

## ADFC Non-exclusive Milk Supply Contract

Dear ADFC Supplier,

Australian Dairy Farmers Corporation Limited ('ADFC') has the option of providing the following non-exclusive offer to purchase your milk.

### 1. Interpretation

Unless the context otherwise requires:

"ADFC" means Australian Dairy Farmers Corporation Limited ABN 80 456 117 281

"ADFC's Policies" means the policies identified in Item 4 of the Schedule

"Announced Base Price" means, in respect of a month, the base monthly milk price for that month announced by ADFC, prior to the commencement of the new season for a Reference Litre of Milk.

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

"Contract" means the contract (the terms of which are set out or referred to in this document) arising from your acceptance of this offer.

"Effective Date" means the date You sign this Contract and the 1<sup>st</sup> of July

"Farm" means the farm or farms allocated to ADFC's farm number or numbers shown in Item 1 of the Schedule. For the avoidance of doubt, 'farm' does not include any additional real estate acquired or used by you on or after the Effective Date to produce milk.

"Financial Year" means each period of 12 consecutive months commencing on 1<sup>st</sup> July.

"Force Majeure" means unforeseeable circumstances that prevent a party from fulfilling their obligations under this Contract. This includes natural disasters, acts of God, industrial action, government action (or inaction), an act of terrorism, outbreak of war, epidemic, loss of production or cattle due to circumstances beyond your reasonable control, such as feed shortages, flood or drought.

"Milk" or "your milk" means all of the milk produced at the farm excluding milk used for the rearing of calves on the farm or milk used or consumed on the farm for domestic or household purposes.

"Month" means calendar month.

"Monthly Volumes" means in respect of a month in the financial year of the Term, the amount set out in Item 2 of the Schedule for that month or such other amount for that month as may be agreed from time to time by You and ADFC in writing.

"Party or parties" means the Supplier or ADFC or both. A reference to a party includes that party's successors and permitted assigns.

"Reference Litre of Milk" means a litre of milk which contains 4.00% fat and 3.20% protein.

“Term” means the period from the Commencement Date to the End Date as specified in Item 3 of the Schedule.

“You” or “Supplier” means the party whose details are set out in Item 1 of the Schedule.

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

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

## 2. Agreement to Supply and Purchase Milk

- a. This Contract sets out the terms and conditions on which ADFC is prepared to buy milk from You.
- b. During the Term and thereafter until the Contract is terminated in accordance with section 10, You agree to supply and ADFC agrees to acquire your Milk, on the terms and conditions referred to in this Contract. You are not required to supply all of your milk to ADFC.
- c. This Contract is comprised of these terms, the Schedule and Annexure 1.
- d. This Contract (including its Schedule and Annexure 1) contains the entire agreement between the parties in relation to their subject matter and supersedes all previous agreements, understandings, communications, and representations on the subject matter.

## 3. Cooling-Off Period

You may terminate this Agreement in writing within the cooling-off period, being within 14-days of the day on which you sign this Agreement.

## 4. Milk Pricing

ADFC strives for fairness for our farmers and aims to pay our suppliers market competitive prices across all of our regions. Our total announced minimum milk prices are based on milk that meets our quality standards and excludes fees and levies. Milk that does not meet our quality standards may be rejected or otherwise be subject to price deductions as described in ADFC's Policies. ADFC offers the same minimum milk price to all non-exclusive suppliers in all regions it collects from. ADFC has tabled below a minimum milk price for July to December and then January to June to provide cashflow that underpins year-round milk supply. The values below represent a \$0.25/Kg MS decrease from an exclusive contract. At the conclusion of a full year supply to the end date of June 30, 2022, ADFC will reimburse the \$0.25/Kg MS as a back pay to you for the volume supplied. ADFC supports the Code and opposes retrospective milk price reductions, as they undermine trust, drive volatility and damage farmers' ability to plan for and invest in their businesses.

ADFC's opening minimum milk price commitment for this season's non-exclusive milk supply is as tabled below.

