



# MILK SUPPLY & PRICING AGREEMENT

Mundella Foods Pty Ltd

ABN 20 055 862 774

And

[Insert Supplier Name Here]

ABN [Insert Supplier ABN Number Here]



## Mundella Foods Pty Ltd

### MILK SUPPLY & PRICING AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

BETWEEN: Mundella Foods Pty Ltd ABN 20 055 862 774 of 46 Randell Rd, Mundijong WA 6123 (the "Customer")

AND: Name: [Insert Supplier Name Here]  
Address: [Insert Supplier Address Here]  
ABN: [Insert Supplier ABN Number Here]  
Trading Name: [Insert Trading Name Here]  
(The "Supplier")

(Each a "Party" and together the "Parties")

#### RECITALS

- A. The Customer carries on business in Australia as a dairy foods manufacturer.
- B. The Supplier agrees to supply Milk to the Customer on and subject to the terms and conditions of this Agreement.

#### AGREEMENT:

##### 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following terms shall have the following meanings:

"**Arbitration Adviser**" has the meaning given to such term under the Code.

"**Agreement**" means this document and its attached schedules.

"**Business Day**" means any day other than a Saturday or a Sunday or a public holiday, special holiday or bank holiday on which registered banks are open for business in Perth, Western Australia.

"**Claim**" includes:

- a) all liability, damage and loss;
- b) actions, applications, causes of action, arbitrations, claims, demands, orders, judgments; and
- c) debts, damages, penalties, payments and costs (including legal costs calculated on a solicitor and own client basis).

"**Code**" means the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019*.

"**Confidential Information**" means any information that:

- a) relates to the business or affairs of the disclosing Party;
- b) is made available to the disclosing Party to the receiving Party, or is otherwise obtained by the receiving Party; and
- c) is by its nature confidential or the receiving Party knows, or ought to know, is confidential.

"**Cooling-Off Period**" means the period commencing on the date on which this Agreement is signed by the last Party to do so and expiring 14 days thereafter.

"**Customer's Site**" means the Customer's manufacturing premises situated at 46 Randell Road, Mundijong, Western Australia, 6123.

"**Contracted Courier**" means the nominated transport company assigned to collect Milk on behalf of the Customer from the Supplier and deliver it to the Customer's Site.

"**Collect**", "**Collected**" or "**Collection**" means at the time, the Contracted Courier pumps the Milk through an intake meter into a road tanker from the Supplier's farm milk storage tank.

"**GST**" means the Goods and Services Tax as it is defined in *A New Tax System (Goods and Services Tax) Act 1999*.

"**Mediation Adviser**" has the meaning given to such term under the Code.

"**Milk**" means raw farm cow's milk.



"**Price**" means the single minimum price per litre of Milk payable by the Customer to the Supplier under this Agreement as calculated in accordance with **Schedule 1**.

"**Specifications**" means the acceptance specifications of Milk as set out in **Schedule 2**.

"**Term**" means the period referred to in clause 4.1.

- 1.2. In this Agreement, unless the context requires another meaning, a reference to:
  - 1.2.1. a singular includes the plural and vice versa;
  - 1.2.2. a clause, schedule or annexure is a reference to a clause, schedule or annexure of this Agreement;
  - 1.2.3. a notice means a notice, approval, demand, request, nomination or other communication given by one Party to another under or in connection with this Agreement;
  - 1.2.4. a person (including a Party) includes:
    - 1.2.4.1. an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
    - 1.2.4.2. the person's successors, permitted assigns, substitutes, executors and administrators;
  - 1.2.5. a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
  - 1.2.6. a month means a calendar month;
  - 1.2.7. time is to local time in Perth, Western Australia;
  - 1.2.8. "dollars" or "\$" is to an amount in Australian currency;
  - 1.2.9. a right includes a benefit, remedy, discretion or power; and
  - 1.2.10. **includes** or **including** means "including, but not limited to", or "includes, without limitation" respectively; and
- 1.3. If the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day. This clause 1.3 does not apply in respect of Collection.
- 1.4. This Agreement may not be construed adversely to a Party only because that Party was responsible for preparing it.
- 1.5. Headings are used for reference only and do not affect the construction or any provision of this Agreement.
- 1.6. In this Agreement, if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

## 2. STATEMENT OF CIRCUMSTANCES

- 2.1. The statement of circumstances in which the Customer would enter into this Agreement is set out in **Schedule 3**.

