

**ELIGIBILITY TO CONTRACT WITH TASMANIAN FOOD CO DAIRY PTY LTD (TRADING AS PYENGANA DAIRY)**

TasFoods will enter into this agreement with a supplier if:

1. Their farms and cows are located in the Pyengana, Valley Tasmania;
2. They pass TasFoods' assessment and verification checks;
3. They agree to supply all their milk to TasFoods during the supply period;
4. They agree to take all reasonable steps to ensure their milk meets TasFoods standards and requirements as per this Agreement and the TasFoods Milk Supplier Handbook; and
5. TasFoods has not already entered into sufficient milk supply agreements to meet its demand for milk from Pyengana Valley.

TasFoods may not accept additional suppliers on these terms after it provides such notice on its website [www.pyenganadairy.com.au](http://www.pyenganadairy.com.au)

**STANDARD MILK SUPPLY AGREEMENT  
FOR MILK EXCLUSIVELY SUPPLIED  
OUT OF THE PYENGANA VALLEY, TASMANIA**

**Milk Supply Agreement**

[#]

and

TasFoods Limited (or subsidiary entity nominated)

**THIS AGREEMENT HAS A 14 DAY COOLING OFF PERIOD.**

**A SUPPLIER HAS 14 DAYS FROM THE DATE IT SIGNS THIS AGREEMENT, OR IF AGREEMENT IS VERBAL THEN FROM THE DATE THIS AGREEMENT WAS PROVIDED TO CHANGE ITS MIND AND END THE AGREEMENT WITHOUT CONSEQUENCES.**

**TO CANCEL THIS AGREEMENT WITHIN THE 14 DAYS, THE SUPPLIER MUST NOTIFY TASFOODS IN WRITING.**

## Table of Contents

|   |           |
|---|-----------|
| <b>Background</b>                                     | <b>3</b>  |
| <b>1. Definitions and Interpretation</b>              | <b>3</b>  |
| 1.1 Definitions.....                                  | 3         |
| 1.2 Interpretation .....                              | 4         |
| <b>2. Term &amp; Cooling Off Period</b>               | <b>4</b>  |
| <b>3. Obligation to supply and purchase Milk</b>      | <b>5</b>  |
| <b>4. Price</b>                                       | <b>5</b>  |
| <b>5. Payment</b>                                     | <b>6</b>  |
| <b>6. Licensing and other regulatory requirements</b> | <b>6</b>  |
| <b>7. Milk Supplier Handbook</b>                      | <b>6</b>  |
| <b>8. Milk Quality Requirements and Testing</b>       | <b>7</b>  |
| <b>9. Failure to meet Specifications</b>              | <b>8</b>  |
| <b>10. Title and Risk</b>                             | <b>8</b>  |
| <b>11. Warranties and Indemnity</b>                   | <b>8</b>  |
| <b>12. Suspension of Milk purchase</b>                | <b>9</b>  |
| <b>13. Force Majeure</b>                              | <b>9</b>  |
| <b>14. Termination</b>                                | <b>10</b> |
| <b>15. Insurance</b>                                  | <b>12</b> |
| <b>16. Assignment of Rights</b>                       | <b>12</b> |
| <b>17. Confidentiality and Intellectual Property</b>  | <b>12</b> |
| <b>18. Product Recall</b>                             | <b>13</b> |
| <b>19. Complaints and Mediation</b>                   | <b>13</b> |
| <b>20. GST</b>  | <b>15</b> |
| <b>21. Notices</b>                                    | <b>16</b> |
| <b>22. Survival</b>                                   | <b>16</b> |
| <b>23. General</b>                                    | <b>17</b> |
| <b>Schedule 1 – Term</b>                              | <b>20</b> |
| <b>Schedule 2 – Price and Minimum Price</b>           | <b>21</b> |
| <b>Schedule 3 – Milk Quality Specifications</b>       | <b>24</b> |
| <b>Schedule 4 – Milk Supplier Handbook</b>            | <b>26</b> |

## **Parties**

[#] (ACN [#]) of [#], Tasmania, # (the **Supplier**); and

**TasFoods Limited** (ACN 084 800 902) or any of its subsidiaries (as is nominated as the processor at time of contracting) of 54 Tamar Street, Launceston, Tasmania (**TasFoods**)

---

## **Background**

- A. The Supplier specialises in the business of cow milk production and its cow herd is located in Pyengana, Tasmania.
- B. TasFoods carries on business in Tasmania as a premium branded food manufacturer and is a processor.
- C. The Supplier has agreed to exclusively supply and TasFoods has agreed to purchase cow milk on the terms set out in this Supply Agreement.

**IT IS AGREED** as follows:

---

## **1. Definitions and Interpretation**

### **1.1 Definitions**

In this Agreement, the following words have the following meanings unless the context requires otherwise:

**Agreement** means this agreement including its Schedules;

**Authority** means any government or quasi-government body or Court with the power to give a direction to a person in connection with this Agreement;

**Business Day** means a day that is not a Saturday or Sunday or public holiday in Launceston, Tasmania;

**Commencement Date** means [#] or the first date from which the Supplier is able to supply Milk to TasFoods;

**Complaints Handling Officer** means the TasFoods Milk Supply Officer;

**Dairy Code** means the Competition and Consumer (Industry Codes – Dairy) Regulations 2019 (Cth) as amended or superseded (**Dairy Code**);

**End Date** means the date set out in Schedule 1;

**Exclusive Supply** means all Farm Milk which is supplied to TasFoods;

**Farm Food Safety Program** means the plan of that name developed as required by the TasFoods Milk Supplier Handbook;

**Fonterra** means Fonterra Co-Operative Group Limited and/or Fonterra Australia Pty Ltd ACN 006 483 665 and their associated entities or subsidiaries;

