

## Milk Supply Agreement 2021

Agreement number MMC – LA 002

Farmer details	Processor details
<p><b>Farmer's Name:</b></p> <p><b>ACN/ABN (if applicable):</b></p> <p><b>Address:</b></p> <p><b>Email:</b></p> <p><b>Phone:</b></p>	<p><b>Processor's Name:</b> Mountain Milk Co-operative</p> <p><b>ACN/ABN (if applicable):</b> 49298071945</p> <p><b>Address:</b> 1285 Gundowring Rd, Gundowring , 3691</p> <p><b>Email:</b> admin@mountainmilkcoop.com.au</p> <p><b>Phone:</b> 0418308414</p>
<p><b>1. Agreement</b></p>	<ol style="list-style-type: none"> <li>1. This Agreement sets out the terms and conditions on which the Processor is prepared to buy milk from the Farmer, as required by the <i>Competition and Consumer (Industry Codes-Dairy) Regulations 2019 (Code)</i>.</li> <li>2. The Farmer and Processor must always deal with each other in good faith, in accordance with section 11 of the Code.</li> <li>3. For the term of this Agreement, the Farmer agrees to supply, and the Processor agrees to buy, milk of the type, quantity, quality and specifications set out in this Agreement for the prices stated in, or calculated in accordance with, this Agreement.</li> <li>4. This Agreement is comprised of these terms, the Schedule, and the Annexures, in accordance with section 22(b) of the Code and which collectively form a single document.</li> <li>5. In accordance with section 22(b) of the Code, this Agreement (including its Schedule and Annexures) 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.</li> <li>6. The parties will keep a record, or a copy of a record, of this Agreement for at least six years following the end of the Term, in accordance with section 55(3) of the Code.</li> </ol>
<p><b>2. Term of Agreement</b></p>	<ol style="list-style-type: none"> <li>1. This Agreement commences on 1<sup>st</sup> July 2021 and will end on 30<sup>th</sup> June 2022, (<b>Term</b>), as required by section 24 of the Code, unless terminated earlier by written agreement by the parties or under clauses 14.4, 15 or 16. [If both parties are members of co-operatives, the Term may be calculated more flexibly, in accordance with section 24(3) of the Code]</li> <li>2. If the Term of this Agreement under clause 2.1 is longer than 3 years, the Farmer has one option to extend the Term by 12 months by giving written notice to the Processor, in accordance with section 36(2) of the Code. The Farmer must give written notice under this clause no earlier than 30 days before, and no later than 7 days before, the end of the Term, as required by section 36(3) of the Code.</li> <li>3. If the Term of this Agreement under clause 2.1 is 3 years or less: <ol style="list-style-type: none"> <li>(a) the Processor shall in writing at least 30 days prior to the end of the Term, notify the Farmer of the Processor's intention to renew, extend or end the Term; and</li> <li>(b) where the Processor informs the Farmer of an intention to extend or renew the Term the Farmer shall within 30 days notify the Processor of their intention to agree to or reject the proposal; and</li> <li>(c) this Agreement will end on the date stipulated in clause 2.1 as the end of the Term unless the Processor and Farmer expressly agree to extend or renew the Term.</li> </ol> </li> </ol>
<p><b>3. Quantity of milk</b></p>	<p>This Agreement is for: <i>(tick one)</i></p> <p><input type="checkbox"/> The exclusive supply of all the milk produced by the Farmer during the Term. If this option applies, the parties agree that:</p> <ol style="list-style-type: none"> <li>(a) there will be no maximum amount of milk that the Farmer must supply to the Processor under this Agreement, in accordance with section 31 of the Code; and</li> <li>(b) the minimum price payable for a specified amount of milk during the term must not be greater than the price for milk supplied more than that amount, in accordance with section 32 of the Code (<b>Tier Pricing</b>).</li> </ol> <p><input type="checkbox"/> _____ [agreed amount]. If this option applies, the Processor agrees to accept, and pay for, a quantity of milk which is up to 10% more or 10% less than the agreed amount specified in recognition of the exigencies of production.</p>

- \_\_\_\_\_ [agreed amount] with the Processor having first right of refusal to purchase milk from the Farmer more than the agreed amount at the price stipulated in clause 6. This Agreement is an exclusive supply contract until the Processor declines to purchase the excess milk.

