

MILK SUPPLY AGREEMENT

NSW – Hunter – CONTRACT EXCLUSIVE

PARTIES

DFMC

Dairy Farmers Milk Co-operative Limited ARBN 108 690 384
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**SUPPLIER
OR YOU**

Supplier name:	
Contact person:	
ABN:	
Email address:	
Mobile number:	
Farm Number: <i>(Bega Vendor Number)</i>	
Property address:	
Dairy Licence Number:	

DFMC accepts the offer of the Supplier to supply milk to DFMC on the terms of this Contract.

Signed for and on behalf of the Supplier or an authorised officer of the Supplier in the presence of: Signature Signature
 Name Name
 Position Position
Signed for and on behalf of DFMC by an authorised officer in the presence of: Signature	
	Andrew Burnett Name	
	Chairman Position	

DETAILS

Item 1 – Commencement Date

1 July 2021

Item 2 – Expiry Date

30 June 2022



Item 3 – Minimum Milk Price

Please note – these prices are announced and will be effective July 1, 2021.

Monthly Period	\$/kg Butterfat	\$/kg Protein	Cpl* (at the Assumed Composition Levels)	Total Cpl* (at the Assumed Composition Levels)
1/7/2021 - 31/7/2021				
1/8/2021 - 31/8/2021				
1/9/2021 - 30/9/2021				
1/10/2021 - 31/10/2021				
1/11/2021 - 30/11/2021				
1/12/2021 - 31/12/2021				
1/1/2022 - 31/1/2022				
1/2/2022 - 28/2/2022				
1/3/2022 - 31/3/2022				
1/4/2022 - 30/4/2022				
1/5/2022 - 31/5/2022				
1/6/2022 - 30/6/2022				

****The Cpl pricing in Item 3 is provided by way of a reference example only. These prices represent the conversion of the Minimum Milk Price for milk solids (butterfat plus protein) set out in Item 3 of the Details to a Cpl price calculated on the assumption that the relevant litre of milk will comprise the Assumed Composition Levels, being 4.00% butterfat and 3.2% protein. Given that the quality (SCC & TPC) of your milk may differ from the Assumed Composition Levels, the Cpl pricing in this Item 3 is not necessarily indicative of the price you will receive for your milk or the minimum milk price under this Contract.***

Item 4 – Statement of justification for Minimum Milk Prices

DFMC and Bega are parties to the Bega Milk Supply Agreement. Pursuant to the Bega Milk Supply Agreement, milk acquired by DFMC from its farmers/members is on-sold to Bega.

The Bega Milk Supply Agreement provides for “back-to-back pricing” with Bega (i.e. the price Bega pays DFMC must be the same as the price DFMC pays its farmers/members).

Under the Bega Milk Supply Agreement, the milk price is negotiated by DFMC and Bega to reflect a competitive market farmgate milk price having regard to certain factors including, to the extent known, competitor processors milk prices in the applicable region.

Bega produces, markets and distributes some of Australia’s most iconic brands in milk, dairy beverages and yoghurt and as such are ultimately more focussed on local farmgate milk prices than international dairy commodity prices in New South Wales.

The Minimum Milk Price is the milk price for exclusive supply negotiated by DFMC and Bega pursuant to the Bega Milk Supply Agreement and reflects Bega’s domestic business focus.

Item 5 – Productivity Incentive

Total Kgs (Butterfat & Protein)	Rate	Cpl	Payment (Dollars)	Total Kgs (Butterfat & Protein)	Rate	Cpl	Payment (Dollars)
5,000	0.10	0.72	\$500	14,000	0.28	2.02	\$3,920
6,000	0.12	0.86	\$720	15,000	0.30	2.16	\$4,500
7,000	0.14	1.01	\$980	16,000	0.32	2.30	\$5,120
8,000	0.16	1.15	\$1,280	17,000	0.34	2.45	\$5,780
9,000	0.18	1.30	\$1,620	18,000	0.36	2.59	\$6,480
10,000	0.20	1.44	\$2,000	19,000	0.38	2.74	\$7,220
11,000	0.22	1.58	\$2,420	20,000	0.40	2.88	\$8,000
12,000	0.24	1.73	\$2,880	21,000	0.42	3.02	\$8,820
13,000	0.26	1.87	\$3,380				

The Productivity Incentive is based on kgs milk solids (butterfat plus protein) supplied per month and starts at 5,000 kg MS which is capped at \$0.40 per kg MS. The formula to calculate the Productivity Incentive is \$0.02 per kg MS per 1000 kg MS supplied during a month. The Cpl price is quoted at the Assumed Composition Levels. The Productivity Incentive is paid on a sliding scale for total milk solids within a month i.e. the more milk solids you send the higher up the payment scale is the value for all those milk solids, e.g. 8,000 kg MS is paid at a rate of 0.160 and 8,500 kg MS is paid at a rate of 0.170

Item 6 – New Milk Incentive Rate -section 3(e)

•\$0.657 per Kg butterfat and \$0.981.00 per Kg protein on the amount of butterfat and/or protein in the milk which we accept from you during the relevant month which is over and above the New Milk Baseline (New Milk Incentive).

Item 7

New Milk Baseline – New Suppliers only

Is the supplier new to DFMC? If yes, complete the baseline details below.

Baseline Calendar Month	Butterfat (Kgs)	Protein (Kgs)
July 2020		
August 2020		
September 2020		
October 2020		
November 2020		
December 2020		
January 2021		
February 2021		
March 2021		
April 2021		
May 2021		
June 2021		

Item 8 – Growth Incentive Rate – Section 3(f)

The Growth Incentive rate is \$0.21 per Kg butterfat and \$0.32 per Kg protein on the first 0 to 9.99% of the increase in either Milk Solid by the Supplier above the Growth Incentive Baseline during the Growth Incentive Period: plus \$0.85 per Kg butterfat and \$1.28 per Kg protein on any balance above 9.99% of either Milk Solid above the Growth Incentive Baseline during the Growth Incentive Period.