**Force Majeure** means events beyond the reasonable control of a party such as (but not limited to) acts of God, wars, fires, typhoons, floods and flooding, earthquakes and riots, epidemics, pandemics, and in the case of TasFoods specifically includes without limitation, damage to, or destruction of TasFoods Ltd Group processing plants, disruption to TasFoods Limited Group

---

workforce due to strikes or other forms of industrial disputes or action and processing difficulties;

**Minimum Price** means the price specified as such in Schedule 2;

**Milk** means whole milk, cream and any other component or classification of a mammary secretion of a lactating dairy animal (excluding colostrum) from a cow located in Pyengana Tasmania;

**Milk Supplier Handbook** means the TasFoods Milk Supplier Handbook attached as Schedule 4;

**Mediation Adviser** has the meaning given in the Dairy Code;

**Price** for the Milk means the price set out in Schedule 2;

**Specifications** means the product specifications outlined in Schedule 3 for the Milk, as amended from time to time by written agreement between the parties;

**Term** means the period specified in Item 1 of Schedule 1 commencing on the Commencement Date.

## 1.2 Interpretation

In this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) words denoting a gender will (where appropriate) include the other gender;
- (c) references to any agreement or deed includes that agreement or deed as amended from time to time;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) references to time are to local time in Tasmania;
- (f) where any word or phrase is defined its other grammatical forms have a corresponding meaning;
- (g) references to "\$", "A\$" or "dollar" are references to Australian currency;
- (h) the use of the words includes or including are not to be taken as limiting the meaning of the words preceding it;
- (i) the schedules and appendices to this Agreement form part of this Agreement
- (j) when a thing is required to be done or money required to be paid under this Agreement on a day that is not a Business Day, the thing must be done and the money paid on the next Business Day;
- (k) any reference to a party includes its successors and permitted assigns; and
- (l) any act, matter or thing which is to be done on or by a day other than a Business Day will be done on or by the next succeeding Business Day

---

## 2. Term & Cooling Off Period

- 2.1 This Agreement can be entered into by signing it, in writing, verbally or by action, providing the intention of the parties is clear. If the Supplier agrees verbally or by action to this Agreement's terms, TasFoods will provide the Supplier with a complete and accurate record of the Agreement within 30 days and in compliance with the Dairy Code.

- 2.2 This Agreement will commence on the Commencement Date and will continue in force for the Term unless terminated earlier in accordance with this Agreement.
- 2.3 The Supplier has 14 days from the date of signing this Agreement or if it has agreed verbally and not signed then 14 days from the date it receives a written record of the terms of this Agreement, to cancel this Agreement by notifying TasFoods. If such cancellation occurs the Supplier will have no liability to TasFoods.
- 2.4 At least 3 months prior to the end of the Term, the parties will discuss whether they wish to enter a new Term.
- 2.5 If the total supply period has exceeded three years, the Supplier may on one occasion by giving TasFoods written notice no earlier than 30 days before the end of the supply period and no later than 7 days before the end of the supply period, notice that it postpones the end of this Agreement by 12 months.

---

### **3. Obligation to supply and purchase Milk**

- 3.1 This is a milk supply and purchase agreement. During the Term, the Supplier must supply TasFoods with all its Milk and TasFoods agrees to purchase all the Milk every month of the year in accordance with the terms of this Agreement.
- 3.2 The Supplier acknowledges and agrees that its engagement to supply the Milk during the Term is exclusive. This means that the Supplier agrees to supply all its Milk from the Farm during the Term to TasFoods, unless this Agreement or the Dairy Code allows it not to.
- 3.3 The Supplier warrants that as at the Commencement Date, it complies with all applicable laws and regulations and holds all licenses necessary to supply Milk to TasFoods.
- 3.4 TasFoods will work with the Supplier by May of each year to develop an anticipated Milk supply curve for the period of the following milk production season from July to June. TasFoods agrees to purchase all milk produced for the milk supply season.
- 3.5 TasFoods will collect the Milk supplied from the Supplier's farm using a tanker and pumping from the designated tank. TasFoods will not be responsible for payment for Milk it cannot collect due to adverse weather conditions and matters arising from them, inability to access the farm due to safety or public health reasons and general road access issues.

---

### **4. Price**

- 4.1 TasFoods will pay the Supplier the Price for the Milk as outlined in Schedule 2. Subject to Schedule 2, and the remainder of this clause 4, the Price will remain fixed.
- 4.2 TasFoods will not lower the Minimum Price during the agreed supply period unless there are exceptional circumstances not caused by TasFoods, and only if it is allowed by the Dairy Code.
- 4.3 The Supplier is eligible for step-ups during the Term as announced by Fonterra. A step up is an additional payment and does not form part of the Minimum Price.
- 4.4 At least two months prior to the anniversary of the Commencement Date each year, the parties will meet to review performance under the Agreement and discuss the

supply for the next year commencing on the anniversary date of the Commencement Date.

---

## **5. Payment**

- 5.1 Payment for all Milk will be on recipient created tax invoice, to be tendered at the end of the month of collection of the Milk.
- 5.2 Payment will be made by TasFoods in arrears by the 22<sup>nd</sup> day following the end of the month of collection. However if the 22<sup>nd</sup> day falls on a weekend or public holiday, payment will be made on the next business day following the 22<sup>nd</sup>.
- 5.3 Payment in respect of an invoice will not constitute an acknowledgment that the Milk meets the Specifications and TasFoods continues to be entitled to all remedies under this Agreement or at law or otherwise in respect of defective or unsatisfactory Milk provided by the Supplier.
- 5.4 TasFoods is not required to pay for Milk which is not accepted or rejected in accordance with clause 9.
- 5.5 All Supplier payments will be made to a designated bank account. The Supplier is responsible for notifying TasFoods in writing of their nominated bank account details.
- 5.6 This Agreement is between TasFoods and the Supplier, The Supplier may determine that a percentage payment is to be made on behalf of a sharefarmer or lessee. Details of any such payment are to be provided in writing to TasFoods.
- 5.7 All payments made to the Supplier will have the required levies deducted before the payment is made in accordance with Schedule 2.