[If this Agreement is for an exclusive supply section 12(5)(b) of the Code requires that the Processor also publish a non-exclusive Agreement that it would enter into in the same circumstances.]

**4. Quality and sampling standards**

1. The Processor must publish quality specifications in Annexure 1 in accordance with section 25(a) of the Code. Unless otherwise agreed in writing, the quality of milk provided by a Farmer must comply with those quality specifications. , If the parties agree in writing on updated quality specifications during the Term, this Agreement is amended accordingly with effect from the date of that agreement.
2. The Processor will undertake the sampling procedures and volume accuracy assurances in Annexure 1 in relation to milk supplied by the Farmer, in accordance with section 25(b) of the Code.

**5. Supply of milk**

1. These terms apply in the following circumstances:
  - a. The Dairy acknowledges that, as a member of Mountain Milk Co-operative(MMC) it is bound by the MMC Constitution.
  - b. Mountain Milk Co-operative (MMC) has entered into a milk supply agreement with Lactalis Australia Pty Ltd.
  - c. In order to meet MMC’s obligations the Dairy will supply milk to Lactalis Australia Pty Ltd, on behalf of MMC, as set out in this agreement.
  - d. As at today MMC is not looking to expand the number of its member farms which supply Lactalis Australian Pty.Ltd.
2. Unless otherwise agreed in writing, the Processor is responsible for arranging the collection of the milk at the Processor’s cost.
3. The Farmer will supply milk, and the Processor will collect milk, at the following times:  
 First supply date: 1/07/21      Last supply date: 30/06/22  
  
 Collection address: \_\_\_\_\_  
  
 Days for supply:  Mon  Tue  Wed  Thu  Fri  Sat  Sun  ALL  
 Hours for supply: after \_\_\_\_\_ and before \_\_\_\_\_ on the agreed days.
4. In accordance with section 25(c) of the Code, when the Processor collects milk at the days and times stated in subclause 5.3, the Processor will provide the Farmer, as soon as practicable after the Processor tests the milk, with written documentation that identifies and accurately describes:
  - (a) sampling tests taken and test results in relation to milk collected;
  - (b) quality of milk collected;
  - (c) quantity of milk collected; and
  - (d) Milk Supply Agreement Number under which milk is collected.
5. Test samples are to be collected from a point as close as reasonably practicable to the coupling at the time milk is transferred from vat to Processor’s milk truck.
6. The Processor will test milk at the Processor’s expense.
7. The Processor’s sample will be tested within \_\_\_\_\_ days of collection of the milk. Any test result exceeding this period may not be relied upon by the Processor to make any assertion regarding quality of the milk received.
8. The Processor will inform the Farmer of test results as soon as practicable but, in any instance, not less than \_\_\_\_\_ days after the sample is taken.
9. The Processor will inform the Farmer in writing of the test results.
10. To avoid adverse test results the Farmer and Processor will take all necessary steps to ensure equipment, couplings, hoses, or any other equipment associated with the transfer of milk from the vat are clean, well maintained, and serviceable.
11. Supply of the milk occurs when the milk passes through the coupling on the hose of the milk supply truck, or other transport device, attached to the Farmer’s farm vat. The Processor becomes the owner of the milk when the hose is decoupled from the truck and the supplied milk is in the truck’s tank or other transport device, in accordance with section 30 of the Code.
12. Losses arising after transfer of ownership shall be borne by the owner of the milk at that time.
13. The Processor will abide by all reasonable requests and directions of the Farmer regarding access to the farm and farm vat.
14. The Farmer will make available safe access to the farm and vat to enable the Processor to collect the milk.