## 3. AGREEMENT TO SUPPLY

- 3.1. The Supplier agrees to sell to the Customer, and the Customer agrees to buy from the Supplier, the Milk on the terms and subject to the conditions contained in this Agreement.
- 3.2. This Agreement is non-exclusive. The Supplier may sell any of its Milk to other persons during the Term.

## 4. TERM OF AGREEMENT

- 4.1. Subject to clause 4.2 and unless otherwise terminated in accordance with clause 18, the term of this Agreement is deemed to have commenced on the **1<sup>st</sup> July 2022** and expires on the **30<sup>th</sup> June 2023**.
- 4.2. The Supplier may terminate this Agreement, with immediate effect and without incurring any liability to the Customer, at any time during the Cooling-Off Period by giving the Customer written notice of such termination.
- 4.3. If the Supplier terminates the Agreement pursuant to clause 4.2, the Agreement will continue to apply to any Milk Collected under the Agreement before such termination takes effect.

## 5. RENEWAL OF AGREEMENT

- 5.1. The Customer and Supplier will discuss a renewal of the Agreement in the period between 3 months and 2 months prior to the expiry of the Term ("Renewal Discussion Period"). Subject to the provisions of the Code, a renewal of this Agreement



may involve a change in the Price or any other term or condition of this Agreement as mutually agreed between the Parties.

- 5.2. If the renewal of the Agreement is not agreed to in writing by the Parties within the Renewal Discussion Period, the Agreement will expire at the end of the Term.

## 6. PRICING AND CONDITIONS OF SALE

- 6.1. Subject to the provisions of this clause 6 and clause 7, the Customer will pay the Supplier the Price for the Milk Collected under this Agreement.
- 6.2. Unless agreed to in writing by the Parties, the Price may not be changed during the Term.
- 6.3. After each Collection, the Supplier must prepare and provide an invoice to the Customer for payment, detailing:
- 6.3.1. the volume of Milk Collected;
  - 6.3.2. the Specifications of Milk Collected, the Specifications being as agreed in **Schedule 2**;
  - 6.3.3. the date of Collection; and
  - 6.3.4. the Price payable in dollars.

## 7. QUANTITY AND QUALITY OF MILK

### Quantity

- 7.1. For the purpose of determining the Price payable, the volume of Milk tendered for Collection will be determined by reference to the Collection intake flow meter measurement ("Collection Measurement") and the corresponding records made of the Collection Measurement.
- 7.2. The Contracted Courier will provide the Supplier and Customer with a written record of the Collection Measurement taken at the time of the Collection.
- 7.3. The Collection Measurement will be deemed final unless it is disputed by the Supplier or the Customer by no later than 7 days from the date of Collection ("Volume Dispute"). Subject to clause 7.4, in the event of a Volume Dispute, an averaged volume between the Collection Measurement and the measurement of Milk volume claimed by the Supplier or the Customer (as the case may be) will be calculated and applied in respect to the relevant volume of Milk Collected ("Average Measurement").
- 7.4. If there is more than a 10% difference between the Average Measurement and the Collection Measurement, the Supplier and the Customer may either:
- 7.4.1. agree to accept the Average Measurement; or
  - 7.4.2. reject the Average Measurement and declare a dispute to be determined in accordance with clause 17.

### Quality

- 7.5. The composition of the Milk Collected will be tested by the Customer within 24 hours of Collection to determine if it complies with the Specifications ("Customer's Test").
- 7.6. The Customer will provide the Supplier with written notice of the results of the Customer's Test within 24 hours of the Customer's Test being completed.
- 7.7. The results of the Customer's Test will be deemed final unless the Supplier disputes the results by no later than 7 days after receipt by the Supplier of the Customer's Test results ("Composition Dispute"). All Composition Disputes will be determined in accordance with clause 17.
- 7.8. Subject to complying with clauses 7.5 to 7.7, the Customer (acting reasonably) will have the right to reject any Milk that does not comply with the Specifications. The Customer will provide the Supplier with written notice stating the reasons for the rejection of any Milk and stating the consequences of the rejection for the Supplier within 24 hours of any Milk being rejected.
- 7.9. If the Customer rejects any Milk in accordance with clause 7.8 and the cause of the rejection is as a result of the Supplier's negligence and/or material breach of this Agreement, the reasonable cost of that Milk and its disposal shall be borne by the Supplier.
- 7.10. The Supplier shall, on reasonable prior notice given in writing by the Customer, permit access to the Customer's quality assurance personnel for a farm audit at least once per annum, or in the event of a contract period being less than 12 months, the frequency will be at least once per contract period.
- 7.11. The Customer will pay for or reimburse the cost of an on farm audit, to a maximum of one per year, of the Supplier's milk producing operation that complies with the West Australian Public Health requirements for milk production premises. The