---

## **6. Licensing and other regulatory requirements**

- 6.1 The Supplier must be a Licensed Dairy Farm with the Tasmanian Dairy Industry Authority (**TDIA**) or if that ceases to exist, hold a licence issued by its replacement entity or authority.
- 6.2 The Supplier must maintain a TDIA approved Farm Food Safety Program for milk harvesting and storage.
- 6.3 A copy of any TDIA or other audit must be provided to TasFoods within 7 Business Days of its completion.
- 6.4 The Supplier should be aware of, and take reasonable steps to meet, local Council conditions and environmental regulations when disposing of Milk on its farm. Examples of Milk disposal methods include (but are not limited to) feeding to livestock, spray irrigation and disposal in a dedicated pond or trench. Guidelines on the disposal of waste milk can be found through the Department of Primary Industries, Parks, Water and Environment.

---

## **7. Milk Supplier Handbook**

- 7.1 The Supplier agrees it has been provided with and read the Milk Supplier Handbook and understands the obligations imposed on it under such handbook.

- 7.2 The Supplier must meet all the requirements outlined in the Milk Supplier Handbook and for the avoidance of doubt it forms part of this Agreement so that a breach of the Milk Supplier Handbook is a breach of this Agreement.

---

## **8. Milk Quality Requirements and Testing**

- 8.1 The Supplier must itself comply with and ensure that Milk supplied to TasFoods satisfies all requirements of the Milk Supplier Handbook including without limitation:
- (a) an independently audited and approved Farm Food Safety Program;
  - (b) the Specifications in Schedule 3; and
  - (c) the Dairy Code, all applicable laws and regulations, and other legal requirements relating to the manufacture, packaging and delivery of the Milk including the direction of any Authority.
- 8.2 The Supplier must comply with and keep appropriate written records of adherence to all systems and procedures to ensure that Milk is not affected or contaminated by micro-organisms, inhibitory substances, chemicals, water, disease or foreign matter (e.g. glass, residues, toxins, flies or anything else that might taint the Supplier's Milk in any way) and immediately notify TasFoods if it suspects there may be an issue with the quality of its Milk.
- 8.3 All Milk must be harvested, stored and handled in accordance with the Milk Supplier Handbook.
- 8.4 The Supplier's farm must be kept and maintained in accordance with the Milk Supplier Handbook.
- 8.5 In accordance with the Milk Supplier Handbook TasFoods may inspect and test the Milk at the premises of the Supplier, TasFoods or any of its related parties, or any third party, and the Supplier must provide TasFoods with all assistance reasonably necessary for that inspection and testing. TasFoods may accept or later reject Milk in accordance with the Milk Supplier Handbook.
- 8.6 If TasFoods rejects Milk, it will provide the Supplier with a written notice outlining that the Milk was rejected, the volume rejected, why it was rejected and what consequences the rejection has on the Supplier including any fees payable by the Supplier arising as a result of the rejection.
- 8.7 If, after inspection or testing, TasFoods informs the Supplier that TasFoods is not satisfied that the Milk will satisfy and comply in all respects with its requirements including the Specifications, the Supplier must immediately take all steps necessary to ensure compliance.
- 8.8 To ensure the quality of milk supplied meets quality standards, TasFoods will undertake milk quality tests and otherwise support the Supplier as outlined in the Milk Supplier Handbook. A copy of all results of the tests will be provided to the Supplier as soon as practicable after TasFoods tests the Milk.
- 8.9 TasFoods will provide the Supplier with monthly statements stating the volume of milk purchased, the amount payable to the Supplier and any deductions permitted by this Agreement and the Dairy Code.
- 8.10 If Milk is supplied by the Supplier to TasFoods which is contaminated which then contaminates the other contents of the milk tanker, the Supplier is responsible for and must reimburse TasFoods for the cost to TasFoods of all the Milk which has been so contaminated, and the transport and disposal costs for that Milk.

---

## **9. Failure to meet Specifications**

- 9.1 TasFoods is not obliged to accept, and may after collection subsequently reject Milk:
- (a) which does not meet the Specifications in Schedule 3; or
  - (b) is otherwise than in accordance with the Milk Supplier Handbook or the remainder of this Agreement,
- and, without limiting TasFoods's rights under other clauses of this Agreement, TasFoods is not required to pay for such Milk, may require the Supplier to collect such Milk at the Supplier's risk and cost or TasFoods may dispose of it and pass on the cost of such disposal to the Supplier.
- 9.2 The Supplier must also cooperate with TasFoods in such business reviews as TasFoods may reasonably request in connection with assessing the Supplier's compliance with the Specifications and its general performance.
- 9.3 Where the Supplier has failed to meet any required Specification or other required performance measure, it will immediately advise the cause of the problem to TasFoods and how the Supplier proposes to rectify it. The Supplier must rectify the failure within 5 days or such other period as TasFoods agrees in writing.

---

## **10. Title and Risk**

- 11.1 Risk of damage to or loss of the Milk will pass to TasFoods upon it entering the pumping system of a TasFoods tanker. Up until this time the Supplier is solely responsible for milk quality and any defects in the milk present at that time, even if issues are identified through analysis and evaluation conducted after it is collected.
- 11.2 Title in the Milk will pass to TasFoods on collection, except in the case where it is later rejected in accordance with clause 9.

