmer must supply to the Processor under this Agreement; and
- (b) there will be no Tier Pricing.

3 Compliance with Dairy Code

- 3.1 This Agreement implements the required terms of the Dairy Code and to the extent there is any inconsistency between the terms of this Agreement and the Dairy Code, then the Dairy Code prevails.
- 3.2 If any part or whole of one or more of the provisions of this Agreement are non-compliant with the Dairy Code, then any part or whole of one or more of those provisions will be severed from this Agreement and the validity, existence, legality and enforceability of the remaining provisions in this Agreement will not be affected, prejudiced or impaired.

4 Good faith

[Drafting Note: the good faith requirements of the Dairy Code overlay the Agreement. The parties may wish to insert the good faith requirements into the Agreement itself].

- 4.1 The Processor and Farmer must at all times deal with each other in Good Faith.
- 4.2 Without limiting clause 4.1, the Good Faith obligation applies in relation to the matters set out in Annexure A.

5 Term

- 5.1 This Agreement will commence on the Start Date and will continue until the End Date unless it is terminated earlier in accordance with clauses 2.2 or 14 (**Term**).

Event	Date
Start Date	[insert date] or date the last party executes (whichever is the later)
End Date	[insert end date] or extended under clause 5.2.

[Drafting Note: the start date and end date of the Agreement must be specified unless this Agreement is for a Processor that is a cooperative to a farmer. If the Processor is a cooperative and the Farmer is a member of that cooperative, then the milk supply agreement may specify that the agreement continues until terminated or the Farmer ceases to be a member of that cooperative.]

- 5.2 If the Term is longer than 3 years, the Farmer may, subject to clause 5.3, by written notice to the Processor (**Extension Notice**) extend the Term by 12 months. The Farmer may only exercise this right to extend once under this Agreement, and such extension is not taken to be a variation of this Agreement.

5.3 The Farmer must give the Extension Notice to the Processor:

- (a) no earlier than 30 days before the End Date; and
- (b) no later than 7 days before the End Date.

6 Minimum Price

The Minimum Price for Milk supplied under this Agreement is set out in Schedule 2.

7 Payment

7.1 [Insert the payment process and conditions as agreed by the parties]

7.2 Subject to clause 7.3, the Processor will pay a Loyalty Payment of \$[insert] to the Farmer if:

- (a) this Agreement is not terminated before the end of the Term; and
- (b) [insert other conditions that are compliant with the Dairy Code].

[Drafting Note: the Loyalty Payment must not impose a condition that the Farmer:

- **supply milk to the processor after the agreement ends; or**
- **agree to vary the agreement to postpone the end of the supply period; or**
- **enter into a new milk supply agreement with the processor.]**

7.3 If this Agreement is terminated before the end of the Term, the Farmer is entitled to a portion of the Loyalty Payment, calculated on the basis of the proportion of the supply period completed before the termination. This clause 7.3 will not apply if the Agreement is terminated in circumstances involving a material breach of the Agreement by the Farmer.

8 Fees and services

8.1 The Processor [may/must] supply [insert details of the service] to the Farmer.

8.2 The fee(s) that the Farmer will pay for the service specified in clause 8.1 and provided by the Processor is [insert the fee or method for calculating the fee].

[Drafting Note: the milk supply agreement must specify the services (if any) that the Processor may or must perform for the farmer regarding the milk supplied. Whether there are fees payable by the Farmer for those services must also be specified. If fees are payable, the amounts must be clearly specified for the first 12 months of the agreement and the process for any subsequent months or years of the agreement must be specified.]

9 Title

[specify when the Processor becomes the owner of Milk supplied under the Agreement]

[Drafting Note: The Dairy Code provides that the Agreement must specify when the Processor becomes the owner of the Milk supplied under the Agreement.]