Supplier will ensure the audit report is shared with the Customer and promptly correct any corrective actions reported in the audit.

#### **Audit**

- 7.12. Should a Volume Dispute or Composition Dispute arise in accordance with the above clauses, the Supplier is entitled to undertake an audit of the Customer's measurement or the Collection Measurement and testing methods upon written request. Such audit will be undertaken at a time agreed to between the Supplier and Customer (both acting reasonably).
- 7.13. Each Party must make available to the other Party on request its records of the volumes and Specifications of Milk supplied under this Agreement within 7 days of receipt of such request.

#### **Written Statements**

- 7.14. Despite clause 7.12, the Customer will provide the Supplier with regular written statements in relation to Milk Collected. The written statements will be provided to the Supplier weekly, within 24 hours following the preceding week's Friday to Thursday supply period and it will contain information related to:
- 7.14.1. the total volume of Milk Collected for the prior week;
  - 7.14.2. the volume of each batch of Milk Collected for the prior week; and
  - 7.14.3. the test results performed versus the Specifications of each batch of Milk Collected for the prior week.

#### **8. PAYMENT TERMS**

- 8.1. Unless specified otherwise in paragraph 3 of **Schedule 1**, the Customer will by the 1st or the 15th day of the month following receipt of an invoice from the Supplier, prepared in accordance with clause 6.3, pay the Supplier the undisputed portion of the invoice.
- 8.2. Where the Customer disputes an amount of an invoice it must immediately notify the Supplier in accordance with clause 17 of this Agreement.

#### **9. MILK COLLECTION**

- 9.1. The Contracted Courier will Collect Milk on behalf of the Customer on the terms and subject to the conditions contained in **Schedule 4**.

#### **10. TITLE AND RISK**

- 10.1. Title and risk in the Milk passes from the Supplier to the Customer upon Collection from the Supplier.

#### **11. INDEMNITY**

- 11.1. The Customer indemnifies the Supplier from and against all Claims incurred or suffered directly or indirectly by the Customer from the date of Collection onwards, except to the extent that the Claims are caused by or contributed to by the negligence of the Supplier.
- 11.2. The Customer indemnifies the Supplier from and against all Claims incurred or suffered directly or indirectly by the Customer arising, directly or indirectly from the acts or omissions of the Contracted Courier whilst entering, being on or egressing from the property owned or occupied by the Supplier.

#### **12. INSURANCE**

- 12.1. The Parties agree to maintain, at their own cost, their own comprehensive insurance policies for any liability that may arise as a result of their obligations under this Agreement.

#### **13. QUALITY MANAGEMENT SYSTEMS**

- 13.1. By no later than 30 days after receipt of written request from the Customer, the Supplier will provide evidence to the Customer that the Supplier has a quality assurance program that, in the reasonable opinion of the Customer, is aligned with industry best practice and is sufficient to ensure that the Supplier produces Milk in compliance with the Specifications.