---

## **11. Warranties and Indemnity**

- 11.1 The Supplier undertakes and warrants to TasFoods that the Milk supplied to TasFoods under this Agreement:
- (a) will fully comply with the Specifications;
  - (b) will be fit for the purpose for which it was made or produced and for any purpose for which the parties agree it has been provided to TasFoods;
  - (c) will be free of any material defects;
  - (d) will be free from any encumbrances;
  - (e) will not infringe any person's intellectual property rights or other rights;
  - (f) will be of merchantable quality;
  - (g) will comply with all relevant Australian legislation, laws, regulations, industry codes and standards from time to time in force.
- 11.2 Where TasFoods reasonably believes that any Milk does not meet any one or more of the undertakings and warranties specified in clause 11.1, without limiting TasFoods's rights under clause 11.3, the Supplier will immediately take all necessary action to remedy the situation including, at TasFoods's election, the immediate sourcing of replacement Milk without additional cost to TasFoods.



- 11.3 The Supplier indemnifies TasFoods and agrees to keep TasFoods indemnified and held harmless from and against any liability, cost, claim, expense or any other loss or damage of any other kind arising from or in connection with:
- (a) any defect or fault in the Milk;
  - (b) any Milk not meeting all of the requirements set out in clause 11.1;
  - (c) any claim that the Milk, or the use, sale or resale of the Milk, infringe the intellectual property rights of any other person;
  - (d) any other breach of this Agreement by the Supplier; or
  - (e) any negligent act or omission by the Supplier and/or any of the Supplier's employees, agents, or contractors in connection with this Agreement, save to the extent such loss or damage is directly attributable to the wilful acts or negligence of TasFoods.

---

## **12. Suspension of Milk purchase**

- 12.1 TasFoods will be entitled to suspend the collection and purchase of Milk from the Supplier for reasons which include (without limitation):
- (a) TasFoods reasonably suspects a Supplier's milk is unsafe;
  - (b) TasFoods identifies potential hazards on the Supplier's farm which could cause injury to TasFoods' employees, contractors, advisors or agents including hazards arising from behaviour;
  - (c) TasFoods reasonably suspects the Supplier does not comply with relevant obligations under federal, state or local government regulations;
  - (d) TasFoods reasonably suspects the Supplier has failed to comply with any requirements as outlined in the Farm Food Safety Program and sufficient corrective action has not been implemented within the agreed timeframe;
  - (e) the Supplier's milk consistently (for two or more successive tanker pick ups or for more than three out of five of the last tanker pick ups) fails to meet the Specifications;
  - (f) the Supplier has failed in TasFoods' reasonable opinion to undertake sufficient corrective action to address Milk quality issues;
  - (g) TasFoods reasonably suspects the Supplier has significant animal health or welfare issues concerning any livestock on their farm;
  - (h) the Supplier misleads (by act or omission) or makes false representations to TasFoods concerning the milk supply relationship.
- 12.2 Where suspension is necessary, TasFoods will give immediate written notice to the Supplier of the suspension and the reason for it and the date from which TasFoods' obligations under this Agreement to purchase Milk from the Supplier will be suspended until TasFoods is satisfied that the matter leading to the suspension has been satisfactorily resolved.

---

## **13. Force Majeure**

- 13.1 Neither party is responsible for delays or failures to perform under this Agreement due to Force Majeure. The obligations of the parties so far as they are affected by the Force Majeure will be suspended for the period that the obligations are unable to be performed due to Force Majeure.

- 13.2 On the occurrence of a Force Majeure the party affected must as soon as practicable give notice and full particulars in writing of the Force Majeure to the other party.
- 13.3 The parties are to avail themselves of all possible means of avoiding Force Majeure and in doing so are to consult and co-operate with each other to determine the best course of action.
- 13.4 In circumstances of restricted supply of Milk, the Supplier will provide TasFoods with preferential supply over other customers taking less annual volume.
- 13.5 For the avoidance of doubt in the event of a Force Majeure impacting TasFoods:
- (a) TasFoods may decide not to collect the Supplier's Milk if it is not practical to do so;
  - (b) The Supplier will be responsible for disposing of and covering associated costs for Milk that TasFoods does not collect;
  - (c) If TasFoods has already collected the Supplier's Milk, TasFoods may decide not to process that milk; and
  - (d) TasFoods may pay the Supplier the price for their Milk it would have paid had the Force Majeure not occurred, except and to the extent the Supplier caused the Force Majeure, exacerbated it, or could have done something to prevent it but did not and except to the extent the Supplier has been able to sell such Milk elsewhere.
- 13.6 If a Force Majeure prevents one of the parties from fulfilling its obligations under this Agreement for a period of more than 60 days, the other party will be entitled to terminate this Agreement by providing 30 days' notice in writing.

---

## 14. Termination

- 14.1 TasFoods may terminate this Agreement at any time upon the occurrence of any of the following events by giving the Supplier notice of the termination in writing (**Termination Notice**):
- (a) the Supplier does not comply with the Dairy Code or any law, regulation or direction by an Authority;
  - (b) any material breach by the Supplier of this Agreement including the Milk Supplier Handbook and, where the breach is capable of remedy, the Supplier has not remedied the breach within 14 days of notice being given by TasFoods specifying the breach and requiring remedy of the same;
  - (c) if the Supplier repeatedly fails to comply with a term of this Agreement even if it has remedied each failure as required;
  - (d) if the Supplier becomes unable to pay its debts as and when they fall due or if any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations, business or undertaking or any step is taken to appoint a receiver, a trustee, manager, provisional liquidator, liquidator or administrator or other similar person over the whole or part of such assets, operations or business or any similar such event;
  - (e) if there is a change in control of the ownership or management of the Supplier or its business or farm and the Supplier did not obtain the prior written consent of TasFoods to the change (such consent not to be unreasonably withheld);

