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**

- Is there a Good Faith Clause in the contract? Does the Dairy Code require it?
- Do you want a specific clause in the milk supply agreement further committing both parties to good faith?

**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?

**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?**

**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.