#### **14. CONFIDENTIALITY**



- 14.1. Except as permitted or required by this Agreement, each Party must not use or disclose to any other person the other Party's Confidential Information.
  - 14.2. Each Party may disclose the Confidential Information of the other Party to the extent necessary:
    - 14.2.1. when required to do so by law or any regulatory authority; and
    - 14.2.2. to such of its employees, officers, professional or financial advisers or service providers whose duties reasonably require such disclosure, on condition that the Party making such disclosure ensures that each person to whom such disclosure is made is informed of the confidentiality of the information.
  - 14.3. If either Party becomes aware of a breach of this clause 13, including a breach of duty of its personnel with respect to the other Party's Confidential Information, it must:
    - 14.3.1. give a notice to the other Party as soon as it becomes aware of the breach; and
    - 14.3.2. promptly provide the other Party with any information or assistance which it may reasonably request in order to minimise the loss or damage it may suffer as a result of the breach.
  - 14.4. The obligations of each Party under this clause 13 survive termination or expiration of this Agreement.
15. GST
- 15.1. If GST is imposed on any supply made by the Supplier to the Customer under this Agreement, the Customer must pay, in addition to any consideration payable under this Agreement for the supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply provided always that the Supplier issues a valid tax invoice to the Customer.
  - 15.2. The Parties acknowledge and agree that all amounts set out in this Agreement are GST exclusive unless stated otherwise.
  - 15.3. Nothing in this clause 14 requires Customer to pay any amount on account of a fine, penalty or interest for which the Supplier is liable, nor pay any tax (including any value added tax, indirect or consumptive tax) if this is otherwise recoverable by Supplier.
16. FORCE MAJEURE
- 16.1. Neither Party will be liable to the other for any failure to comply with the terms of this Agreement (other than the payment of money) where such breach is due to an act of God, industrial dispute, strike, lock-out, fire, flood, war, civil unrest or disruption or any other matter outside the reasonable control of the relevant Party ("Force Majeure").
  - 16.2. In such circumstances the Parties will work together to minimize damages to both Parties and each Party must take reasonable steps to minimise its losses.
  - 16.3. If by reason of Force Majeure a Party ("Affected Party") is unable to perform any obligation under this Agreement for a consecutive period of 40 days or such other period as the Parties may agree in writing, the other Party may on expiry of that period give written notice to the Affected Party terminating this Agreement with immediate effect.
  - 16.4. Termination of this Agreement under clause 15.3 is without prejudice to the rights of either Party against the other in respect of any matter or thing occurring under this Agreement before termination.
17. WARRANTIES
- 17.1. The Supplier represents and warrants that:
    - 17.1.1. it is lawfully authorised to sell the Milk to the Customer and holds all applicable licenses, authorisations and permits to do so; and
    - 17.1.2. the Milk is produced, stored, graded and sampled in accordance with all applicable laws, regulations and standards prior to its Collection.
18. COMPLAINTS AND DISPUTE RESOLUTION
- Complaints**
- 18.1. If a Party ("Complainant") wishes to make a complaint in relation to a matter arising under or in connection with this Agreement, the Complainant must notify the other Party in writing of the following:
    - 18.1.1. the nature of the complaint;



- 18.1.2. that the Complainant wishes the complaint to be dealt with in accordance with the complaint handling procedure provided in this Agreement; and
  - 18.1.3. the outcome the Complainant wants, ("Complaint Notice").
- 18.2. If the Complainant is the Supplier, the Complaint Notice must be directed to the Customer's internal complaint handling officer whose details are set out in clause 20.1.3.
- 18.3. Within 5 Business Days after receiving the Complaint Notice, the other Party ("Respondent") must provide the Complainant with written acknowledgement stating:
- 18.3.1. that the Complaint Notice has been received; and
  - 18.3.2. the steps to be taken to deal with the complaint.
- 18.4. The Complainant and the Respondent must attempt to resolve the complaint before taking action to resolve the complaint by mediation or arbitration.
- 18.5. If the complaint is not resolved in accordance with this complaint handling procedure within 60 days after the acknowledgement was given to the Complainant under section 17.3:
- 18.5.1. either Party may take action to have the complaint resolved by mediation; or
  - 18.5.2. the Parties may agree in writing to refer the complaint to arbitration.
- 18.6. The Complainant may, at any time, withdraw the complaint by notice in writing to the Respondent.

#### **Mediation**

- 18.7. If a Party refers the complaint to mediation:
- 18.7.1. the Party referring the complaint to mediation must request the Mediation Adviser to appoint a mediator for the dispute; and
  - 18.7.2. the mediation will be conducted as required under the Code.

#### **Arbitration**

- 18.8. If the Parties have agreed in writing to refer the complaint to arbitration:
- 18.8.1. the Parties must request the Arbitration Adviser to appoint an arbitrator for the dispute; and
  - 18.8.2. the arbitration will be conducted as required under the Code.