- (f) the Supplier fails to comply with applicable industry standards including animal welfare, workplace health and safety or environmental standards and does not remedy the failure within 7 days of TasFoods giving written notice of the failure, or immediately if the failure is not one that can be remedied.
- 14.2 The Supplier may terminate this Agreement at any time upon the occurrence of any of the following events by giving TasFoods notice as specified in the Termination Notice:
- (a) if TasFoods commits a material breach of this Agreement including the Milk Supply Handbook where the breach is capable of remedy, TasFoods has not remedied the breach within 14 days of notice being given by the Supplier specifying the breach and requiring remedy of the same;
  - (b) if TasFoods repeatedly fails to comply with a term of this Agreement even if it has remedied each failure as required;
  - (c) if TasFoods fails to make payment as required under clause 5 of this Agreement (in the absence of a bona fide dispute) and further fails to make payment within 14 days of a receipt of a notice from the Supplier specifying the breach and requiring remedy of the same; or
  - (d) if TasFoods becomes unable to pay its debts as and when they fall due or if any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations, business or undertaking or any step is taken to appoint a receiver, a trustee, manager, provisional liquidator, liquidator or administrator or other similar person over the whole or part of such assets, operations or business, or any similar such event.
- 14.3 A party may give the other party notice of termination without cause by providing six months notice in writing to the other party.
- 14.4 TasFoods and the Supplier may mutually agree to terminate this Agreement at any time.
- 14.5 Where a party decides to unilaterally terminate this Agreement as permitted by this clause 14, the terminating party must give to the other, as soon as practicable after the termination, notice of termination stating the reason for the termination and the day the termination takes effect.
- 14.6 Where a termination occurs that is not in writing, TasFoods must no later than 30 days after the termination occurs:
- (a) make a written record of the termination;
  - (b) give a copy of the record to the Supplier;
  - (c) if the supply period was 90 days or longer, make all reasonable efforts to obtain from the Supplier a written acknowledgment that the record is a complete and accurate record of the termination.
- 14.7 Any termination will be effective on the date specified in the Termination Notice (providing it complies with this clause).
- 14.8 Without limiting what may constitute a material breach, any serious breach or persistent and recurrent breach of:
- (a) clause 8.1; or
  - (b) the undertakings and warranties given by the Supplier in clause 11.1, will be deemed to be a material breach for the purposes of clause 14.1

- 14.9 Where this Agreement is terminated, the terms and conditions of this Agreement will continue to be binding on the parties in connection with all Milk collected prior to termination.

---

## **15. Insurance**

- 15.1 The Supplier will take out and maintain during the Term of this Agreement:
- (a) comprehensive public liability policy to cover all sums which the Supplier may become legally liable to pay as compensation consequent upon:
    - (i) death of, or bodily injury to, any person; and
    - (ii) loss of, or damage to, property,happening anywhere in Australia arising out of or in connection with this Agreement. The limit of liability provided by this policy must be not less than \$10 million per occurrence;
  - (b) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Supplier in connection with this Agreement and the Supplier must ensure that all sub-contractors are similarly insured in respect of their employees;
  - (c) other insurances required by law.
- 15.2 The Supplier must notify TasFoods immediately of any cancellation of a relevant insurance policy and of any change to that policy which affects TasFoods's interests.
- 15.3 If any event occurs which may give rise to a claim involving TasFoods under any policy of insurance to be taken out by the Supplier under this clause 15 then the Supplier must:
- (a) notify TasFoods within 14 days of that event; and
  - (b) ensure that TasFoods is kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 15.4 At TasFoods's request, the Supplier must produce evidence that the Supplier is maintaining all insurance required by this clause 15.

---

## **16. Assignment of Rights**

- 16.1 The Supplier may not assign, transfer or subcontract any or all of its rights and obligations under this Agreement without the prior written consent of TasFoods (which will not be unreasonably withheld). The Supplier will be liable for all acts or omissions of any subcontractor or other worker appointed by it.
- 16.2 TasFoods may assign to any of its related entities, or any other third party, any or all of its rights and/or obligations under this Agreement (including without limitation its rights under the warranties and indemnities set out in this Agreement).

---

## **17. Confidentiality and Intellectual Property**

- 17.1 The terms of this Agreement are confidential to both parties and must not be disclosed by either party to any third party without the prior written consent of the other party.

- 17.2 Any information acquired by one party, its employees, agents, advisors and contractors in the course of negotiating and performing its obligations under this Agreement regarding the affairs, operations and business of the other party, its employees, agents and contractors will, during the Term and thereafter, be treated by it as confidential and will not be disclosed without the prior consent of the other party, regardless of how it was obtained.
- 17.3 The obligations of confidentiality set out in this clause 17 will not apply to information that:
- (a) is now or becomes in the public domain except where public disclosure is a result of a breach by the Supplier;
  - (b) is given by a party to its legal advisors, accountants, financiers, or other third party advisors in the normal course of seeking advice;
  - (c) was lawfully received by the receiving party from another person having a legal right to disclose that information; or
  - (d) is required to be disclosed by law.
- 17.4 All plans, drawings, data, descriptions or other specifications (together with any intellectual property rights in them) shared or supplied by one party to the other in connection with this Agreement will remain the exclusive property of the supplying party. The receiving party must keep confidential and not use or disclose to any third party the information contained in those documents except to the extent required for the purpose of the parties ongoing relationship.

---

## **18. Product Recall**

- 18.1 In the event that any Milk or other items created from the Milk are found by the Supplier, TasFoods or any government authority or court to contain a defect or not to be in compliance with any standard or requirement so as to make it advisable that such Product be reported or recalled, the parties will work together to undertake all obligations imposed by law, regulation or order and will file and/or publish all necessary corrective action programs and other documents. The costs of such measures will be shared depending on at what stage of the production the problems arose.
- 18.2 Any product or process modifications required in circumstances of a recall will be conducted by the Supplier promptly and at its cost.
- 18.3 The Supplier will consult with and obtain the approval of TasFoods prior to making any statement to the public or any government authority relating to potential safety hazards affecting the Milk.
- 18.4 The Supplier will provide ongoing technical and product quality support to TasFoods in relation to the Milk, without additional cost and as reasonably requested by TasFoods.