ADFC MINIMUM FY22 Milk PRICE	July to Dec			Jan to June		
	\$/Kg Fat	\$/Kg Protein	\$/Kg MS	\$/Kg Fat	\$/Kg Protein	\$/Kg MS
Base	\$5.13	\$7.70	\$6.27	\$5.46	\$8.19	\$6.67
Quality Incentive	\$0.23	\$0.34	\$0.28	\$0.23	\$0.34	\$0.28
Total announced minimum price commitment	\$5.36	\$8.04	\$6.55	\$5.69	\$8.53	\$6.95

## 5. Milk Payment Arrangements

- a. **Announced base price:** Subject to the other provisions of this paragraph, ADFC will acquire your Milk each Month for the Announced Base Price for that Month.
- b. **Adjustments:** Incentives, penalties and other adjustments will apply to the announced base price per litre in accordance with ADFC's Policies.
- c. **Levies:** Where any levy applies to the Milk, ADFC will pay the levy on behalf of the Supplier. The amount of any levy will be deducted from the payment to the Supplier.
- d. **Paid to be paid:** Despite any other provision of this document, ADFC has no obligation to pay You for your Milk unless and until the relevant processor to whom your Milk is on-supplied pays ADFC all amounts payable by the relevant processor to ADFC.

## 6. Determination of Monthly Volumes

- a. ADFC has completed Item 2 of the Schedule in respect of the expected Monthly Volumes of Milk that You will supply to ADFC in each Month of the Term.
- b. Monthly Volumes may be changed by mutual agreement between the parties.
- c. ADFC shall, from time to time, notify you of the policies and factors that impact upon the ADFC's determination of your Monthly Volumes including, for example, the regional commercial needs of relevant processors.
- d. There is no maximum amount of Milk that You may supply to ADFC under this Contract during the Term.
- e. You must notify ADFC as soon as reasonably practicable if you consider you will be unable to supply the expected monthly volumes of milk, in item 2 of the schedule, to ADFC.

## 7. ADFC's Policies

- a. In addition to the terms of this document, ADFC's Policies will apply to your supply of Milk to ADFC and form part of this Contract.
- b. ADFC may change ADFC's Policies from time to time in accordance with the Code. ADFC will notify you in writing of any changes to ADFC's Policies.
- c. You must comply with ADFC's Policies. In the event of any express inconsistency between this document and ADFC's policies relating to pick-up arrangements (including road access), milk quality standards and control procedures for milk, the provisions of ADFC's Policies shall prevail over the terms of this document to the extent of the inconsistency. In all other respects, in the event of any express inconsistency between this document and ADFC's Policies, the terms of this document shall prevail.
- d. You acknowledge having received and read ADFC's Policies before entering into this Contract.

## 8. Quality and sampling procedures

- a. Unless otherwise agreed in writing, the quality of milk provided by You must comply with quality specifications in ADFC's Policies. If the parties agree in writing on updated quality specifications during the Term, this Contract is amended accordingly with effect from the date of that agreement.
- b. ADFC will undertake the sampling procedures and volume accuracy assurances specified in ADFC's Policies in relation to Milk supplied by You.

## 9. Monthly Statements

- a. ADFC will issue a statement to You within 14 days of the end of each Month during the Term.
- b. The statement will specify *dealings* with the Milk in the prior Month.
- c. *Dealings* include the quality and quantity of Milk purchased by ADFC, the date(s) of the purchases, price for the Milk, where multiple methods are agreed for calculating the milk price, the method applied for calculating the milk price for a particular purchase, any fees or levies deducted from payment and the date the Milk was delivered.

## 10. Termination

- a. Subject to clauses 10(c) and (d), this Contract shall continue for the Term and thereafter unless and until terminated by either party giving to the other party notice in writing in accordance with this clause 10(a). If a party wishes to terminate this Contract pursuant to this clause 10(a) (that party being the "**Terminating Party**"), must follow the following procedure:

- i. the Terminating Party must provide written notice to the other party that it is exercising its right to terminate the Contract ("**Notice of Termination**") not less than 30 days prior to the end of the Term;
  - ii. in order to be effective, the Notice of Termination must set out the date on which the termination will take effect ("**Termination Date**"); and
  - iii. the Termination Date:
    - 1. must be the final day of a Month;
    - 2. cannot be less than one Month from the date of the Notice of Termination; and
    - 3. cannot be any earlier than the final date of the Term (unless by express permission from ADFC as per clause 2 (c)).
  - iv. The Terminating Party must confirm in writing to ADFC of their intention to cease supplying ADFC ("**Notice of Confirmation of Termination**") by day 15 of the terminating period ("**Termination Window**").
  - v. If the procedure set out in this clause 10(a) is not followed, the Notice of Termination shall be ineffective. Without limitation, if the Notice of Confirmation of Termination is not given within the Termination Window, the Notice of Termination shall be ineffective and of no force or effect.
- b. If You continue supplying ADFC after the end of the Term:
- i. the contract and ADFC's Policies in force at the time shall continue to apply (including during any Notice Period); and
  - ii. the minimum milk price announced by ADFC for the period following the expiration of the Term shall apply.
- c. You may terminate this Contract by giving 30 days written notice to ADFC **PROVIDED THAT** you provide documentary evidence that you are permanently leaving the dairy industry to the reasonable satisfaction of ADFC.
- d. Either party may immediately terminate this Contract if the other party:
- i. commits a fundamental or material breach of this Contract which is incapable of remedy; or
  - ii. commits a fundamental or material breach of this Contract and fails to remedy the breach within thirty (30) days after notice in writing has been given to remedy that breach.
- e. The termination of this Contract must be in writing with accompanying reasons for the termination as well as the date upon which the termination takes effect, to be provided as soon as practicable after the termination.

## 11. Complaints & Disputes

- a. All disputes are subject to the provisions of the Code relating to disputes.
- b. Where a dispute arises out of or in connection with performance of this Contract both parties, acting in good faith, will use all reasonable endeavours to bring the issue to the attention of the other party in a timely fashion and in any instance not more than 30 days after the event occurs which leads to the dispute.
- c. Notification will include:
  - i. The nature of the complaint;
  - ii. that the aggrieved party wishes to resolve the dispute in accordance with this Contract; and
  - iii. the desired resolution.

- d. The party receiving the complaint will in writing notify the other party that they have received the complaint within five Business Days and articulate steps intended to resolve the dispute.
- e. Any complaints arising under this Contract must, in the case of ADFC, in the first instance be referred to the ADFC's Internal Complaints Handling Officer for resolution under ADFC's complaint handling procedure set out in Annexure 1.
- f. Where a notification of a dispute is made to the other party to this Contract both parties will act, in good faith, to resolve the dispute.
- g. If after attempting to resolve the dispute, and in any instance not before the elapse of 60 days after notification, the parties are not reconciled, both parties agree to participate in a mediation process as specified in the Code.
- h. The costs of a mediation will be borne by each party equally, unless otherwise agreed. If a party seeks legal representation in the mediation process, such legal costs will be borne by that party.
- i. Nothing in this dispute resolution procedure will prevent a party seeking an injunction.

## 12. Force Majeure

- a. Neither party is liable for a failure to comply with this Contract or a failure to perform an obligation under this Contract because that party is unable to perform its obligations due to an event of Force Majeure
- b. The party relying on an event of Force Majeure must notify the other party as soon as practicable and in writing of the reliance on the event of Force Majeure.

## 13. Variation

- a. Except as provided under this clause 13, ADFC and the Supplier may only agree to vary this Contract in writing signed by both parties, or by a written notice of offer to vary the Contract and a written notice of acceptance. Any offer, acceptance or signed variation must state the Milk Supply Agreement to which it refers and the date the variation is to take effect.
- b. ADFC can only unilaterally vary this Contract:
  - 1. on the occurrence of exceptional circumstances, by reducing the minimum price for milk stipulated in the Contract (Step Down), where:
    - A. the exceptional circumstances are temporary and involve an extraordinary event (including an emergency or change in market conditions) that:
      - i. occurs outside Australia; and
      - ii. has a highly significant effect on supply, demand, or costs in the dairy industry; and
      - iii. is not caused by a decision made by ADFC;
    - B. where the unilateral variation resulting in the Step Down is unavoidable because of the exceptional circumstances;
    - C. where either:
      - i. ADFC has taken or will take all reasonable steps to prevent or limit the impact of the exceptional circumstances on ADFC; or
      - ii. there are no such steps ADFC can take; and
  - 2. if there is a change in Commonwealth, State or Territory law and then only to the extent necessary to comply with the changed law but without reducing the minimum price under this Contract.