15. The Processor will take all reasonable measures to ensure milk collected from the vat has had a reasonable time for the milk to be brought to a temperature between 0 and 4 degrees Celsius. Where milk is collected at a higher temperature because of early collection after milking, no action lies against the Farmer by the Processor or purchaser.

#### 6. Price

The Processor will pay the Farmer for milk on the following basis: (tick as applicable)

- The Processor will pay the Farmer the minimum price for the milk set out in Item 1 of the Schedule, in accordance with section 26(a) of the Code. Payment will be made within 45 days of supply and acceptance of the milk.
- The Processor will pay the Farmer for the milk in accordance with the schedule of yearly minimum prices in Item 2 of the Schedule, in accordance with section 26(b) of the Code. Payment will be made within 45 days of supply and acceptance of the milk.
- The Processor will pay the Farmer for the milk in accordance with the schedule of monthly minimum prices in Item 3 of the Schedule, in accordance with section 26(c) of the Code. Payment will be made within 45 days of supply and acceptance of the milk.

[A Processor must include a statement of its justification for each minimum price set out in the relevant Annexure, in accordance with section 14 of the Code.]

#### 7. Levies

Where any levy applies to the milk: (tick one)

- The Processor will collect and pay the levy on behalf of the Farmer. The amount of levy due will be deducted from the payment to the Farmer.
- The Farmer will pay the levy.

#### 8. Loyalties

- (Not applicable) If this Agreement is not terminated before the end of the Term, the parties agree that the Farmer will receive the loyalty payments from the Processor in accordance with the payment schedule in Item 2 of the Schedule and this clause 8.

In accordance with section 35(2) of the Code, the parties agree that any loyalty payment must not be made on the basis that the Farmer will:

- (a) supply milk after the Term;
- (b) agree to vary this Agreement to extend the Term under clause 2.2; or
- (c) enter a new milk supply agreement with the Processor.

The parties agree that if this Agreement is terminated before the end of the Term and termination has not occurred in circumstances involving material breach by the Farmer, that the Farmer will be entitled to a portion of the loyalty payment, calculated on the basis of the proportion of the Term in which the Farmer supplied milk before Termination, in accordance with section 35(3) and (4) of the Code.

#### 9. Services and fees

- (Not applicable) During the Term, the Processor will provide the Farmer services for the fees identified in Annexure 3.  
[Fees must be specified for first year of the Agreement either as a single fee for the service that applies throughout that first year or as a schedule of monthly fees for that period, in accordance with section 29(3) of the Code. If the Agreement is longer than one year, a Processor must specify how fees will be determined after the first year, in accordance with section 29(2) of the Code.]  
The amount of fees due will be deducted from the payment to the Farmer.  
Every 12 months the Processor will give the Farmer written notice of any fees for the services it provides to the Farmer, which are payable by the Farmer and which the Processor will deduct from the payment owed by the Processor to the Farmer, in accordance with section 29(2)(b) of the Code. [Remove if the Term is for one year or less]

#### 10. Payment method

The Processor will pay the Farmer for the purchase of the milk in accordance with this Agreement by EFT Bank details:

BSB: \_\_\_\_\_ Account: \_\_\_\_\_ Account name: \_\_\_\_\_

#### 11. Rejection of milk

1. In accordance with Section 25(a) and (d) of the Code, the Processor may reject milk that the Farmer supplies in the following circumstances:
  - (a) If the milk does not meet the minimum quality requirements described in clause 4 and Annexure 1.
  - (b) If the Processor reasonably suspects or is aware that the milk has been supplied contrary to Law.
2. In accordance with section 25(e) of the Code, the Processor will notify the Farmer's contact person in accordance with clause 17 as soon as practicable following supply, if it intends to reject any milk (**Rejection Notice**) because of a failure to comply with clause 11.1. As soon as practicable following the relevant supply

of milk, the Processor will also advise the Farmer in writing of the rejection, reasons for the rejection and consequences for the Farmer of the rejection including consequences identified in clause 11.3.