---

## **19. Complaints and Mediation**

- 19.1 If a party to this Agreement has a complaint arising out of or in connection with this Agreement then the matter must be dealt with in accordance with the procedures set out in this Agreement.
- 19.2 If a party to this Agreement has a complaint arising out of or in connection with this Agreement then, the party so concerned (the complainant) must notify the complaint handling officer in writing (notice of complaint) 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 set out below; and
  - (c) the outcome the complainant wants.
- 19.3 Within 5 working days after receiving the notice of complaint, the Complaint Handling Officer will give written acknowledgment to the complainant stating:
- (a) that the notice of complaint has been received; and
  - (b) the steps to be taken to deal with the complaint.
- 19.4 Within 14 days of acknowledging the receipt of a notice of complaint, the complainant and the respondent and the Complaints Handling Officer must meet and discuss in good faith in order to resolve the complaint.
- 19.5 If the complaint is not resolved within 60 days of receipt of the notice of complaint or there is a dispute between the parties in relation to this Agreement, then either party may refer the matter to mediation.
- 19.6 The parties must request the Mediation Adviser to appoint a mediator for the dispute.
- 19.7 The Mediation Adviser:
- (i) must appoint a mediator within 14 days after receiving the request under subclause 19.7 unless the Mediation Adviser is satisfied that the complaint giving rise to the dispute:
    - (A) is frivolous or vexatious; or
    - (B) has previously been the subject of another mediation; and
  - (ii) must give the parties to the dispute, in writing, details of the mediator appointed.
- 19.8 The mediator must decide:
- (i) how the mediation is to be conducted (for example, by telephone or in meetings); and
  - (ii) the time and place for the mediation; and
  - (iii) the day the mediation commences for the purposes of this Agreement.
- 19.9 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.
- 19.10 (a) Each party to the dispute must attend the mediation and attempt to resolve the dispute.
- (b) For the purposes of subclause 19.11(a), 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.
- 19.11 If an agreement is reached in relation to the dispute, the mediator must, within 14 days after the agreement is reached:
- (i) set out, in writing, the terms of the agreement; and
  - (ii) give a copy of the terms to each party to the dispute; and
  - (iii) notify the Mediation Adviser that an agreement has been reached.

- 19.12 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.
- 19.13 The mediator conducting a mediation of a dispute in accordance with this Agreement:
- (i) may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur; and
  - (ii) must terminate the mediation if the party who requested the mediation requests the mediator to do so.
- 19.14 If a dispute that is the subject of mediation in accordance with this Agreement is not resolved within 30 days after the mediation commenced:
- (i) the respondent to the mediation may ask the mediator to terminate the mediation; and
  - (ii) the mediator must do so.
- 19.15 If the mediator terminates a mediation under subclauses 19.15(i) or (ii), the mediator must issue a certificate stating:
- (i) the names of the parties to the mediation; and
  - (ii) the nature of the dispute that was the subject of the mediation; and
  - (iii) that the mediation has been terminated; and
  - (iv) that the dispute has not been resolved.
- 19.16 The mediator must give a copy of the certificate issued under clause 19.16 to:
- (i) the Mediation Adviser; and
  - (ii) each party to the dispute.
- 19.17 (a) 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).
- (b) Each party to a dispute that was the subject of a mediation must pay that party's costs of attending the mediation.
- 19.18 The parties must comply with this clause 19 before commencing court proceedings in relation to a complaint or a dispute between the parties in relation to or arising under this Agreement, except proceedings for urgent interlocutory or final relief. If a dispute is not resolved by mediation then, either party may, if it wishes, commence court proceedings.
- 19.19 Any information or documents disclosed by a party in the course of the complaint handling procedure or dispute resolution procedure must be kept confidential and may only be used in an attempt to resolve the relevant complaint or dispute.
- 19.20 Despite the existence of a complaint or dispute between the parties arising out of or in relation to this Agreement, each party must continue to comply with its obligations under this Agreement.

---

## **20. GST**

- 20.1 Unless otherwise expressly provided in this Agreement, all amounts paid or payable under this Agreement are inclusive of any GST which may be applicable to any supplies
-

made by either party under this Agreement. To the extent GST is applicable to any amount paid or payable in respect of a taxable supply made under or in connection with this Agreement, the party obliged to pay for the taxable supply must pay an additional amount equal to the GST payable on or for the taxable supply.

20.2 TasFoods and the Supplier agree that:

- (i) TasFoods can issue recipient created tax invoices in respect of the Milk;
- (ii) the Supplier will not issue tax invoices in respect of the Milk;
- (iii) the Supplier acknowledges that it is registered for GST when it enters into the Agreement and that it will notify TasFoods if it ceases to be registered; and
- (iv) TasFoods acknowledges that it is registered when it enters into the agreement and that it will notify the Supplier if it ceases to be registered for GST.

---

## 21. Notices

21.1 Every notice or other communication under this Agreement will be in writing, delivered personally, or by mail, facsimile or email, addressed to the relevant party as set out below:

**Communications to the Supplier:**

Attention: [#]  
Address: [#], Tasmania,  
Phone: [#]  
Email:

**Communications to TasFoods:**

Attention: Sonia Tuff, Chief Operating Officer  
Address: 54 Tamar Street, Launceston  
Phone: 03 6331 6983  
Email: [sonia.tuff@tasfoods.com.au](mailto:sonia.tuff@tasfoods.com.au)

---

## 22. Survival

22.1 Representations and warranties

All representations and warranties in this Agreement will remain in full force and effect for the Term of this Agreement.