#### **Urgent Relief**

- 18.9. Nothing contained in this clause 17, will prevent a Party from applying to a court of competent jurisdiction for urgent injunctive or other interlocutory relief.

### **19. TERMINATION OF AGREEMENT**

- 19.1. A Party may immediately terminate this Agreement if:
- 19.1.1. the other Party commits a material breach of this Agreement and such material breach is not capable of remedy;
  - 19.1.2. the other Party commits a material breach of this Agreement, the material breach is capable of remedy and the other Party fails to remedy the material breach within 14 days following receipt of written notice requiring it to do so;
  - 19.1.3. any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the other Party's assets or business; or
  - 19.1.4. the other Party is unable to pay its debts as they fall due or compounds with its creditors, or assigns any of its assets for the benefits of its creditors.
- 19.2. The terminating Party must give to the other Party, as soon as practical after the terminating Party terminates the Agreement, written notice containing:
- 19.2.1. details of the termination;
  - 19.2.2. the reason for the termination; and
  - 19.2.3. the day on which the termination takes effect.



## 20. RIGHTS OF TERMINATION

20.1. Any termination of this Agreement will be without prejudice to the rights of either Party against the other, in respect of anything done, or omitted under this Agreement before termination, or regarding any sums of other claims outstanding at the time of termination.

## 21. NOTICES

21.1. A notice, approval, consent or other communication ("Notice") given under this Agreement:

21.1.1. must be in writing;

21.1.2. must be either:

21.1.2.1. personally served; or

21.1.2.2. sent by mail; or

21.1.2.3. sent by electronic transmission,

21.1.3. addressed as follows:

### **the Customer**

To: Mundella Foods Pty Ltd  
Attention: The WA Dairy Operations Manager  
Address: 46 Randell Road, Mundijong, Western Australia, 6123  
Email: mwollaston@manassen.com.au

### **the Supplier**

To: [Insert Supplier Name Here]  
Attention: [Insert Supplier Contact Name Here]  
Address: [Insert Supplier Postal Address Here]  
Email: [Insert Supplier Email Address Here]

21.2. A Notice takes effect from the time it is received unless a later time is specified in it.

21.3. A letter or email is taken to be received:

21.3.1. if delivered personally, on the date of delivery;

21.3.2. if posted, on the date which is three Business Days after it is posted; and

21.3.3. in the case of email, when the message is successfully transmitted and an acknowledgement of receipt from the receiver's computer is recorded on the sender's computer.

21.4. Any Party may change its address for receipt of notices at any time by giving written notice of such change to each other Party.

## 22. ASSIGNMENT

22.1. No Party may assign, subcontract or encumber its right, title and interest under or pursuant to this Agreement without the prior written consent of the other Party.

## 23. SURVIVAL

23.1. The provisions of this Agreement survive any termination of this Agreement to the extent required for their full observance and performance.

## 24. SUCCESSORS

24.1. This Agreement binds the Parties and their successors or assigns.

## 25. GOVERNING LAW

25.1. This Agreement shall be governed by and construed in accordance with the law of Western Australia and each of the Parties hereby submits to the non-exclusive jurisdiction of the Western Australian Courts.



## 26. RELATIONSHIP OF PARTIES

- 26.1. Nothing in this Agreement creates (or is intended to create), constitutes or evidences any partnership, joint venture, agency, trust, employer/employee relationship or agency or other fiduciary relationship between the Parties and a Party may not make, or permit to be made, any representation that any such relationship exists between the Parties.
- 26.2. Neither Party has authority to act for, or to incur any obligation or liability on behalf of, the other Party.

## 27. WAIVER AND EXERCISE OF RIGHTS

- 27.1. A Party does not waive a right, power or remedy if it fails to exercise or enforce, grants any forbearance or indulgence, or delays in exercising or enforcing any right, power, remedy or privilege under this Agreement.
- 27.2. A single or partial exercise or waiver by a Party of a right, power or remedy relating to this Agreement does not prevent any other or further exercise of that right, power, remedy or privilege or any other right, power, remedy or privilege under this Agreement.
- 27.3. A waiver of a right, power, remedy or privilege must be in writing and signed by the Party giving the waiver.
- 27.4. A Party is not liable for any liability incurred by the other Party caused or contributed to by the waiver, exercise, attempted exercise, and failure to exercise or delay in the exercise of a right, power or remedy by the first mentioned Party.