3. In accordance with section 25(d) of the Code, where the Processor rejects the milk by giving the Rejection Notice, the Farmer is responsible for recovery and/or movement and disposal of the milk. Where the Farmer does not respond to the Rejection Notice within 24 hours of its issuance, or fails to retake possession of the milk within 5 business days of the Rejection Notice, the Processor may dispose of the rejected milk, or deliver the rejected milk to the Farmer, at the Farmer's expense. The Processor will provide reasonable assistance to the Farmer to move and/or dispose the rejected milk at the Farmer's expense.
4. Where a Processor or Farmer become aware of:
  - (a) any possible actual or potential defect, contamination, fault, or other condition in any milk supplied;
  - (b) any matter that may impact on compliance with any health standard, public policy or code;
  - (c) any matter which may affect compliance with any law or regulatory health standard,
 the Processor or Farmer must, as soon as possible, advise the other party of the nature of the defect or issue, details of collections impacted, and actions taken or proposed to diminish the defect's impact.
5. The Processor and Farmer must co-operate to diminish any risk to the public from the defect including compliance with laws, assisting each other in investigating the source of the defect and taking such remedial action as necessary to ameliorate the defect's impact. Such steps include assisting government authorities and disseminating information to the public where necessary.

## 12. Conflicting terms

1. The Code requires that transactions between a Processor and Farmer must be conducted pursuant to a Milk Supply Agreement. To the extent of any inconsistency between the terms of this Agreement 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.
2. To the extent that there is inconsistency between these terms (clauses 1 to 25) and any terms in the Schedule or the Annexures, these terms shall prevail.

## 13. Statement for reporting period

The Processor will issue a statement to the Farmer, in accordance with section 25 of the Code:

- within 14 days of the end of each month       within 7 days of each Consignment

The statement will specify *dealings* with the milk:

- each month       between and including the date of each Consignment

*Dealings* include the quality and quantity of milk purchased by the Processor, 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.

## 14. Variation

1. Except as provided under this clause 14, the Processor and Farmer may only agree to vary this Agreement by writing signed by both parties, or by a written notice of offer to vary the Agreement and a written notice of acceptance. Any offer, acceptance or signed variation must state the Milk Supply Agreement Number to which it refers and the date the variation is to take effect.
2. The Processor can only unilaterally vary the Milk Supply Agreement:
  - (a) in accordance with section 28(1) of the Code, on the occurrence of *exceptional circumstances*, by reducing the minimum price for milk stipulated in the Milk Supply Agreement (**Step Down**), where:
    - (i) in accordance with section 28(3) of the Code, the *exceptional circumstances* are temporary and involve an extraordinary event (including an emergency or change in market conditions) that:
      - a. occurs outside Australia; and
      - b. has a highly significant effect on supply, demand, or costs in the dairy industry; and
      - c. is not caused by a decision made by the Processor;
    - (ii) where the unilateral variation resulting in the Step Down is unavoidable because of the exceptional circumstances, as required by section 28(4)(b) of the Code;
    - (iii) where, as required by section 28(4)(a) of the Code, either:
      - a. the Processor has taken or will take all reasonable steps to prevent or limit the impact of the exceptional circumstances on the Processor; or
      - b. there are no such steps the Processor can take; and
  - (b) 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 the Milk Supply Agreement, in accordance with section 33(2) of the Code.
3. As required by section 28(4)(c) of the Code, a Processor wishing to vary this Agreement under clause 14.2(a) must give the Farmer and the Australian Competition and Consumer Commission 30 days' written notice of the following:

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- (a) The Step-Down; and
  - (b) the date the step-down will take effect (**Step-Down Date**). The Step-Down Date must not be a date earlier than the time the Processor's variation under clause 14.2 occurs, in accordance with section 27 of the Code.
  - (c) the exceptional circumstances giving rise to the variation (see clause 14.2(a)(i) to (iii)); and
  - (d) either the reasonable steps the Processors has taken or will take to prevent the impact of the exceptional circumstances or if the Processor cannot take any steps; and
  - (e) why the minimum price reduction is unavoidable; and
  - (f) the period to which the minimum price reduction applies.
4. The Farmer has the right to terminate the Milk Supply Agreement within 21 days of receipt of a notice under clause 14.3, which termination will have effect from the Step-Down Date, in accordance with section 28(5)(a) of the Code.
  5. The Farmer may rescind any termination under clause 14.4 before the end of the 21-day period referred to in clause 14.4, in accordance with section 28(5)(b) of the Code.
  6. Any variation under this clause 14, does not allow variation that does not comply with the Code, as required by section 33 (4) of the Code.
  7. 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.
  8. An agreed variation which is not written in the first instance will be written and transmitted by the Processor to the Farmer within 30 days, as required by section 19(2) of the Code. Where the supply period of the Agreement is 90 days or longer the Processor must make all reasonable efforts to obtain written acknowledgement that the record is a complete and accurate record of the variation from the Farmer, as required by section 19(2)(c) of the Code.
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- 15. Cooling-Off** The Farmer may terminate this Agreement in writing within the cooling-off period being within 14-days of;
- (a) the day this Agreement is entered into if the Agreement is in writing; or
  - (b) the day the processor gives the Farmer a written record of this Agreement; in accordance with sections 12(4)(b) and 23 of the Code.
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- 16. Termination**
1. This Agreement may be terminated with immediate effect by written consent of both parties. Where the parties' consent to termination the Processor must provide a written record to the Farmer within 30 days.
  2. Either party may terminate this Agreement immediately if:
    - (a) the other party to the Agreement has committed a fundamental or material breach of the Agreement and has not remedied it in 30 days after being requested to do so by written notice; or
    - (b) the other party has committed a material breach which cannot be remedied
  3. The termination of this Agreement 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, in accordance with clause 34 of the Code.
  4. A Farmer may terminate this Agreement by giving \_\_\_\_\_ days' notice to the Processor if the Farmer intends to exit the dairy industry, in accordance with section 34(1) of the Code.
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- 17. Complaints and Disputes**
1. All disputes are subject to the provisions of the Code relating to disputes.
  2. Where a dispute arises out of or in connection with performance of this Agreement 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.
  3. Notification will include:
    - (a) nature of the complaint
    - (b) that the aggrieved party wishes to resolve the dispute in accordance with this Agreement
    - (c) desired resolution.
  4. The party receiving the complaint will in writing notify the other party that they have received the complaint within five days and articulate steps intended to resolve the dispute.
  5. Any complaints arising under this Agreement must, in the case of the Processor, in the first instance be referred to the Processor's Internal Complaints Handling Officer for resolution under the Processor's complaint handling procedure set out in Annexure 2, in accordance with section 43(1) of the Code.
  6. Where a notification of a dispute is made to the other party to this Agreement both parties will act, in good faith, to resolve the dispute.
  7. 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 subordinate themselves to a mediation process as articulated in the Code, in accordance with section 43(3) of the Code.
  8.  (*tick if it applies*) Any disputes arising under or in any way resulting from this Agreement which cannot be resolved in mediation under clause 17(7) shall be referred to arbitration conducted in accordance with section 46 of the Code.
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9. The costs of a mediation and/or arbitration will be borne by each party equally, unless otherwise agreed. If a party seeks legal representation in the mediation/arbitration process, such legal costs will be borne by that party.
  10. Nothing in this dispute resolution procedure will prevent a party seeking an injunction.
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**18. Contact details for notices, disputes, variations and rejections**

The details of the primary contact people for the Processor and Farmer are:

Farmer's contact name:	Processor's contact name: Mountain Milk Co-operative
Telephone:	Mobile: 0418308414
Mobile:	Email: admin@mountainmilkcoop.com.au
Facsimile:	For Processor's Internal Complaints Handling
Email:	Officer name: Patten Bridge
	Mobile: 0418308414
	Email: patten@mountainmilkcoop.com.au

These individuals may be contacted, by telephone, mobile, text, facsimile, email, or any other mode of communication contemplated this clause, in the event of a contract notice, variation, dispute or rejection of milk by the Processor or Farmer.