However, the Growth Incentive rate will be capped at a fixed rate of \$0.21 per Kg butterfat and \$0.32 Kg protein where 720,000 Kg Milk Solids or more are accepted by DFMC from the supplier during the Growth Incentive Period.

Example of application:

For example, if:

- your Growth Incentive Baseline is 60,000 Kg butterfat and 40,000 Kg protein; and
- at the end of 30 June 2022, DFMC has accepted 78,000 Kg butterfat and 52,000 Kg protein from you,

then DFMC will pay you a Growth Incentive of:

- \$0.21 per Kg butterfat on 5,994 Kg of butterfat (being, 9.99% of the butterfat baseline of 60,000 Kg) i.e. \$1,258.74; and
- \$0.32 per Kg protein on 3,996 Kg protein (being 9.99% of the protein baseline of 40,000 Kg) i.e. \$1,278.72; and
- \$0.85 per Kg butterfat on 12,006 Kg butterfat (being the balance of total growth in butterfat compared to baseline i.e. 18,000 Kg less 5,994 Kg) i.e \$10,205.10; and
- \$1.28per Kg protein on 8,004 Kg protein (being the balance of total growth in protein compared to baseline i.e. 40,000 Kg less 3,996 Kg) i.e. \$10,245.12,

being a total Growth Incentive of \$22,987.68.

Example 2: Using the example above, if you commenced supplying DFMC part way through the financial year, and:

- 28,000 Kg butterfat and 22,000 Kg protein was your Prior Deemed Milk Supply to your previous processor during the period commencing on 1 July 2021 and ending the day prior to the Start Date; and

- 50,000 Kg butterfat and 30,000 Kg protein was accepted from you by DFMC from the Start Date until 30 June 2022,

then, you will be paid:

- 64.10% of the \$7,348.32 (being the total incentive calculated in the above example on the growth in butterfat); and
- 57.69% of the \$6,648.10 (being the total incentive calculated in the above example on the growth in protein),

being, a total Growth Incentive of \$13,996.42.

To determine whether you will receive a Growth Incentive, at the end of the FY21/22 year, your milk supply will be assessed against both the criteria for the New Milk Incentive and the criteria for the Growth Incentive. If you would have received more money from DFMC under the New Milk Incentive, you will not also be paid a Growth Incentive. If you would have been paid more money from DFMC under the Growth Incentive, you will receive a top up payment as soon as reasonably practicable after the end of the FY21/22 year, being the difference between what you would have been paid under the Growth Incentive less what you have been paid under the New Milk Incentive.

Item 9 – Growth Milk Incentive Baseline for new suppliers: Section 3 (f)

Is the Supplier a new supplier to DFMC? If yes, complete the baseline details agreed between the parties below:

Baseline Financial Year	Total Butterfat (Kgs)	Total Protein (Kgs)
25 June 2019 to June 30 2020		
1 July 2020 to 25 June 2021		
Growth Incentive Baseline (average previous 2 years)		

Item 10 -Supermarket Retailer Own Brand (ROB) Levy

If applicable, DFMC will pass on in full any farmer levies received by BDD from supermarket retailers that have been generated out of retail price increases on ROB fresh white milk for so long as the retailers continue these programs. On a periodic basis, BDD will calculate the total levies received from a supermarket retailer divided by the total number of litres of milk supplied by all milk suppliers to BDD and DFMC in the relevant region over the same period. You will then be paid the applicable cpl levy for the number of litres you supplied DFMC during that period of time.

Item 11 – Gate Fees

Fee	Rate
Gate Fees	\$20(first collection per day)
	\$50 (for additional collections on that day, where multiple pick-ups are agreed to by DFMC)
	\$40(per pick-up if you fail to supply the Minimum Monthly Volume Collection)

Item 12 – Quality Demerit Points

Demerit Points per Month	Cpl
0	2.0
1	1.4
2 – 4	1
5 – 9	0
10 – 14	-1
15 – 17	-4
18 – 23	-8
24 – 29	-12
30 - 60	-16
61+	No payment

SAMPLE

Item 14 – Minimum Monthly Volume Collection

Minimum litres per Month
20,000

Item 15 – Annual Defined Volume

Your Annual Defined Volume will be used to calculate the number of shares in DFMC you must acquire pursuant to DFMC's compulsory 2011 share acquisition program.

Please return this agreement to:

Mark Kebbell
Executive Officer
Milk Supply
Dairy Farmers Milk Co-operative Limited
PO Box 4132
GEELONG VIC 3220

SAMPLE

1. Milk Supply

- (a) **Agreement to supply milk:** You agree to supply all of your milk to DFMC, and DFMC agrees to purchase all of your milk, on the terms and conditions set out in this Contract.
- (b) **Term of Contract:** This Contract commences on the Commencement Date set out in **Item 1** of the Details and will end on the Expiry Date set out in **Item 2** of the Details, unless terminated earlier in accordance with the provisions of this Contract (**Term**).
- (c) **Cooling off period:** You may terminate this Contract with immediate effect at any time within the period of 14 days after the date this Contract is entered into without incurring any liability to DFMC.
- (d) **Exclusive Contract:** For the avoidance of doubt, this Contract constitutes an exclusive agreement for you to supply your milk to DFMC during the Term. You will breach this Contract if you supply any of your milk to a third party at any time prior to this Contract terminating or otherwise expiring in accordance with its terms.