## 28. SEVERABILITY

- 28.1. Any provision in this Agreement which is invalid or unenforceable under the Code, any law or otherwise is to be read down if possible, so as to be valid and enforceable. If that is not possible, the provision shall, to the extent that it is possible, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

## 29. VARIATIONS

- 29.1. Subject to clause 28.2, this Agreement can only be varied by written agreement between the Parties.
- 29.2. The Customer may unilaterally vary this Agreement where there is a change in a Commonwealth, State or Territory law:
  - 29.2.1. to the extent necessary to comply with the changed law; and
  - 29.2.2. without reducing the Price.
- 29.3. If the Customer unilaterally varies this Agreement under clause 28.2, the Customer must as soon as practicable after the variation provide the Supplier with written notice containing:
  - 29.3.1. details of the variation;
  - 29.3.2. the reason for the variation; and
  - 29.3.3. the day on which the variation takes effect.

## 30. KEEPING OF RECORDS RELATED TO AGREEMENT

- 30.1. Each Party must keep originals, or copies, of:
  - 30.1.1. this Agreement;
  - 30.1.2. all records related to this Agreement; and
  - 30.1.3. all written communications exchanged between the Parties related to this Agreement, (collectively "Records").
- 30.2. Records must be kept from the day on which a Record is made or given and for a minimum period of 6 years from the day on which this Agreement ends.

## 31. RIGHTS CUMULATIVE

- 31.1. Except as expressly stated otherwise in this Agreement, the rights and remedies of a Party under this Agreement are cumulative and the pursuit or exercise of a particular right or remedy is in addition to any other rights and remedies of that Party under this Agreement or otherwise.



32. CONSENTS

32.1. Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

33. LEGAL COSTS

33.1. Except as expressly stated otherwise in this Agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.

34. COUNTERPARTS

34.1. This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

35. ENTIRE AGREEMENT

35.1. This Agreement is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding, whether oral or in writing, on anything connected with that subject matter.



THIS AGREEMENT was signed by or on behalf of the Parties on the date set out at the beginning of this Agreement.

SIGNED for and on behalf of Mundella Foods Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth)

Signed by Director: .....

Print Name: [Insert Director Name Here]

Signed by Director: .....

Print Name: [Insert Director Name Here]

SIGNED by/for [Insert Supplier Business Name Here]

Signed by duly authorised Representative : .....

Print Name: [Insert Supplier Signatory Name Here]

In the presence of:

Witness Signature: .....

Witness Name: .....

Witness Address: .....

Witness Occupation: .....



## Schedule 1 - Volume and Price

### **1. SUPPLY VOLUME:**

- 1.1. The Customer agrees to purchase Milk produced by the Supplier, and the Supplier will maintain supply, to a minimum per month volume of [Insert Monthly Volume Here] litres and a maximum per month volume of [Insert Monthly Volume Here] litres. This represents a total volume per annum of between [Insert Total Term Volume Here] Million litres and [Insert Total Term Volume Here] Million litres. Subject to paragraph 1.3 below, the Supplier will use its best endeavours to supply Milk in equal volumes throughout each week and month of the year.
- 1.2. The Supplier acknowledges and agrees that:
  - 1.2.1. the combined effects of consumer demand, changing product mix and seasonality impacts on the week-to-week Milk volume required by the Customer;
  - 1.2.2. without reducing the minimum or maximum volume of Milk that the Customer is obliged to purchase from the Supplier per annum, the Customer may, from time to time, need to review the Milk volume required for Collection; and
  - 1.2.3. the Supplier will use its best endeavours to accommodate any request made by the Customer to vary the Milk volume required for Collection.
- 1.3. In the event of sustained oversupply, the Supplier shall work proactively with the Customer to identify strategies to mitigate such an oversupply.

### **2. RAW MILK PRICING:**

- 2.1. The Price per litre shall be all-inclusive, Ex farm Milk storage, net all Milk levies and GST exclusive.
- 2.2. For the period 1 July 2022 to 31 December 2022, the Price shall be \$0.60 per litre. For the period 1 January 2023 to 30 June 2023, the Price shall be \$0.62 per litre.