10 Quality and quantity

- 10.1 The volume of Milk supplied by the Farmer to the Processor under this Agreement is set out in Schedule 3.
- 10.2 The Milk supplied by the Farmer to the Processor under this Agreement must meet the Specifications.
- 10.3 The sampling procedures and the volume accuracy assurances that may be used in relation to the Milk by the Processor are outlined in Schedule 3.
- 10.4 The Processor must give to the Farmer, as soon as practicable after the Processor tests the Milk in accordance with Schedule 3, written notice of the results of the test.
- 10.5 The Processor must give written statements to the Farmer at [insert specified times]. The written statements will include:
- (a) [insert the information included in the written statements].
- 10.6 If the Milk does not meet the Specifications, then the Processor may:
- (a) deduct certain amounts from the payment for the Milk in accordance with Schedule 3; or
 - (b) [insert other action the Processor may take as negotiated between parties]; or
 - (c) reject the Milk in accordance with clause 11.

11 Rejection of Milk

- 11.1 Subject to the application of this clause 11, the Processor will [accept/be deemed to accept] the Milk supplied [insert circumstances when Milk will be accepted or deemed accepted].
- 11.2 The Processor may reject the Milk supplied by the Farmer when:
- (a) the Milk fails the relevant testing set out in Schedule 3; or
 - (b) the Milk fails to comply with the Specifications set out in Schedule 3; or
 - (c) [specify other circumstances when the Milk may be rejected by the Processor].
- 11.3 If the Processor rejects the Milk in accordance with clause 11.2, then the Processor must give written notice to the Farmer as soon as practicable after the rejection, including:

- (a) the reasons for the rejection; and
 - (b) the consequences for the Farmer of the rejection, including any fees payable by the Farmer for matters arising as a result of the rejection.
- 11.4 If the Processor rejects the Milk in accordance with clause 11.2, then the following conditions apply:

- (a) [specify the procedure and consequences for the Farmer when the Milk has been rejected, including any fees, collection or disposal of the Milk, or liabilities].

12 Variation

- 12.1 Subject to clauses 12.5 to 12.7, this Agreement may only be varied by further agreement in writing between the Processor and the Farmer and be accepted by the parties to it either by signature of both parties, or a written notice of offer and a written notice of acceptance.

[Drafting note: parties can choose their own process for varying an agreement as long as the Agreement specifies it. Any process of variation must be in accordance with the Dairy Code.]

- 12.2 All variations made under this Agreement must comply with the Dairy Code and must be in writing. If provisions of a variation are noncompliant with the Dairy Code, those provisions shall be severed from the variation, to the extent of the noncompliance, and the validity, existence, legality and enforceability of the remaining provisions will not in this Agreement any way be affected, prejudiced or impaired.

- 12.3 Subject to clause 13, the Minimum Price must not be varied except to increase the Minimum Price by agreement.

- 12.4 Retrospective Stepdowns are not permitted.

- 12.5 The Farmer may unilaterally vary this Agreement in writing:

- (a) [if any, specify the circumstances in which the Farmer may do so].

- 12.6 If there is a change in a Commonwealth, State or Territory law, then the Processor may unilaterally vary this Agreement:

- (a) only to the extent necessary to comply with the changed law; and
- (b) without reducing the Minimum Price.

- 12.7 If the Processor unilaterally varies this Agreement under clause 12.6, the Processor must as soon as practicable after the variation provide the Farmer with:

- (a) the variation; and
- (b) written notice of:
 - (i) the reason for the variation; and
 - (ii) the day the variation takes effect.

13 Unilateral Prospective Stepdown

- 13.1 The Processor must not implement a Unilateral Prospective Stepdown unless in accordance with the Dairy Code.
- 13.2 Without limiting clause 13.1, the Processor must only implement a Unilateral Prospective Stepdown in Exceptional Circumstances and in accordance with Annexure B.

14 Termination

- 14.1 For the avoidance of doubt, no party has the right to unilaterally terminate this Agreement unless specified by this clause 14.
- 14.2 Subject to clauses 14.3, 14.4 and Annexure B, this Agreement can be terminated by [insert the circumstances for mutual termination].

[Drafting Note: parties can choose their own termination process and it must be specified in the Agreement and Dairy Code compliant. As for unilateral termination by the Processor, this can only occur in specific instances under the Dairy Code. All unilateral rights to terminate the Agreement must be in writing].