22.2 Indemnities

Each indemnity in this document:

- (a) is a continuing obligation;
- (b) is a separate and independent obligation of the party giving the indemnity from its other obligations under this document; and
- (c) will survive termination of this Agreement.

22.3 Other

Clauses 13, 17, 19, 20, 21, 22 and 23 are continuing obligations and survive termination of this Agreement.



---

## 23. General

- 23.1 This Agreement may only be varied:
- (a) by TasFoods unilaterally if there is a change to the Commonwealth, State or Territory law which necessitates a change to this Agreement, in which case TasFoods will be entitled to vary this Agreement to the extent necessary to comply with the changed law (but without reducing a minimum price under this Agreement) and must notify the Supplier in writing of the variation required within 30 days; or
  - (b) with agreement of both parties in writing and such change must not mean that this Agreement does not comply with the Dairy Code.

This Agreement cannot otherwise be varied unilaterally or otherwise. Any variation must be in plain English or contain a plain English overview of the variation and consist of a single document.

- 23.2 No waiver of any breach of this Agreement will be held or construed to be a waiver of any other subsequent or antecedent breach of this Agreement.
- 23.3 This Agreement constitutes the entire agreement and basis of the transaction between the parties in relation to its subject matter.
- 23.4 This Agreement will be governed by and construed in accordance with the laws of Tasmania, Australia and the parties submit to the non-exclusive jurisdiction of the Tasmanian courts.
- 23.5 Each party acknowledges and represents to the other that it is not a joint venturer, partner or co-venturer with the other and that neither party will incur any liability on behalf of the other party or purport to pledge the credit of the other party or accept any order or obligation to be binding upon the other party.
- 23.6 The Supplier acknowledges that the Milk may be resupplied by TasFoods to a related entity (as defined in the Corporations Act 2001 (Cth)) of TasFoods and that the covenants, representations, warranties and indemnities given by the Supplier in this Agreement will continue to apply to such resupply. If as a result of the Supplier breach of this Agreement or negligence, any related entity of TasFoods suffers loss or damage (TasFoods Group Loss) TasFoods Group Loss will be deemed to be loss or damage of TasFoods; and the Supplier will be liable to TasFoods in respect of TasFoods Group Loss as if loss or damage of exactly the same character as TasFoods Group Loss had been suffered by TasFoods.
- 23.7 This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same agreement.
- 23.8 Each party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement.

# SIGNED AS AN AGREEMENT

---

Signed for and on behalf of

[#]

[# depends on form of business e.g. in accordance with Section 127(1) Corporations Act/ by its authorised representatives]

---

Chief Executive Officer

---

Director/Company Secretary

---

---

Signature

Signature

---

---

Witness Print name

Authorised representative Print name

---

---

**THIS AGREEMENT HAS A 14 DAY  
COOLING OFF PERIOD.**

**A SUPPLIER HAS 14 DAYS FROM THE DAY  
IT SIGNS THIS AGREEMENT, OR IF  
AGREEMENT IS VERBAL THEN FROM THE  
DATE THIS AGREEMENT WAS PROVIDED  
TO CHANGE ITS MIND AND END THE  
AGREEMENT WITHOUT CONSEQUENCES.**

**TO CANCEL THIS AGREEMENT WITHIN  
THE 14 DAYS, THE SUPPLIER MUST  
NOTIFY TasFoods IN WRITING.**

Signed for and on behalf of )  
**TasFoods Limited/or relevant subsidiary** )  
by its duly authorised officer )  
in the presence of: )

..... Authorised Officer Signature

..... Name (Print)

..... Witness Signature

..... Name of Witness (Print)

## Schedule 1 – Term

---

|                               |                                 |
|-------------------------------|---------------------------------|
| 1 Term                        | Three years                     |
| 2. Commencement Date          | 1 July 2021                     |
| 3. End Date                   | 30 June 2024                    |
| 4. Complaint Handling Officer | Milk Supply Officer, Deb Morice |

## **Schedule 2 – Price and Minimum Price**

---

The Price payable by TasFoods will be calculated by reference to the minimum price, if quality standards are met, of the Fonterra Base Milk Price for East and South as set out in Item 9 of the Fonterra Exclusive Milk Supply Agreement less all levies (Dairy Australia and Tasmanian Dairy Industry Authority levies), multiplied by a monthly quality bonus. The Supplier will nominate to the Milk Supply Officer if they would prefer the 7/5 of the 8/4 schedule. The schedule chosen will remain in place for an entire milk supply season (i.e. 1 July 2021 to 30 June 2022).

The Supplier may also be entitled to a Winter Milk Supply payment as outlined in the Milk Supply Handbook.

The Supplier may also be entitled to a Herd Recording Rebate as outlined in the Milk Supply Handbook.

The Supplier may also be entitled to a Milk Cooling Incentive as outlined in the Milk Supply Handbook.

In the event of a step-up to the Fonterra Milk Price, it will be paid to the Supplier monthly in arrears once TasFoods has received written correspondence from Fonterra addressed to TasFoods. Any step up as notified by Fonterra will be paid to the Supplier in the month following the formal notification from Fonterra and the payment will be paid in accordance with the step-up period as notified by Fonterra.

| 7/5 - East and South |           |               |
|----------------------|-----------|---------------|
| Excluding GST        | \$/kg Fat | \$/kg Protein |
| July                 | 5.53      | 7.75          |
| August               | 4.81      | 6.74          |
| September            | 4.81      | 6.74          |
| October              | 4.81      | 6.74          |
| November             | 4.81      | 6.74          |
| December             | 4.81      | 6.74          |
| January              | 5.23      | 7.33          |
| February             | 5.23      | 7.33          |
| March                | 5.53      | 7.75          |
| April                | 5.69      | 7.97          |
| May                  | 5.79      | 8.11          |
| June                 | 5.95      | 8.34          |

| 8/4 - East and South |           |               |
|----------------------|-----------|---------------|
| Excluding GST        | \$/kg Fat | \$/kg Protein |
| July                 | 5.42      | 7.59          |
| August               | 4.81      | 6.74          |
| September            | 4.81      | 6.74          |
| October              | 4.81      | 6.74          |
| November             | 4.81      | 6.74          |
| December             | 5.42      | 7.59          |
| January              | 5.42      | 7.59          |
| February             | 5.42      | 7.59          |
| March                | 5.42      | 7.59          |
| April                | 5.42      | 7.59          |
| May                  | 5.42      | 7.59          |
| June                 | 5.42      | 7.59          |

The Supplier will receive a Minimum Price of \$6.55/kgMS.