### **3. PAYMENT TERMS**

- 3.1. Payment shall be made for all invoices received 3 business days prior to the 1st and 15th of each month and paid on the 1st and 15th of each month respectively.



## Schedule 2 - Specifications

The Supplier shall ensure that all Milk handling and storage is of a standard to ensure that the Milk Collected on behalf of the Customer satisfies the following acceptance Specifications:

Parameter	Limits
Coliforms	< 100 cfu / ml
E. Coli	< 100 cfu / ml
Aerobic Plate Count	< 3,000 cfu / ml
pH	6.5 - 6.8
Fat	> 3.5%
Protein	> 3.1%
Total Solids	> 12%
Total Solids (non-fat)	> 8%
Antibiotic	Negative
Somatic Cell Counts	< 250,000 cfu / ml
Milk Temperature	≤ 5° C
Water Content	< 1.0%
Smell	Fresh smell - no off flavours or taints
Appearance	White and free from any foreign matter



### Schedule 3 - Statement of Circumstances

1. **Specified Region - Western Australia.** Supplier to be located within 2 hours road transport of the Customer's Site with a preference given to suppliers located closer to the Customer's Site to minimise transport costs. The Customer may decline an offer of supply where it believes that the cost of Milk Collection would be unreasonably high in relation to the overall Milk cost delivered to the Customer's Site.
2. **Total Volume.** The total volume of Milk to be purchased by the Customer for the Supply Period referred to in paragraph 3 below is an aggregate amount of no less than **2.70 million litres and no more than 3.18 Million litres**. The Customer has entered into supply agreements to satisfy this demand.
3. **Supply Period.** 1 July 2022 to 30 June 2023.
4. **Exclusivity.** Subject to the Supplier supplying the Customer with the volumes of Milk set out in **Schedule 1** of the Agreement, the Supplier may sell Milk to another milk processor.
5. **Price.** The Price paid by the Customer is set out in **Schedule 1** of the Agreement.
6. **Existing Contractual Obligations.** The Customer may enter into milk supply agreements with other parties to manage surplus and deficit Milk volumes from time to time.
7. **Existing Suppliers.** In assessing offers to supply Milk, the Customer will give preference to suppliers that current supply Milk to the Customer and who wish to continue such supply.
8. **Reliability of Supply.** In assessing offers to supply Milk, the Customer will give preference to suppliers who can demonstrate that they can reliably achieve the volume and quality specification requirements in the Agreement.
9. **Good Standing.** The Customer reserves the right to refuse to contract with any supplier who, in the reasonable opinion of the Customer, has engaged in public denigration of the Customer or a key retail or wholesale customer of the Customer.
10. **Milk Supply Profile.** The Customer's primary activity is the processing of Milk into short shelf life yoghurt and cultured foods. Demand for these products is relatively consistent week to week across the whole year. As a consequence, the Customer requires a Milk supply with consistent Specifications. The Customer reserves the right to refuse to contract with any supplier that, in the reasonable opinion of the Customer, experiences unacceptable variances in their seasonal Milk supply Specifications.
11. **Minimum Pricing Justification.** The Price is calculated with reference to the following factors:
  - 11.1. the need for the Customer to be competitive in the Australian retail and wholesale markets for dairy products and Milk purchases are a material determinant of the Customer's cost of production for those products;
  - 11.2. prices offered or expected to be offered by other buyers of Milk across Western Australia;
  - 11.3. given the national market for Milk in Australia, the Price takes into consideration the cost of Milk and transportation from regions outside of Western Australia; and
  - 11.4. the Price is a single average price set throughout the Term and represents the Customer's desire for simplicity while taking account of the variation in cost of Milk production for Suppliers across the full season.
12. **Intention to Negotiate.** The Customer is amenable to negotiating the terms of the Agreement.



## Schedule 4 - Collection

### **1. Collection Cost**

- 1.1. Collection of Milk shall be the Customer's responsibility and at the Customer's sole cost.

### **2. Collection Schedule:**

- 2.1. The Customer will Collect Milk via a nominated Contracted Courier up to 5 days per 7 day week including a regular Sunday Delivery.
- 2.2. The Supplier and the Customer shall ensure that prompt communication is undertaken to advise the other Party of any factors that impact the Collection or access to the Collection.