- 14.3 The Farmer may unilaterally terminate this Agreement in writing in the following circumstances:
- (a) in accordance with Annexure B; or
 - (b) [if any, specify the circumstances in which the Farmer may do so].
- 14.4 The Processor may unilaterally terminate this Agreement in writing in the following circumstances:
- (a) [if any, specify the circumstances in which the Processor may do so provided that any such circumstance involves a material breach of the Agreement by the Farmer].

[Drafting Note: any circumstance in which the Processor is given the right to unilaterally terminate this Agreement must involve a material breach of the Agreement by the Farmer].

- 14.5 The process for unilateral termination under clauses 14.3 or 14.4 is:
- (a) [if any, specify the process of unilateral termination by which the Agreement may be unilaterally terminated].
- 14.6 If a party unilaterally terminates the Agreement under clauses 14.3 or 14.4 (**first party**), then the first party must give to the other party as soon as practicable after the first party unilaterally terminates the Agreement:
- (a) the termination; and
 - (b) written notice of:
 - (i) the reason for the termination; and

- (ii) the day the termination takes effect.

14.7 The Agreement will continue to apply to Milk supplied under the Agreement before the termination takes effect (including during a Cooling Off Period, or in response to a Unilateral Prospective Stepdown).

15 Dispute resolution

[Drafting Note: the Agreement must detail an internal complaint handling procedure and mediation. It is optional for the Agreement to provide arbitration].

If a party to this Agreement has a complaint or there is a Dispute in relation to a matter arising under or in connection with the Agreement, the matter may be dealt with or resolved in accordance with the procedures set out in Annexure C and Annexure D.

16 Records

16.1 The parties must keep originals or copies of:

- (a) this Agreement;
- (b) any variations to or termination of this Agreement; and
- (c) any notices or statements issued under this Agreement or the Dairy Code,

for the period set out in clause 16.2 below.

16.2 A record, or a copy of a record, must be kept for the period:

- (a) starting on the day on which the record is made or given; and
- (b) ending on the last day of the 6 years beginning on the day this Agreement ends.

17 Entire agreement

This Agreement, together with [list each annexure or other document that will be part of or contemplated by the overall agreement], contain the entire agreement between the parties about their subject matter and supersede all previous communications, representations or agreements between the parties on the subject matter.

[Drafting Note: the Dairy Code requires that a milk supply agreement is a Single Document. This term is undefined by the Dairy Code. The ACCC has issued guidance that provides its view on what is a Single Document on its website. The guidance notes that additional policies or milk handbooks need to be provided alongside the milk supply agreement to the Farmer, and that such materials will be frozen at that point in time. Parties can agree a process to vary policies and handbooks under the Agreement if it is not inconsistent with the Dairy Code.]

[Drafting Note: a Processor's terms of trade may also include other relevant terms on which the Processor is prepared to purchase milk and that the Processor may wish to include in

this Agreement. Any relevant terms may be inserted into an agreement provided those terms are not inconsistent with any of the provisions of the Dairy Code.

EXECUTED as an [agreement/deed].

[Drafting Note: the parties can decide to execute as an agreement or as a deed. This will affect the testimonium and the execution clauses.]

Sample

Sample Dairy Code Compliant Milk Supply Agreement Terms

Schedule 1 - Details

1 Processor details

ITEM	DETAILS
Processor Name	[insert]
ACN / ABN	[insert]
Address	[insert]
Telephone	[insert]
Facsimile	[insert]
Email	[insert]
Mobile	[insert]
Contact Name	[insert]
Internal complaints handling officer	Name [insert]
	Address [insert]
	Email [insert]

[Drafting Note: the Processor must have an internal complaints handling officer under the Dairy Code.]

2 Farmer details

ITEM	DETAILS	
Farmer Name	[insert]	
ACN / ABN	[insert]	
Address	[insert]	
Telephone	[insert]	
Facsimile	[insert]	
Email	[insert]	
Mobile	[insert]	
Contact Name	[insert]	
Internal complaints handling officer	Name	[insert]
	Address	[insert]
	Email	[insert]

[Drafting Note: the Farmer does not have to have an internal complaints handling officer under the Dairy Code, this section is optional].