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**19. Guarantees & Warranties**

1. The Processor guarantees the testing procedure used to test milk samples.
2. The Processor guarantees accuracy of volumetric measuring of milk collected.
3. The Processor guarantees cleanliness of all equipment upon taking ownership of the milk.
4. Both the Processor and Farmer warrant that they are possessed of all necessary authorisations, licences, approvals and permits for the conduct of their respective businesses.
5. If a party becomes aware of a wilful breach, false or misleading representation in relation to any warranty under this agreement, they will inform the other party.
6. Both parties respectively warrant that at the date of signing the agreement each party has the power to lawfully execute the agreement and all necessary actions have been taken to authorise the execution of the agreement.

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**20. Indemnities**

1. To the maximum extent permitted by law the Farmer will not be liable to the Processor should the Farmer fail to provide the required volume of milk during the operational period of this Agreement.
2. Excepting those warranties imposed by statute and this Agreement, the parties exclude all express or implied warranties or representations regarding the milk supplied.
3. The Farmer is not liable to the Processor for any losses of savings or profits incurred by the Processor arising out of the execution of this agreement.
4. The Processor indemnifies the Farmer from any unlawful or improper conduct of the Processor or Processor's employees, agents, or representatives.

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**21. Force Majeure**

1. Neither party is liable for a failure to comply with this Agreement or a failure to perform an obligation under this Agreement, except for the payment of money, because that party is unable to perform that function arising out of:
  - (a) an act of God (including an epidemic);
  - (b) natural disaster;
  - (c) an act of terrorism;
  - (d) the outbreak of war;
  - (e) any such other event of such a magnitude as to render reasonable performance impossible.
2. Where possible, the party relying on a force majeure must notify the other party as soon as practicable and in writing of the reliance on the force majeure.

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**22. Confidentiality**

1. The parties must keep confidential and must not disclose or make available directly or indirectly to any third party all Confidential Information unless:
    - (a) 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;
    - (b) at the time of the disclosure, the information was in the public domain; or
    - (c) subsequent to the disclosure, the information becomes part of the public domain (other than because of a breach of this clause).
  2. The parties must not use, disclose, or access the Confidential Information for any reason except as is necessary to perform this Agreement.
  3. At the end of the Term or upon earlier termination or completion of this Agreement, the Processor must deliver to the Farmer or as it otherwise directs any Confidential Information in the Processor's possession
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that is capable of being delivered. The Processor must delete, erase, or otherwise destroy any Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the Farmer or as it directs.

4. For the avoidance of doubt, the parties' obligations in sub-clause 22(1) apply to any information disclosed or obtained in dealing with or resolving the complaint or dispute under this Agreement, in accordance with section 54 of the Code.
5. For the purpose of this clause **Confidential Information** means the terms of this Agreement and (whether or not in material form and whether disclosed before or after the date of this Agreement) 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 Agreement and which:
  - (a) is by its nature confidential;
  - (b) is designated by the party disclosing the information as confidential; or
  - (c) the party receiving the information knows or ought reasonably to know is confidential;
 but does not include any part of the information that:
  - (d) 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;
  - (e) 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;
  - (f) 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;
  - (g) is independently developed by the party receiving the information outside the scope of the relationship with the other party; or
  - (h) is required to be disclosed by court order, subpoena or other law or legal process.