- c. If ADFC wants to vary this Contract under clause 13 (a) it must give You and the Australian Competition and Consumer Commission 30 days' written notice of the following:
  1. The Step-Down; and
  2. the date the Step-Down will take effect (Step-Down Date). The Step-Down Date must not be a date earlier than the time ADFC's variation under clause 13 occurs.
  3. the exceptional circumstances giving rise to the variation (see clause 13 (A)(i) to (iii)); and
  4. either the reasonable steps ADFC has taken or will take to prevent the impact of the exceptional circumstances or if ADFC cannot take any steps; and
  5. why the minimum price reduction is unavoidable; and
  6. the period to which the minimum price reduction applies.
- d. The Supplier has the right to terminate the Contract within 21 days of receipt of a notice under clause 13(c), which termination will have effect from the Step-Down Date.
- e. The Supplier may rescind any termination under clause 13 (d) before the end of the 21-day period referred to in clause 13(d).
- f. Any variation under this clause 13, does not allow variation that does not comply with the Code.
- g. Any variation agreed to by the parties is limited to compliance with the law or the Code. If the variation to the Agreement is inconsistent with a law or the Code, the law or Code will prevail to the extent of the inconsistency.
- h. An agreed variation which is not written in the first instance will be written and transmitted by ADFC to the Supplier within 30 days. Where the supply period of the Contract is 90 days or longer, ADFC must make all reasonable efforts to obtain written acknowledgement that the record is a complete and accurate record of the variation from the Supplier.

#### 14. Confidentiality

- a. The parties must keep confidential and must not disclose or make available directly or indirectly to any third party any Confidential Information unless:
  - i. the disclosure of the Confidential Information is necessary to comply with any laws or the lawful requirements of any public, statutory, governmental, semi-governmental, local governmental or judicial body entity or authority;
  - ii. at the time of the disclosure, the information was in the public domain; or
  - iii. subsequent to the disclosure, the information becomes part of the public domain (other than because of a breach of this clause).
- b. The parties must not use, disclose, or access the Confidential Information for any reason except as is necessary to perform this Contract.
- c. For the avoidance of doubt, the parties' obligations in clause 14(a) apply to any information disclosed or obtained in dealing with or resolving a complaint or dispute under this Contract.
- d. For the purpose of this clause "**Confidential Information**" means the terms of this Contract and (whether or not in material form and whether disclosed before or after the date of this Contract) any information of whatever kind relating to a party that is disclosed or becomes known to the other party in the course of their discussions and negotiations regarding or in connection with this Contract and which:
  - i. is by its nature confidential;
  - ii. is designated by the party disclosing the information as confidential; or
  - iii. the party receiving the information knows or ought reasonably to know is confidential;

but does not include any part of the information that:

- iv. is generally known to the public at the time of disclosure or becomes generally known to the public through no wrongful act on the part of the party receiving the information;
- v. is in the possession of the party receiving the information at the time of disclosure otherwise than as a result of that party's breach of a legal obligation;
- vi. becomes known to the party receiving the information through disclosure by sources other than the other Party provided that, in so far as is known to that source, it is not prohibited by law or contract from disclosing the information to the party receiving the information;
- vii. is independently developed by the party receiving the information outside the scope of the relationship with the other party; or
- viii. is required to be disclosed by court order, subpoena or other law or legal process

#### **15. Governing Law**

This Contract is governed by the laws of Victoria and each party submits to the non-exclusive jurisdiction of the courts of Victoria.

#### **16. Set-Off**

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

#### **17. Acknowledgment**

You acknowledge that, prior to signing this document, you have been given the opportunity to obtain independent legal and financial advice on the contract.