2. Minimum Milk Price

- (a) **Minimum Milk Price:** Subject to the other terms of this Contract, DFMC will acquire all of your milk each Month for the Minimum Milk Price for that Month set out in **Item 3** of the Details. The Minimum Milk Prices are paid in \$ per kg butterfat and \$ per kg of protein contained in your milk supplied each Month.
- (b) **Justification for Minimum Milk Price:** The Dairy Code requires DFMC to provide you with a statement of justification for each Minimum Milk Price. DFMC has set out its justification in **Item 4** of the Details.
- (c) **Example pricing:** *Item 3 of this document sets out the Minimum Milk Prices for each Month converted to a Cpl basis. The conversion of the Minimum Milk Price to Cpl has been calculated on the assumption that the relevant litre of milk supplied will comprise 4.00% butterfat and 3.2% protein (Assumed Composition Levels). Given that the quality of your milk may differ from the Assumed Composition Levels, the pricing in Item 3 is not necessarily indicative of the price you will receive for your milk nor does it constitute the minimum milk price under this Contract.*

3. Incentives

- (a) **Productivity Incentive:** In addition to the Minimum Milk Price, you will be paid a Productivity Incentive based on the total number of milk solids in your milk that you supply to DFMC each Month during the Term that complies with the Quality Standards. The Productivity Incentive will be paid at the rates set out in **Item 5** of the Details.
- (b) **Productivity amalgamation:** If you have multiple farms, DFMC will amalgamate milk solids for the purposes of calculating the Productivity Incentive as long as farms are owned by the one entity. Quality Incentives and Quality Fees will continue to apply to individual farms. If you have multiple farms, you may elect one farm to which the Productivity Incentive will be credited.
- (c) **Quality Incentive:** If you receive a total of 4 or less Demerit Points in a Month, you will be entitled to receive a Quality Incentive payment equal to:
 - (1) the relevant rate set out in **Item 12** of the Details based on your total number of Demerit Points for that Month;
 - (2) multiplied by the total number of litres of your milk supplied to DFMC in that Month.
- (d) **Supermarket Retailer Own Brand (ROB) Levy:** If applicable, the Supermarket Retailer Own Brand (ROB) Levy will be paid to you in accordance with **Item 10** of the Details.
- (e) **New Milk Incentive (12 months)** - If you are able to increase either or both of the kg of butterfat or kg of protein contained in the milk which we accept from you in any of the twelve months (described below)

compared to the kg of butterfat or kg of protein contained in the milk you supplied in the same month in the previous Financial Year (New Milk Baseline), you will be eligible for a new milk incentive at the rate of:

- \$0.65 per Kg butterfat and \$0.98 per Kg protein on the amount of butterfat and/or protein in the milk which we accept from you during the relevant month which is over and above the New Milk Baseline (**New Milk Incentive**).
- The relevant twelve months are: July 2021 through to June 2022 (inclusive).

The New Milk Baseline which will apply is set out in the Acceptance Form. If you are a new supplier to DFMC, this will be based on evidence you give us about the milk you supplied your previous processor for the New Milk Baseline period.

If you have more than one address for milk collection listed in the Acceptance Form, BDD will group all of those farms together for the purposes of calculating the New Milk Incentive.

- (f) **Growth Milk Incentive** - If you are able to increase either or both of the kg of butterfat or kg of protein contained in the milk which we accept from you from 1 July 2021 until 30 June 2022, you may be eligible for a Growth Incentive.

The Growth Incentive is calculated on any increase in either or both of the kg of butterfat and kg of protein contained in the milk which we accept from you from 1 July 2021 until 30 June 2022 over and above the average amount of the relevant milk solids contained in milk you supplied during the previous two financial years (**Growth Milk Baseline item 9**).

The Growth Milk Baseline which will apply is set out in the Acceptance Form – Item 7 and item 9. If you are a new supplier to DFMC, this will be based on evidence you give us about your supply to your previous processor for the Growth Milk Baseline period.

If you commence supplying DFMC part way through a financial year, then Growth Incentive will be calculated based on:

- your **Prior Deemed Milk Supply** as set out in the Acceptance Form; and
- the milk you supply DFMC from your Start Date up until 30 June 2022, (**Total Annual Milk**).

You will then be paid a pro-rata proportion of the Growth Incentive calculated on the proportion of the Total Annual Milk that you supplied DFMC during that period.

If you have more than one address for milk collection listed in the Acceptance Form, DFMC will group all of those farms together for the purposes of calculating the Growth Incentive.

The rates for the Growth Incentive and an example of the way in which the Growth Incentive operates are set out below:

The Growth Incentive rate is:

- \$0.21 per Kg butterfat and \$0.32 per Kg protein on the first 0 to 9.99% of the increase in either milk solid by you above the Growth Incentive Baseline from 1 July 2021 to 30 June 2022; plus
- \$0.85 per Kg butterfat and \$1.28 per Kg protein on any balance above 9.99% of either milk solid above the Growth Incentive Baseline from 1 July 2021 to 30 June 2022.

However, the Growth Incentive rate will be capped at a fixed rate of \$0.21 per Kg butterfat and \$0.32 per Kg protein where 720,000 Kg milk solids or more are accepted by DFMC from you from 1 July 2021 to 30 June 2022.