Schedule 2 - Minimum Price

1 Minimum Price

[insert as table or other easy to read format; noting interaction with the Specifications and Testing]

2 Justification of Minimum Price

[Drafting Note: a standard form of a milk supply agreement must be published on the Processor's website and it must include the Processor's justification for each minimum price specified in the standard form of the milk supply agreement].

[insert as table or other easy to read format]

Schedule 3 - Volume, specifications and testing

1 Volume

This Agreement [is/is not] an Exclusive Supply Agreement.

The volume of Milk supplied in accordance with this Agreement is:

[insert as table or other easy to read format]

[Drafting Note:

- ***If this Agreement is an Exclusive Supply Agreement, then all of the Farmer's Milk must be purchased under this Agreement.***
- ***If this Agreement is not an Exclusive Supply Agreement, then the volume of Milk that will be supplied under this Agreement must be specified.]***

2 Specifications and testing

[insert as table or other easy to read format]

[Drafting Note: a milk supply agreement must specify the Processor's requirements in relation to the quality and quantity of Milk supplied. The sampling procedures and volume accuracy assurances that the Processor may use in relation to the Milk must also be specified.]

Sample Dairy Code Compliant Milk Supply Agreement Terms



Australian Dairy Products Federation Inc.

Execution page

[Drafting Note: The execution clauses provided here are for an agreement and make certain assumptions about the nature of the parties (for example, whether a party is an entity or a natural person). Please review each execution clause to ensure it is appropriate for the relevant party.]

PROCESSOR EXECUTION CLAUSE

[Drafting Note: this execution clause assumes that the Processor is a company.]

EXECUTED by [COMPANY NAME] ACN []
in accordance with section 127 of the
Corporations Act 2001 (Cth) by being signed
by the following officers:

Signature of director

Signature of director/company secretary

Name of director (please print)

Name of director/company secretary
(please print)

OR

Signature of sole director and sole company
secretary

Name of sole director and sole company
secretary (please print)

FARMER EXECUTION CLAUSE

[Drafting Note: Use the appropriate execution clause based on whether the Farmer is an individual or a company and the delete the unneeded execution clause.]

SIGNED by [NAME] in the presence of:

Signature of witness

Signature of [name]

Name of witness (please print)

OR

EXECUTED by [COMPANY NAME] ACN []
in accordance with section 127 of the
Corporations Act 2001 (Cth) by being signed
by the following officers:

Signature of director

Signature of director/company secretary

Name of director *(please print)*

Name of director/company secretary
(please print)

OR

Signature of sole director and sole company
secretary

Name of sole director and sole company
secretary *(please print)*

Annexure A - Good faith

[Drafting Note: the good faith requirements of the Dairy Code overlay the Agreement. The parties may wish to insert the good faith requirements into the Agreement itself].

1.1 Without limitation, Good Faith applies in relation to the following:

- (a) negotiating and entering into this Agreement;
- (b) exercising rights, or performing obligations, under this Agreement;
- (c) dealing with or resolving complaints or disputes arising under or in connection with this Agreement; and
- (d) varying or terminating this Agreement.

1.2 Without limitation, in determining whether the Processor or Farmer (first party) has acted in Good Faith in dealing with the Processor or Farmer (other party), the following may be taken into account:

- (a) whether the first party has acted honestly;
- (b) whether the first party has tried to cooperate with the other party to achieve the purposes of this Agreement;
- (c) whether the first party has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
- (d) whether the first party has not acted in a way that constitutes retribution against the other party for past complaints and disputes;
- (e) whether the first party's relationship with the other party has been conducted without duress;
- (f) whether the first party's relationship with the other party has been conducted in recognition of the need for certainty regarding the risks and costs of supplying or purchasing Milk;
- (g) whether the first party has undermined, or denied the other party, a benefit of this Agreement;
- (h) whether the first party has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint or dispute with the other party; and
- (i) whether, in dealing with the first party, the other party has acted in good faith.

Annexure B - Unilateral Prospective Stepdown

1.1 The Processor must only implement a Unilateral Prospective Stepdown in Exceptional Circumstances if:

- (a) the Unilateral Prospective Stepdown does not reduce a Minimum Price for Milk supplied after the expected end of the Exceptional Circumstances; and
- (b) the requirements in clause 1.2 are satisfied.

