

GUIDE TO MILK SUPPLY AGREEMENTS AND THE DAIRY INDUSTRY CODE OF CONDUCT

MILK SUPPLY AGREEMENTS CHECKLIST 2 – THINGS TO CONSIDER BEYOND THE DAIRY INDUSTRY CODE OF CONDUCT

Last reviewed May 2021

This checklist is to be read in conjunction with the Dairy Australia Milk Supply Agreements Checklist 1. Dairy Australia's Talking points for contract discussions may also be useful. This document reflects on matters that farmers should consider when approaching the terms of a milk supply agreement being offered by a processor **which are terms not governed by the Dairy Industry Code of Conduct (the Dairy Code).**

What is a Milk Supply Agreement or contract?

A contract is an agreement that legally binds the people who are a party to the agreement. Contracts can take many forms and they can include many different terms and expectations.

Any commercial contract, like a milk supply agreement, should be a balance between completeness and clarity. A good contract should cover all reasonably foreseeable events without being so comprehensive that it becomes a long and difficult document. Good contracts should avoid legal jargon, should be in plain English and be understandable.

The clauses of the Dairy Industry Code of Conduct are a base standard imposed by law. However, the Dairy Code does not and cannot, form a complete contract. **This checklist is designed to encourage a farmer to consider other matters outside of the operation of the Dairy Code.**

This checklist cannot cover all possibilities; however, it serves as a pointer to matters that you would normally hope to find in a milk supply agreement. It only refers to general matters that may be considered. It is not legal advice, nor is it an exhaustive list of what may matter to you in your contract.

There are examples of model standard form contracts which outline many of these matters and how they should be approached. It is recommended that you refer to these resources to help guide you through your contract negotiations. Contact your representative organisation (ADF) for information. Processors will also be required to

put their standard form contracts on their websites on the 1st of June each year.

A milk supply agreement is a binding contract once signed.



The first two rules of signing any contract including a milk supply agreement

Rule 1: Read it. **Rule 2:** Understand it. If you're unsure of what you're signing up for, or even if an aspect of the agreement is uncertain to you, seek advice. Seeking advice is a sensible business expense.

Below are some common issues for consideration:

Definitions section

- Is there a list of expressions in the contract that need defining? For example, if the word 'collection' is used, what does the word 'collection' actually mean and when is milk actually 'collected'? Is the milk collected when it goes into the tanker or when the tanker gets to the processor's plant? There are other expressions that are in contracts that may also require specific definitions.

Interpretation section

- Interpretation clauses appear in many commercial contracts. They are guides on how to read the contract. For example, many contracts have interpretation clauses that say where the word 'him'

occurs it also means 'her', or that where words which appear in the singular also mean the plural.

Good Faith Clause

- Good faith is demanded by the Dairy Code whether it is in the agreement or not. However, many contracts do require good faith clauses anyhow. Do you want a specific clause in the milk supply agreement further committing both parties to good faith?

Terms of the Agreement

The milk purchasing arrangements

- What is the price for which the milk is to be purchased? For a multiyear contract is the price articulated for each year? These are actually requirements of the Dairy Code, however incentives for productivity, flat milk supply, loyalty or growth can be added to a milk supply agreement beyond the stated minimum price.
- Does the agreement clearly set out how the milk is purchased or when the ownership transfers from the farmer to the processor? Does it occur at the coupling between the vat and the tanker or when the milk gets to the plant? The Dairy Code says that the contract must describe the transfer of ownership, but it makes no suggestion as to where that happens so it needs to be outlined in the contract.

Ownership and Transport Arrangements

- How is the milk transported? How is transportation arranged and who pays? Fees must be in the contract.

Testing regimes

- The processor is required to guarantee its testing regime. Do you want more detail regarding the testing?
- The contract must contain a description of sampling procedures, what sort of details do you want in it? What access should you have to samples? How should you be advised of test results?

Payments

- What is the payment system for the supply of milk? How, when and how often will you be paid?

Defects

- What happens if sub-standard milk is supplied (for example, in the event of a high somatic cell count)?
- What is the process for dealing with sub-standard milk?

- Is there a scale of price reduction for sub-standard milk or is it simply rejected?

Guarantees, Warranties and Indemnities

- What are the parties' duties if they breach, or find the other in breach of a guarantee or warranty?
- What actions should you be indemnified against (protected from) if something goes wrong and a third party (consumer) is injured or hurt by milk supplied by your farm?

Termination Clauses and Force Majeures

- What are the grounds to terminate the agreement and how does any termination happen if it occurs?
- Is there a Force Majeure clause? Do you want one?

Variations

- How is the contract allowed to be varied or changed? How is that to be recorded?

Dispute Resolution Clauses

- While the Dairy Code dictates a dispute resolution process, it leaves the option open on arbitration. In the case of a dispute, do you want to rely on arbitration rather than courts?

Other matters

- Are there health and biosecurity standards in the agreement?
- What are the insurance clauses and who do they apply to? It is common for contracts to expect farmers to maintain indemnity insurance. (This is always a good idea anyhow).
- What confidentiality clauses are required? Do you even want a confidentiality clause?
- What are the rules about parties making public statements about each other?
- Are there any other issues peculiar to the milk you supply, for instance organic certification and how should that be dealt with in the contract?

The Dairy Industry Code of Conduct cannot be a supplement for a good milk supply agreement. It does cover off on some basic elements regarding conduct in the industry. For your agreement with a processor to work, you still have to think clearly about what you expect in your contract to make your rights and obligations clear to you and the processor. Above all, read and understand your contract and do not be afraid to seek professional advice.

This project is supported by the Department of Agriculture, through funding from the Australian Government.