Example 1: For example, if:

- your Growth Incentive Baseline is 60,000 Kg butterfat and 40,000 Kg protein; and
- at the end of 30 June 2022, DFMC has accepted 78,000 Kg butterfat and 52,000 Kg protein from you,

then DFMC will pay you a Growth Incentive of:

- \$0.21 per Kg butterfat on 5,994 Kg of butterfat (being, 9.99% of the butterfat baseline of 60,000 Kg) i.e. \$1,258.74; and

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To determine whether you will receive a Growth Incentive, at the end of the FY21/22 year, your milk supply will be assessed against both the criteria for the New Milk Incentive and the criteria for the Growth Incentive. If you would have received more money from DFMC under the New Milk Incentive, you will not also be paid a Growth Incentive. If you would have been paid more money from DFMC under the Growth Incentive, you will receive a top up payment as soon as reasonably practicable after the end of the FY21/22 year, being the difference between what you would have been paid under the Growth Incentive less what you have been paid under the New Milk Incentive.

4. Fees and levies

- (a) **Gate Fees:** You will be charged the Gate Fees set out in **Item 11** of the Details as a fee for the service of DFMC collecting your milk, which will be deducted from the Minimum Milk Price you receive in respect of a Month.
- (b) **Industry Levies:** DFMC may pay on your behalf to the relevant industry body or authority any levies. If this levy is voluntary, you can advise DFMC in writing to stop collecting and paying that levy. The amount of any levy due will be deducted from the payment for your milk.
- (c)

5. Price Changes

- (a) **Price increases:** DFMC may make a determination during the Term to increase the Minimum Milk Prices (**Price Increase**). If DFMC makes such a determination, it will give written notice to you of the details of the Price Increase. Due to the requirements of the Dairy Code, in order to be eligible to receive the Price Increase, you will need to agree in writing to the variation of this Contract in accordance with the Price Increase notified to you by DFMC. DFMC will provide you with instructions as to how to agree to any such variation of this Contract at the time it notifies you of the Price Increase.
- (b) **Retrospective Step Downs:** DFMC will not retrospectively reduce the Minimum Milk Prices applicable during the Term under any circumstances.
- (c) **Prospective Step Downs:** DFMC agrees that it will not unilaterally vary this Contract to prospectively step down the Minimum Milk Prices, unless:

- (1) the variation of the Minimum Milk Price is effective only after written notice of the variation has been given in accordance with clause 5(d);
 - (2) Exceptional Circumstances have occurred;
 - (3) DFMC has taken any and all such reasonable steps to prevent or limit the impact of the Exceptional Circumstances or there are no such steps that DFMC is able to take;
 - (4) due to the Exceptional Circumstances, the prospective step down is unavoidable; and
 - (5) the variation of the Minimum Milk Price is limited to the expected end of the Exceptional Circumstances.
- (d) **Notice of Step Down:** In the event that DFMC varies this Contract to apply a prospective step down in accordance with this clause 5, DFMC must, at least 30 days before the step down occurs, give you and the Australian Competition and Consumer Commission written notice of:
- (1) the step down;
 - (2) the Exceptional Circumstances;
 - (3) the reasonable steps DFMC has taken or will take to prevent or limit the impact of the Exceptional Circumstances or that there are no such steps that DFMC is able to take;
 - (4) why the step down is unavoidable; and
 - (5) the period to which the step down relates.
- (e) **Termination Right:** You will have a right to terminate this Contract within 21 days after receiving a notice of a step down under clause 5(d) with effect from the day the step down occurs. You will also have the right to rescind any such termination before the end of those 21 days.

6. Quality

- (a) **Quality Standards:** You must at all times comply with, and ensure your milk supplied to DFMC complies with, each of the Quality Standards set out in Sections 2 and 3 of DFMC's Milk Policy.
- (b) **Non-compliance:** Failure to comply with the Quality Standards may result in DFMC:
 - (1) rejecting your milk in accordance with the procedures set out in the Quality Standards; or
 - (2) notifying you in writing that collection of your milk will be suspended until DFMC is satisfied that appropriate rectification of the relevant issue has been made by you.
- (c) **Rejection of milk:** If your milk is rejected by DFMC:
 - (1) you will not be paid by DFMC for that milk;
 - (2) you may be liable to pay DFMC the total cost of the milk of other suppliers (if any) that has been contaminated in the relevant tanker at the current value of the milk, along with the freight costs and disposal costs incurred by DFMC, BDD or its contractors in accordance with the Quality Standards; and
 - (3) DFMC must as soon as practicable after the rejection of your milk, provide you with written notice of the rejection, including the reasons for the rejection and the consequences for you of the rejection (including any fees payable by you for matters arising as a result of the rejection).
- (d) **Demerit Points:** You will receive demerits points for each breach of the Quality Standards in accordance with table set out in **Annexure A** and the Appendix of DFMC's Milk Policy (**Demerit Points**). If you receive:

- (1) 4 or less Demerit Points in respect of a Month, you will receive a Quality Incentive in accordance with clause 3(c), which is an additional amount that will be paid to you on top of the Minimum Milk Prices for your milk supplied in that Month;
 - (2) 10 to 60 Demerit Points in respect of a Month, you will be charged a Quality Fee in accordance with clause 6(e), which is an amount which will be deducted from the Minimum Milk Prices that you will receive for your milk supplied in that Month; and
 - (3) 61 or more Demerit Points in respect of a Month, you will not be paid the Minimum Milk Price for your milk supplied in that Month.
- (e) **Quality Fees:** If you receive 10 to 60 Demerit Points in a Month, you will be charged a Quality Fee which will be deducted from the Minimum Milk Prices that you will receive for your milk supplied in that Month and will be equal to:
- (1) the relevant rate set out in **Item 12** of the Details based on your total number of Demerit Points for that Month;
 - (2) multiplied by the total number of litres of your milk supplied to DFMC in that Month.