1.2 The Processor must satisfy the following requirements:

- (a) either:
 - (i) the Processor has taken or will take all reasonable steps to prevent or limit the impact of the Exceptional Circumstances on the Processor; or
 - (ii) there are no such steps the Processor can take;
- (b) because of the Exceptional Circumstances, the Unilateral Prospective Stepdown is unavoidable; and
- (c) the Processor gives the Farmer and the Australian Competition and Consumer Commission written notice at least 30 days before the Unilateral Prospective Stepdown occurs of the following:
 - (i) the Unilateral Prospective Stepdown;
 - (ii) the Exceptional Circumstances;
 - (iii) the reasonable steps (if any) the Processor has taken or will take as mentioned in paragraph (a);
 - (iv) why the Unilateral Prospective Stepdown is unavoidable;
 - (v) the period to which the Unilateral Prospective Stepdown applies.

1.3 If the Processor implements a Unilateral Prospective Stepdown, the Processor must as soon as practicable after the variation provide the Farmer with:

- (a) the variation; and
- (b) written notice of:
 - (i) the reason for the variation; and
 - (ii) the day the variation takes effect.

1.4 The Farmer has the right to terminate this Agreement within 21 days after receiving notice of a Unilateral Prospective Stepdown, with effect from the day the Unilateral Prospective Stepdown occurs. The Farmer may rescind a termination under this clause 1.4 before the end of the 21 day period.

- 1.5 The Minimum Price must not be further reduced as a result of the Farmer rescinding a termination under clause 1.4.

Sample

Annexure C - Dispute resolution

- 1.1 Subject to clause 1.7, if a party to this Agreement has a complaint or there is a Dispute in relation to a matter arising under or in connection with the Agreement, the matter may be dealt with or resolved:
- (a) in accordance with the Complaint Handling Procedure and clauses 1.7 to 1.11; or
 - (b) by mediation as provided by the Dairy Code and replicated in Annexure D; or
 - (c) by arbitration as provided by the Dairy Code and replicated in Annexure D.
- 1.2 If the matter relates to the termination of this Agreement, then a reference to a party to the Agreement includes a reference to a person who was a party to the Agreement before it was terminated.
- 1.3 The Processor must have a complaint handling officer to manage complaints in accordance with the Complaint Handling Procedure and clauses 1.7 to 1.11.
- 1.4 The Farmer will provide the Processor with any information reasonably requested by the Processor to assist the Processor in complying with its dispute reporting obligations under section 56 of the Dairy Code.
- 1.5 The parties to a complaint or a Dispute about a matter arising under or in connection with this Agreement must observe [insert any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving the complaint or dispute].
- 1.6 Annexure D of this Agreement adapts the procedures for mediation and arbitration outlined in the Dairy Code to this Agreement. To the extent there is any inconsistency between Annexure D and the Dairy Code, then the Dairy Code prevails.
- 1.7 If a party wishes for a complaint in relation to a matter arising under or in connection with the Agreement to be dealt with in accordance with the Complaint Handling Procedure, then the complaint must be dealt with in accordance with Complaint Handling Procedure before the parties take action to resolve the complaint by mediation or arbitration.
- 1.8 When a party wishes to have a matter dealt with in accordance to the Complaint Handling Procedure (**Complainant**), the Complainant must notify the other party to the Agreement (**Respondent**) in writing of the following:
- (a) the nature of the complaint;
 - (b) that the Complainant wishes the complaint to be dealt with in accordance with the Complaint Handling Procedure provided in this Agreement; and
 - (c) the outcome the Complainant wants,
- (together, the **Complaint Notice**).
- 1.9 Within 5 working days after receiving the Complaint Notice, the Respondent must give a written acknowledgement to the Complainant stating:
- (a) that the Complaint Notice has been received; and

- (b) the steps to be taken to deal with the complaint.
- 1.10 If the complaint is not resolved within 60 days after the acknowledgement was given to the Complainant under clause 1.9:
- (a) either party may take action to have the complaint resolved by mediation; or
- (b) the parties to the Agreement may agree that the complaint is to be resolved by arbitration.
- 1.11 The Complainant may, at any time, withdraw the complaint by notice in writing to the Respondent.