#### **18. Milk Ownership**

Ownership of milk is transferred from the Supplier to ADFC when the milk tanker is approved for unloading at the relevant processing facility once milk testing approval is provided by that facility's milk testing process.

#### **19. Severability**

The Contract shall not be adversely affected by any part that is unenforceable or invalid. The offending part shall be read down or shall be severed and the remaining parts shall continue to have full force and effect.

#### **20. Joint and Several**

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

#### **21. Privacy**

ADFC collects, uses and discloses personal information in accordance with our 'Privacy Policy', the current version of which can be accessed at [www.adfc.com.au](http://www.adfc.com.au) (or such other web address as notified to you).

#### **22. General**

- a. Without prior and written permission of the other party, neither party will assign this Contract.
- b. To the extent of any inconsistency between the terms of this Contract and the Code, the Code prevails. To the extent of any ambiguity between a term of this Agreement and the Code, the term should be construed in a way that complies with the Code.

- c. If a party chooses not to demand enforcement of a term of this Contract the choice cannot be interpreted as a waiver of the term. An aggrieved party may seek damages or specific performance for breach of this Contract.
- d. Expiry or termination of this Contract does not limit any rights or obligations a party had prior to the expiry or termination.
- e. Clauses which are intended to operate beyond the Term may be relied upon by a party beyond the Term.
- f. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

If you wish to accept this offer for milk supply, you must sign and return the enclosed copy of this document to ADFC. Each named supplier, or their representative, must sign the enclosed copy of this document. Please also initial each page of the enclosed copy of this document. Please keep a copy of this contract for your records.

Yours faithfully



Scott Sieben  
**ADFC Executive Chairman**



You agree to supply milk to ADFC in accordance with the terms of this contract and ADFC policies:

Where the supplier is an individual(s):

SIGNED by the supplier in the presence of: )  
)  
)

.....  
Supplier

.....  
Witness

.....  
Supplier

.....  
Print Name of Witness

.....  
Supplier

.....  
Date

Where the Supplier is a company:

Executed by the supplier in accordance with )  
section 127 of the Corporations Act 2001 )  
(Cth) )

.....  
Director / Secretary

.....  
Director

.....  
Name (BLOCK LETTERS)

.....  
Name (BLOCK LETTERS)

.....  
Date

OR

.....  
Sole Director and Secretary

.....  
Name (BLOCK LETTERS)

.....  
Date

**SCHEDULE**

**Item 1 - Supplier**

Supplier's Name:

ACN/ABN (if applicable):

Farm or Farms:

Address:

Email:

Phone:

**Item 2 – Monthly Milk Supply Volumes**

<b>Month</b>	<b>Monthly Contract Volume</b>
July 2021	
August 2021	
September 2021	
October 2021	
November 2021	
December 2021	
January 2022	
February 2022	
March 2022	
April 2022	
May 2022	
June 2022	
<b>Total</b>	

**Item 3 – Term:**

(a) - Commencement Date: 1<sup>st</sup> of July 2021

(b) - End Date: 30<sup>th</sup> June 2022

**Item 4 – ADFC's Policies**

"ADFC Milk Supply Policy"

**Initial here:** \_\_\_\_\_

**ANNEXURE 1: ADFC's COMPLAINTS HANDLING PROCESS (clause 11(e))**

1. ADFC's Internal Complaints Handling Officer is currently Ron Page.
2. If You have a complaint in relation to this Contract or your milk supply arrangements with ADFC, you should in the first instance contact ADFC's Internal Complaints Handling Officer to discuss your complaint.
3. ADFC will attempt to resolve your complaint within 10 Business Days of being notified of your complaint.
4. If You are unable to resolve your complaint with ADFC's Internal Complaints Handling Officer within 20 Business Days of notifying ADFC of your complaint, you may request that your complaint be escalated to ADFC's Executive Chairman for review.
5. If You are unable to resolve your complaint with ADFC's Executive Chairman within a further 10 Business Days of requesting your complaint be considered by ADFC's Executive Chairman, you may request that the parties agree to mediation of your complaint in accordance with clause 11 of the Contract.