7. Payment

- (a) **Payment date:** Subject to clause 7(b), you will be paid for your milk supplied to DFMC in a Month on the fifteenth day of the following Month.
- (b) **Weekends and public holidays:** If the fifteenth day of the Month is a:
 - (1) Saturday or Sunday, you will be paid on the immediately preceding Business Day; or
 - (2) public holiday or bank holiday, you will be paid on the nearest Business Day prior to the fifteenth day of the Month.
- (c) **Milk Statements:** DFMC must provide you with a Milk Statement in respect of your milk supplied to DFMC each Month during the Term. Your Milk Statement, in respect of a Month, will be available on Milkline <https://milkline.begacheese.com.au> on the evening of the fifteenth of the following Month. Your Milk Statement will specify the details set out in Annexure C.
- (d) **Paid to be paid:** Despite any other provision of this Contract, DFMC has no obligation to pay you for your milk unless and until Bega pays DFMC all amounts payable by Bega to DFMC under the Bega Milk Supply Agreement in respect of the on-supply of your milk by DFMC to Bega.

8. Collection of milk

- (a) **Frequency:** Your milk must be supplied on a consistent basis throughout the week on either a daily or skip-a-day basis as agreed by you and DFMC, except in emergencies. DFMC has no obligation to collect your milk more frequently than once per day, but may agree to do so from time to time. If, at DFMC's election, your milk is collected more frequently than you require, no Gate Fees or charges will apply for the additional collections.
- (b) **Variation:** The amount of your milk collected over any two day period must not vary by more than 20%. For example, if the combined total of your milk collected on Monday and Tuesday is 5,000 litres, the milk available for collection on Wednesday and Thursday must be between 4,000 and 5,000 litres. This does not apply to seasonal members and end of the season.
- (c) **Minimum Monthly Volume Collection:** You must meet the minimum monthly volume collection set out in **Item 14** of the Details at all times (**Minimum Monthly Volume Collection**). Further requirements regarding minimum monthly volume collection and pick-up arrangements are contained in Section 4 of DFMC's Milk Policy.

- (d) **Failure to meet Minimum Monthly Volume Collection:** If you fail to meet the Minimum Monthly Volume Collection set out in **Item 14** of the Details in respect of a Month, DFMC will inform you in writing. If you fail to meet the Minimum Monthly Volume Collection in the following Month, you will be charged a higher Gate Fee in accordance with **Item 14** of the Details until such time as you reach and maintain the Minimum Monthly Volume Collection.
- (e) **Excess milk:** Where the volume of your milk exceeds the capacity and ability of the tanker of DFMC's contractor, additional Gate Fees and charges will not be applied.
- (f) **Storage:** Your milk must be stored in accordance with all Laws and the Quality Standards. Your milk will not be collected by DFMC from non-refrigerated vessels. Furthermore, DFMC will not accept your milk if it has been segregated on the basis of composition or quality.
- (g) **Access:** You must provide safe and suitable access for tankers to collect your milk in compliance with DFMC's Milk Policy.
- (h) **Title and ownership of milk:** Ownership of your milk passes from you to DFMC when it enters the tanker of DFMC's contractor.

9. DFMC's Milk Policy

- (a) **Compliance:** In addition to the terms of this document, during the Term, the parties must comply with DFMC's Milk Policy set out in **Annexure B** which forms part of this Contract.
- (b) **Changes to DFMC's Milk Policy:** DFMC may only change DFMC's Milk Policy with your written agreement or in accordance with clause 26.
- (c) **Inconsistencies:** In the event of any inconsistency between this document and DFMC's Milk Policy, the terms of this document shall prevail to the extent of the inconsistency.
- (d) **Acknowledgement:** You acknowledge having received and read DFMC's Milk Policy contained in **Annexure B**.

10. Annual Defined Volume

- (a) **Annual Defined Volume:** Your Annual Defined Volume for the Term is set out in **Item 15** of the Details.
- (b) **Changes:** You and DFMC may from time to time agree in writing to change your Annual Defined Volumes.
- (c) **Compulsory Share Acquisition Program:** Your Annual Defined Volume will be used in connection with DFMC's compulsory share acquisition program.

11. Termination

- (a) **Material breach:** Either party may terminate this Contract with immediate effect, if the other party commits a material breach of this Contract.
- (b) **Leaving the Dairy Industry:** You may terminate this Contract by giving DFMC not less than 90 days prior written notice provided that you provide documentary evidence to the reasonable satisfaction of DFMC that you are permanently leaving the dairy industry.
- (c) **Written Notice:** In order to terminate this Contract in accordance with clauses 11(a) or 11(b), the terminating party will provide the other party with written notice of:
 - (1) the termination;
 - (2) the reason for the termination; and

- (3) the day the termination takes effect.
- (d) **Implications of the Dairy Code:** As a result of the introduction of the Dairy Code, DFMC is:
- (1) prohibited from making retrospective step-downs in the Minimum Milk Price in all circumstances;
 - (2) prohibited from making prospective step-downs in the Minimum Milk Price, except in the Exceptional Circumstances;
 - (3) prohibited from making other unilateral changes to this Contract (including changes to DFMC's Milk Policy), except in accordance with clause 26 in order to comply with a change in the Law; and
 - (4) required at all times to deal with you in good faith in relation to the supply of your milk.