Annexure D - Dispute resolution procedures

1 Complaints Handling Procedure

[Drafting Note: a complaint should be dealt in accordance with the complaint handling procedure provided in this Annexure and the framework of notices and deadlines specified by the Dairy Code (set out in Annexure C). Parties have discretion as to the content of the complaint handling procedure, provided it is not inconsistent with the Dairy Code.]

[insert conditions or process for the Complaint Handling Procedure]

2 Mediation

[Drafting Note: an agreement must provide for mediation as a means for resolving disputes between parties to the agreement]

Appointment of mediator

- 2.1 Mediation Adviser means the person appointed as mediation adviser under regulation 44 of the Dairy Code by the Minister for Agriculture, Drought and Emergency Management (Federal).
- 2.2 The parties must request the Mediation Adviser to appoint a mediator for the dispute.
- 2.3 The Mediation Adviser:
- (a) must appoint a mediator within 14 days after receiving the request under clause 2.2 unless the Mediation Adviser is satisfied that the complaint giving rise to the dispute:
 - (i) is frivolous or vexatious; or
 - (ii) has previously been the subject of another mediation; and
 - (b) must give the parties to the dispute, in writing, details of the mediator appointed.

Conduct of mediation

- 2.4 Subject to clause 2.5, the mediator must decide:
- (a) how the mediation is to be conducted (for example, by telephone or in meetings); and
 - (b) the time and place for the mediation; and
 - (c) the day the mediation commences for the purposes of this Agreement.
- 2.5 The mediation must be conducted in Australia.

Notice of commencement of mediation

- 2.6 Within 14 days after the mediation has commenced, the mediator must notify the Mediation Adviser, in writing, that the mediation has commenced and of the nature of the dispute.

Attendance at mediation

- 2.7 Each party to the dispute must attend the mediation and attempt to resolve the dispute.
- 2.8 For the purposes of clause 2.7, a party is taken to attend a mediation to attempt to resolve a dispute if the party is represented at the mediation by a person who has authority to enter into an agreement to settle the dispute on behalf of the party.

Notice of successful mediation

- 2.9 If an agreement is reached in relation to the dispute, the mediator must, within 14 days after the agreement is reached:
- (a) set out, in writing, the terms of the agreement; and
 - (b) give a copy of the terms to each party to the dispute; and
 - (c) notify the Mediation Adviser that an agreement has been reached.
- 2.10 The party who requested the mediation may, at any time, withdraw the complaint that is the subject of the dispute by notice in writing to the other party to the dispute and the mediator.

Termination of mediation

- 2.11 The mediator conducting a mediation of a dispute in accordance with this Agreement:
- (a) may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur; and
 - (b) must terminate the mediation if the party who requested the mediation requests the mediator to do so.
- 2.12 If a dispute that is the subject of mediation in accordance with this Agreement is not resolved within 30 days after the mediation commenced:
- (a) the respondent to the mediation may ask the mediator to terminate the mediation; and
 - (b) the mediator must do so.
- 2.13 If the mediator terminates a mediation under clauses 2.11 or 2.12, the mediator must issue a certificate stating:
- (a) the names of the parties to the mediation; and
 - (b) the nature of the dispute that was the subject of the mediation; and
 - (c) that the mediation has been terminated; and
 - (d) that the dispute has not been resolved.

2.14 The mediator must give a copy of the certificate to:

- (a) the Mediation Adviser; and
- (b) each party to the dispute.

Costs of mediation

2.15 Each party to a dispute that was the subject of a mediation must pay half the costs (if any) of the mediation (being all reasonable costs associated with the conduct of the mediation).

2.16 Each party to a dispute that was the subject of a mediation must pay that party's costs of attending the mediation.

[Drafting Note: the parties can choose the default positions above or draft their own costs clause].

3 Arbitration

[Drafting Note: it is optional under the Dairy Code that an agreement provides for arbitration as a means for resolving disputes between parties to the agreement]

Appointment of arbitrator

3.1 Arbitration Adviser means the person appointed as mediation adviser under regulation 45 of the Dairy Code by the Minister for Agriculture, Drought and Emergency Management (Federal).