This is our estimate of the weighted average milk price for all milk over the supply period if quality standards are met, inclusive of an average of the production and quality incentive additional payments. We have provided this amount for your convenience. The actual amount you receive may be more or less.

#### Justification of Minimum Price

The minimum price TasFoods pays in any season is determined using the following criteria:

- The expected milk production forecast for each region taking into account any available industry milk production outlook
- The market conditions that impact the Australian business both domestically and international including commodity prices and the USD exchange rate
- Competition for milk in the regions we operate
- Our optimal product mix across our manufacturing facilities including costs and efficiencies
- The monthly minimum prices also take into account the variation in cost of milk production across the season and provide choice to enable suppliers to produce milk that is suitable for their farming system.

TasFoods monitors evolving market conditions and their impacts on price throughout the season.

## Schedule 3 – Milk Quality Specifications

| Test   | Description   | Frequency              |
|--|---|------------------------|
| Bulk Milk Cell Count (BMCC) / Somatic Cell Count (SCC)<br>Referred to in this section as BMCC<br><br>Standard <300,000 BMCC per ml | The BMCC test is a measure of the number of white blood cells in milk. Cows in very early or late lactation, and cows with mastitis infection increase the risk of high levels of BMCC. Elevated BMCC levels in milk lead to poor product quality and reduced yields in dairy manufacturing as well as problems relating to food safety regulation in domestic and export markets.  | Weekly                 |
| Total Plate Count/ Standard Plate Count (also known as 'TPC/SPC')<br><br><80,000 cfu/ml  | This is a measure of the total number of bacteria or microorganisms per ml of milk that will grow and survive at body temperature. High levels can be caused by: <ul style="list-style-type: none"> <li>• Poor plant hygiene</li> <li>• Milk cooling problems</li> <li>• Mastitis in the herd</li> </ul>  | Weekly                 |
| Temperature<br><br><5°C within three hours from the commencement of milking.   | Temperature Bacterial growth in raw milk can be rapid when milk is not cooled properly. It is a requirement of holding a dairy licence that the farm is capable of cooling milk to 5°C or lower within three and a half hours from commencement of milking and of holding the milk at a maximum of 5°C until collected.   | Per consignment        |
| Sensory  | Milk will be graded prior to collection by senses test, where sight and smell are used to determine the suitability of the milk within the bulk vat. Feed odours and foreign matter may result in the milk being rejected.  | Per consignment        |
| Extraneous Water/Freezing Point  | All milk supplied to TasFoods must be free of any extraneous water. The TasFoods standard for freezing point of milk is -0.517°C maximum, however, TasFoods will allow latitude up to -0.512°C until otherwise advised.   | At TasFoods discretion |
| Acidity  | Acidity is measured as a percentage of lactic acid present in the milk sample. This is designed to detect if the milk has gone "off".   | At TasFoods discretion |
| pH   | The pH of milk is 6.7, milk is tested to determine any change in pH which may be acid or alkaline in nature.  | At TasFoods discretion |
| Sediment/Extraneous Matter   | Milk is to be free of sediment.   | At TasFoods discretion |
| Pesticides or Other Chemical Contaminants  | Milk is to be free of residues from pesticides and other contaminants, according to Australian MRL's (refer to Standard 1.4.2 of the Australian New Zealand Food Standards Code).   | At TasFoods discretion |
| Aflatoxin  | Milk is to be free of aflatoxin residues. In the absence of a quantitative MRL for aflatoxin in milk, TasFoods and the dairy industry regard the acceptable level of detection as <0.50 ppb aflatoxin M1 in raw milk, which is in line with the Codex Alimentarius standard.  | At TasFoods discretion |
| Colostrum  | All milk supplied to TasFoods must be below the standard of 1.35 g/L.   | At TasFoods discretion |
| Test   | Description   | Frequency              |
| Inhibitory Substances (I.S.) and other contaminants / defects<br><br>Absent  | Inhibitory substances have a direct negative impact on the dairy manufacturing process. All milk received by TasFoods is assessed for contamination and general fitness for purpose, including testing for antibiotics or other inhibitory substances. Any detected defects or contaminants will trigger trace back processes to identify the supplier at the source of the contamination. Contaminants and defects may include, but are not limited to: <ul style="list-style-type: none"> <li>• Microbiological growth to such an extent as to make the milk unfit for processing</li> <li>• Blood</li> </ul> | Per consignment        |



|  |  |  |
|--|--|--|
|  | <ul style="list-style-type: none"><li>• Agricultural chemicals</li><li>• Animal health treatments</li><li>• Antibiotics</li><li>• Chemical Contaminants (i.e. QAC, NPE)</li><li>• rBST</li></ul> |  |
|--|--|--|

---

## **Schedule 4 – Milk Supplier Handbook**

---

The applicable Milk Supply Handbook is the 2021/22 version provided to **the Supplier** with and attached to this **Agreement** and which can also be found at [www.pyenganadairy.com.au](http://www.pyenganadairy.com.au)