12. Assignment

- (a) **Your assignment:** Subject to clauses 12(b) and 12(c), you may assign this Contract with DFMC's prior written consent (such consent not to be unreasonably withheld). For example, if you wished to sell or lease your Farm you may wish to assign the contract to the purchaser or lessee, subject to you obtaining the prior written consent of DFMC.
- (b) **Owner's consent:** If you are not the owner of the Farm, DFMC may before giving its consent to an assignment of this Contract, require you to provide to DFMC evidence that the owner of the Farm consents (in a form and substance satisfactory to DFMC) to the assignment of this Contract.
- (c) **Conditions of consent:** If DFMC gives its consent to the assignment of this Contract, DFMC may require you and the person to whom you wish to assign this Contract, to enter into a deed of consent in a form which is reasonably acceptable to DFMC. The deed of consent will, amongst other things, require the person to whom you wish to assign this Contract to comply with this Contract from the date of assignment.
- (d) **DFMC's assignment:** DFMC may at any time assign this Contract to Bega without your consent. If DFMC assigns this Contract to Bega, you will, if requested by DFMC or Bega, enter into a deed with Bega (in a form reasonably acceptable to Bega and DFMC) pursuant to which you agree with Bega to comply with this Contract as from the date of assignment.

13. Confidentiality

- (a) **Not confidential:** The terms of this Contract are not confidential.
- (b) **Consent to disclosure:** In order to ensure that there is milk pricing transparency between DFMC and its members, for the purposes of any privacy legislation, you consent to DFMC disclosing to its members, should such a need arise:
- (i) that you have signed this Contract with DFMC; and
 - (ii) the general terms of this Contract (including the price paid for milk under this Contract and the Term).
- (c) **Notice of disclosure:** DFMC must advise you in writing of its intention to disclose details of this Contract before actual disclosure.

14. Liquidated Damages

- (a) **Payment of liquidated damages:** If you supply all or some of your milk to a third party during a Month you must, if required by DFMC, immediately pay to DFMC liquidated damages for that Month calculated as follows:

$$\$X = W \text{ cents} \times (Y - Z)$$

Where:

$\$X$ is the amount payable by you to DFMC for the relevant Month. If $\$X$ is a negative amount, no amount is payable by you.

Y is the average monthly litres you have supplied to DFMC based on the 12 months immediately preceding the relevant Month (or in the event you have not supplied DFMC for 12 months, the average monthly litres you have supplied to DFMC during the period you have supplied DFMC).

Z is the number of litres supplied to DFMC by you for the relevant Month.

W means the Minimum Milk Price payable for the relevant Month pursuant to this Contract, provided that if W is a negative number, W shall be zero.

- (b) **Pre-estimate of loss:** You acknowledge that the above formula represents a genuine pre-estimate of the loss DFMC will suffer if you supply all or some of your milk to a third party during the Term.

15. Membership

- (a) **Membership requirement:** You must be a member of DFMC at all times during the Term.
- (b) **Becoming a member:** If you are not already a member of DFMC, you must immediately become a member after signing this document and subscribe for 500 shares at \$1 per share.

16. Governing Law

This Contract will be governed by the laws of the State in which the Farm is located.

17. Set-Off

DFMC may set-off any amount payable by you to DFMC against any amount payable by DFMC to you.

18. Acknowledgment

You acknowledge that you have been given the opportunity to obtain independent legal and financial advice on this Contract.

19. Supersedes all previous agreements

This Contract supersedes and replaces all previous agreements, arrangements and understandings between DFMC and you in relation to the supply of your milk to DFMC.

20. Severability

This Contract will not be adversely affected by the unenforceability or invalidity of any part. The offending part shall be read down or shall be severed and the remaining parts shall continue to have full force and effect.

21. Joint and Several

Any covenant or agreement on the part of and for the benefit of two or more persons will bind them and be for the benefit of them jointly and severally respectively.

22. Force Majeure

- (a) **No termination for Force Majeure:** A party will not be entitled to terminate this Contract due to a default of the other party which is caused by Force Majeure.
- (b) **No liability for breach of Contract:** A party who is in breach of this Contract will not be liable to the other party if the breach of Contract is caused by Force Majeure if that party has:
 - (i) as soon as practicable, given the other party notice of the occurrence and predicted consequences of the Force Majeure; and
 - (ii) used all reasonable endeavours to remedy the effect of the event that gave rise to the Force Majeure, and to continue to perform its obligations under this Contract.
- (c) **Extent of reliance:** For the avoidance of doubt, a party that relies on this clause 22 may only do so to the extent that its breach of this Contract, or the circumstances which would otherwise give the other party the right to terminate this Contract, are caused by the event giving rise to the Force Majeure, and only for so long as the Force Majeure remains in effect.

23. Authority

- (a) **More than one Supplier:** Where the Supplier consists of more than one person, this document may be signed by any one or more of the persons comprising the Supplier.
- (b) **Authority to sign:** If this document is not signed by all of the persons comprising the Supplier, any person who has signed this document warrants to DFMC that it is duly authorised to sign and bind all the persons comprising the Supplier.

24. Electronic Signature

- (a) In this clause 24:
 - Approved Platform** means a method of identifying and indicating a person's intention in respect of electronic communication that satisfies any requirement to sign the information communicated pursuant to the *Electronic Transactions Act*;
 - DocuSign** means the signature software and platform located at www.docusign.com; and
 - Electronic Transactions Act** means *Electronic Transactions Act 2000 (NSW)* or any similar legislation in the relevant State in which the Farm is located.
- (b) The Parties each agree and acknowledge that:
 - (i) this document may be executed in any number of counterparts, each executed by one or more Parties;
 - (ii) this document may be executed electronically by any Party, or all Parties, using an Approved Platform. Any electronic copy of this document so signed will constitute an executed original counterpart;
 - (iii) all counterparts together will be taken to constitute one agreement;
 - (iv) this document will be deemed to have been validly entered into and will be final and binding once all Parties have signed even if one or more Parties sign electronically using an Approved Platform;
 - (v) the DocuSign platform is considered by the Parties to be an Approved Platform and to be as reliable as appropriate for the purposes of execution of this document; and

- (vi) each Party who signs this document using DocuSign or another Approved Platform accepted by all other Parties is bound by, has complied with and will comply with any terms and conditions of DocuSign or other Approved Platform, in relation to the execution of this document.
- (c) This clause 24 does not limit the ways in which a Party may execute this document.