3.2 The parties must request the Arbitration Adviser to appoint an arbitrator for the dispute.

3.3 The Arbitration Adviser:

(a) must appoint an arbitrator within 14 days after receiving the request under clause 3.2 unless the Arbitration Adviser is satisfied that the complaint giving rise to the dispute:

- (i) is frivolous or vexatious; or
- (ii) has previously been the subject of another arbitration; and

(b) must give the parties to the dispute, in writing, details of the arbitrator appointed.

Conduct of arbitrator

3.4 Subject to clause 3.5, the arbitrator must decide:

- (a) how the arbitration is to be conducted (for example, by telephone or in meetings); and
- (b) the time and place for the arbitration; and
- (c) the day the arbitration commences for the purposes of this Agreement.

3.5 The arbitration must be conducted in Australia.

Notice of commencement of arbitration

- 3.6 Within 14 days after the arbitration has commenced, the arbitrator must notify the Arbitration Adviser, in writing, that the arbitration has commenced and of the nature of the dispute.

Attendance at arbitration

- 3.7 Each party to the dispute must attend the arbitration.
- 3.8 For the purposes of clause 3.7, a party is taken to attend an arbitration if the party is represented at the arbitration by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.

Notice of successful arbitration

- 3.9 If the dispute is resolved, the arbitrator must, within 14 days after the dispute is resolved:
- (a) set out, in writing, the terms of the resolution; and
 - (b) give a copy of the terms to each party to the dispute; and
 - (c) notify the Arbitration Adviser that the dispute has been resolved.

Termination of arbitration

- 3.10 The arbitrator conducting an arbitration of a dispute in accordance with this Agreement must terminate the arbitration if the original complainant from clause 3.7 requests the arbitrator to do so.
- 3.11 If the arbitrator terminates an arbitration under clause 3.10, the arbitrator must issue a certificate stating:
- (a) the names of the parties to the arbitration; and
 - (b) the nature of the dispute that was the subject of the arbitration; and
 - (c) that the arbitration has been terminated; and
 - (d) that the dispute has not been resolved.

- 3.12 The arbitrator must give a copy of the certificate to:

- (a) the Arbitration Adviser; and
- (b) each party to the dispute.

Costs of arbitration

- 3.13 Each party to a dispute that was the subject of an arbitration in accordance with this Agreement must pay half the costs (if any) of the arbitration (being all reasonable costs associated with the conduct of the arbitration).
- 3.14 Each party to a dispute that was the subject of an arbitration in accordance with this Agreement must pay that party's costs of attending the arbitration.



[Drafting Note: the parties can choose the default positions above or draft their own costs clause].

Sample

Appendix - Additional terms

[Drafting Note: This list of additional terms is for the consideration of Farmers and Processors in the process of negotiating. The list is not comprehensive and it is only meant to provide parties with some additional guidance. Parties should carefully consider whether any additional terms are unilateral or mutual - and that there is a risk of some terms being an unfair contract term under the Australian Consumer Law (especially if unilateral). Parties should seek independent legal advice about the drafting and insertion of additional terms]

- Delivery or collection of Milk
- Warranties
- Indemnities
- Exclusion and limitation of liability
- Accounts and financial records (both parties/one party)
- Risk
- Restraint of trade
- Confidentiality
- Privacy
- Publicity and public announcements
- Default clauses
- Force majeure (mutual termination right)
- Expert determination
- Signing by representative
- GST
- Adjustment of price - cost pass through
- Set off or No set off
- Interest on default
- Boilerplate clauses:
 - Notices
 - Joint and several liability
 - Knowledge
 - Relationship between parties
 - Inconsistency
 - Assignment
 - Waiver
 - Approval and consent
 - Acknowledgments
 - Further steps
 - Additional obligations
 - Certificates
 - Severability
 - Continuing rights and obligations
 - No merger
 - Time of the essence
 - Governing law and jurisdiction

Sample Dairy Code Compliant Milk Supply Agreement Terms



Sample