25. GST

- (a) **Gross-up:** If any payment made to a party pursuant to or relating to this Contract constitutes consideration for a taxable supply for the purposes of GST, the amount to be paid for the supply will be increased so that the net amount retained by a party after payment of that GST is the same as if the party was not liable to pay GST in relation to that supply.
- (b) **Payment of GST:** Payment of the additional amount will be made at the same time as payment for the supply is required to be made under this Contract.
- (c) **Recipient created tax invoice:** If you have not already done so, you and DFMC must enter into a recipient created tax invoice agreement (in the form required by DFMC).

26. Variations

- (a) **Unilateral variations:** Other than variations in pricing which must occur in accordance with clause 5, this Contract may only be unilaterally varied during the Term by DFMC:
 - (i) to the extent necessary to comply with any changes in a Commonwealth, State or Territory Law; but
 - (ii) without reducing the Minimum Milk Prices under this Contract.
- (b) **Notice:** DFMC will provide you with written notice of any unilateral variations, including the details and reason for the variation and the day the variation takes effect.

27. Obligation to act in Good Faith

In accordance with the Dairy Code, you and DFMC agree that each must deal with the other in good faith in relation to the supply of your milk.

28. Bullying and Harassment

Neither DFMC nor you will engage in behaviour that is, or may be reasonably considered to be, intimidating, bullying or harassing or commit any act or behaviour which is offensive or abusive in connection with this Contract. If you are in breach of this clause, DFMC may suspend the collection of your milk for a period of 5 days or until such time as DFMC determines (acting reasonably) that the behaviour has been rectified.

29. Compliance with the Law

- (a) **Compliance:** You and DFMC must at all times comply with the Law when carrying out your respective obligations in connection with this Contract.
- (b) **Licence:** You must ensure that you hold all necessary licences, permits and approvals that are required by Law (including a Dairy Industry Licence) in order to comply with your obligations under this Contract. Failure to comply with the obligations under this clause may result in DFMC suspending the collection of your milk until such time as the failure is rectified.
- (c) **Authority:** You agree to provide DFMC permission for each relevant state food authority to be granted with the necessary access rights to your Farms for audit purposes.

- (d) **Code:** This Contract is intended to implement the required terms of the Dairy Code. To the extent there is any inconsistency between the terms of this Contract and the Dairy Code, then the Dairy Code prevails.
- (e) **Severability:** If any part or whole of one or more of the provisions of this Contract are non-compliant with the Dairy Code, then any part or whole of one or more of those provisions will be severed from this Contract and the validity, existence, legality and enforceability of the remaining provisions in this Contract will not be affected.

30. Liability and insurance

- (a) **No liability:** DFMC will not be responsible for payment of your milk if it is not collected by DFMC due to:
 - (i) adverse weather conditions; or
 - (ii) where there is restricted access to a Farm due to safety or notified public health reasons, such as animal disease.
- (b) **Insurance:** It is your responsibility to ensure that you have adequate insurance to cover any incidences of milk loss, contamination or damage to other supplier's milk in the milk tanker and coverage for restricted access to the Farms due to public road or bridge failure.

31. Use of Information and Privacy

- (a) **Compliance:** DFMC will use any personal information collected in the course of performance of this Contract in accordance with the *Privacy Act 1988* (Cth) and DFMC's Privacy Policy available at <https://dfmc.org.au/privacy-policy>.
- (b) **Use of information:** DFMC may use all information provided by, or relating to you (including any personal information about you) for any purposes associated with DFMC's business, including any of the matters referred to in this Contract, the provision of information to customers or third party service providers or in connection with industry or governmental projects in which DFMC participates.

32. Disputes

The procedure set out in this clause applies if either party (the **complainant**) wishes to have a complaint in relation to a matter arising under, or in connection with, this Contract dealt with in accordance with the complaint handling procedure provided in this Contract:

- (a) the complainant must notify the other party (the **respondent**), in writing, of the following:
 - (i) the nature of the complaint;
 - (ii) that the complainant wishes the complaint to be dealt with in accordance with the complaint handling procedure provided in this Contract; and
 - (iii) the outcome the complainant wants;
- (b) within five Business Days after receiving notice of the complaint under clause 32(a), the respondent must give a written acknowledgement to the complainant stating:
 - (i) that notice of the complaint has been received; and
 - (ii) the steps to be taken to deal with the complaint;

- (c) the complainant and the respondent must attempt to resolve the complaint in accordance with the complaint handling procedure provided in this Contract before taking action to resolve the complaint by mediation or arbitration;
- (d) if the complaint is not resolved in accordance with the complaint handling procedure provided in this Contract within 60 days after the acknowledgement was given to the complainant under clause 32(b):
 - (i) either party may take action to have the complaint resolved by mediation in accordance with this clause 32 or by any other appropriate mediation process (for example, in accordance with another industry code); or
 - (ii) the parties may agree that the complaint is to be resolved by arbitration in accordance with this clause 32 or by any other appropriate arbitration process (for example, in accordance with another industry code);
- (e) the complainant may, at any time, withdraw the complaint by notice in writing to the respondent;
- (f) in the event that either you or DFMC wish to have the dispute resolved by mediation, the procedure set out in section 48 of the Dairy Code will apply; and
- (g) DFMC must have a complaint handling officer to manage complaints that arise in relation to a matter arising under, or in connection with, this Contract.

33. Interpretation

In this Contract, unless the context otherwise requires:

\$ per kg	means dollars per kilogram.
Business Day	means a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Melbourne, Australia.
Commencement Date	means the date set out in Item 1 of the Details.
Contract	means this contract (the terms of which are set out or referred to in this document and each of the Annexures) arising from DFMC's acceptance of your offer.
Cpl	means cents per litre.
Dairy Code	means the <i>Competition and Consumer (Industry Codes – Dairy) Regulations 2019</i> .
Demerit Points	has the meaning given to that term in clause 6(d).
Details	means the section entitled 'Details' which commences on page two of this document.
DFMC	means Dairy Farmers Milk Co-operative Limited ARBN 108 690 384.
DFMC's Milk Policy	means DFMC's Milk Policy, a copy of which is attached to this Contract as Annexure B .
Exceptional Circumstances	means any circumstances of limited duration that involve an Extraordinary Event.
Expiry Date	means the date set out in Item 2 of the Details.

Extraordinary Event	<p>means an event (including an emergency or change in market conditions) that:</p> <ul style="list-style-type: none"> (a) occurs outside of Australia; (b) has a highly significant effect on supply, demand or costs in the dairy industry; and (c) is not caused by decisions made by DFMC or any other processor.
Farm	<p>means the farm or farms allocated the Farm Number or Numbers shown in the Supplier's details on the first page of this document. For the avoidance of doubt, Farm does not include any additional real property acquired or used by you on or after the Commencement Date to produce milk.</p>
Force Majeure	<p>means any occurrence or omission as a direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations under this Contract and that is beyond the reasonable control of that party and the effect of which could not have been avoided by that party exercising reasonable diligence, including forces of nature, industrial action and action or inaction by a government or governmental or semi-governmental entity or authority having the ability to make laws or other determinations or orders which have the force of law. Force Majeure includes any loss of production or cattle due to circumstances beyond your reasonable control, such as feed shortages due to extreme events (e.g. locust plague) and weather conditions such as drought, flood or cyclone.</p>
Gate Fees	<p>means the gate fees (otherwise known as stop charges) charged by DFMC in relation to the collection of your milk from the Farm as set out in clause 4(a) and Item 11 of the Details.</p>
Law	<p>means all laws, regulations and requirements of regulatory bodies and authorities relevant to the supply of your milk in the manner contemplated by this Contract, including laws relating to food safety, road transportation and occupational health and safety.</p>
BDD	<p>means BDD Australia Pty Ltd (ABN 68 083 019 390).</p>
Bega	<p>means Dairy Farmers Pty Limited ABN 65 010 308 068.</p>
Bega Milk Supply Agreement	<p>means the milk supply agreement dated on or about 1 July 2004 between DFMC and Bega (as amended).</p>
Minimum Monthly Volume Collection	<p>has the meaning given to that term in clause 8(c).</p>
Minimum Milk Price	<p>means, in respect of a Month during the Term, the price set out in Item 3 of the Details.</p>
Milk Statement	<p>means, in respect of a Month, a written statement of your milk supplied to DFMC during that Month that is to be given to you in accordance with clause 7(c).</p>
Month	<p>means calendar month.</p>

Parties	means you and DFMC and party means any one of them. A reference to a party includes that party's executors, administrators, successors and permitted assigns.
Quality Fee	means, in respect of a Month, the amount (if any) to be deducted from the Minimum Milk Price to be paid to you for that Month in accordance with clause 6, Item 12 of the Details and Annexure A .
Quality Incentive	means, in respect of a Month, the amount (if any) to be paid to you in addition to the Minimum Milk Price for that Month in accordance with clause 6, Item 12 of the Details and Annexure A .
Quality Standards	means the quality standards for your milk and animal health and welfare standards set out in Sections 3 and 4 of DFMC's Milk Policy.
Term	has the meaning given to that term in clause 1(b).
Productivity Incentive	means the productivity incentive to be paid in accordance with clause 3(a) and Item 5 of the Details.
Supermarket Retailer Own Brand (ROB) Levy	means the Supermarket Retailer Own Brand (ROB) Levy to be paid in accordance with clause 3(d) and Item 10.
You or Supplier	means the person, partnership or corporate entity named on page one of this document as the Supplier.
your milk	means all of the milk produced at the Farm(s) excluding milk used for the rearing of calves on the Farm(s) or milk used or consumed on the Farm(s) for domestic or household purposes.

A reference to the singular includes the plural and a reference to the plural includes the singular.

A reference to a person includes a natural person, partnership, firm, body corporate or other entity.

Annexure A – Quality Demerit Points

Test	Result from	Result to	Demerit points	Test Application
Total Plate Count (Units 000cfu/ml)	0	15000	0	Highest Official Test per month excluded. Then demerit points (if any) are applied to each other official test. There are normally three official tests each month.
	15001	24000	1	
	24001	39000	2	
	39001	64000	4	
	64001	and over	8	
Somatic Cell Count or Bulk Milk Cell Count (Units '000/ml)	0	200	0	Average per 10 day Period is calculated. Highest average for the month is excluded. The points are applied to each remaining average. There are normally three weighted averages/month. Milk is not accepted from herds with a recurrent BMCC of 400,000 per ml or more based on current DFMC Milk Policy Guidelines (which is based on EU requirements).
	201	250	1	
	251	300	3	
	301	350	6	
	351	400	10	
	401	and over	15	

Repeat offenders over 50,000 cfu/ml and 400,000 SCC may be suspended.

Annexure B – DFMC’s Milk Policy