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**23. General and other matters**

1. Without prior and written permission of the other party, neither party will assign this Agreement.
2. The parties remain independent of each other. Nothing in this agreement may be read down as creating any form of legal relationship beyond a contractual obligation. This contract does not create a partnership, trust arrangement, joint venture, agency, employment relationship or other relationship that is not contractual in nature.
3. 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.
4. Subject to compliance with the dispute resolution processes articulated in this contract and the Code, remedies in this Agreement do not exclude remedies available to a party in law or equity.
5. Expiry or termination of this Agreement does not limit any rights or obligations a party had prior to the expiry or termination.
6. Clauses which are intended to operate beyond the Term may be relied upon by a party beyond the Term.
7. Invalidity of a term shall only impact on this Agreement to the extent of the invalidity. Remaining provisions which are capable of execution remain binding on the parties.
8. The Processor is liable for any stamp duties arising out of this Agreement.
9. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
10. If any clause or part of any clause is in any way unenforceable, invalid, or illegal, it is to be read down to be enforceable, valid, and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
11. The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.
12. Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

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**24. Law and Jurisdiction**

This Agreement is governed by the law in force in the state the milk is supplied under clause 5 and the Courts in that State have jurisdiction.

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**25. Interpretation**

1. A reference to this Agreement or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns, or novates this Agreement or that other document.
  2. A reference to legislation or a legislative provision includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision.
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3. A reference to a clause, annexure or schedule is a reference to a clause, annexure, or a schedule to or of this Agreement.
4. Clause headings are inserted for convenience only and do not form part of this Agreement.
5. The annexures and schedules form part of this Agreement.
6. A reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity.
7. A reference to a natural person includes their personal representatives, successors and permitted assigns.
8. A reference to a corporation includes its successors and permitted assigns.
9. Related or subsidiary in respect of a corporation has the same meaning given to that term in the Corporations Act.
10. A reference to a right or obligation of a party is a reference to a right or obligation of that party under this Agreement.
11. An obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally.
12. A reference to a breach of warranty includes that warranty not being complete, true, or accurate.

**This Agreement is deemed to be accepted by signature of both parties or upon the Processor's receipt of a written notice of acceptance of the Agreement by the Farmer.**

Signed on behalf of the Farmer \_\_\_\_\_  
(ABN \_\_\_\_\_) by a duly authorised  
representative:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signed on behalf of the Processor: Mountain Milk Cooperative  
(ABN : 49298071945) by a duly authorised representative:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

*Office use only*

Payment Terms accepted: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Farmer details verified by: \_\_\_\_\_

Entered to systems on: \_\_\_\_/\_\_\_\_/\_\_\_\_

Entered to systems by: \_\_\_\_\_



## Schedule

### Item 1: Minimum Price [refer to clause 6, option (a)]

- a. Mountain Milk Co-operative (MMC) has entered into a milk supply agreement with Lactalis Australia Pty Ltd.
- b. In order to meet MMC's obligations the Dairy will supply milk to Lactalis Australia Pty Ltd, on behalf of MMC, as set out in this agreement.

The price payable to individual suppliers supplying farm milk to the Purchaser, as specified in the Lactalis Australia Milk Supplier Handbook. Victoria & Riverina, South Australia and Tasmania – Edition 2 effective from 1<sup>st</sup> July 2021, (See link below) less a monthly deduction of \$0.10/ kgMS Mountain Milk Cooperative Operational Charge which will be made payable to Mountain Milk Co-operative Ltd.

<https://www.mountainmilkcoop.com.au/media/1090/national-supplier-handbook-edition-2-2021-final.pdf>

The rates and prices are subject to any applicable quality adjustments specified in the Quality Provisions and are the minimum prices and rates for the Supply Period.

### Item 2: Price Justification

Lactalis' minimum prices for the period are set on the following basis:

- (a) The need for Lactalis to be competitive in the Australian retail and wholesale markets for milk and dairy products, given milk purchases are a material determinant of Lactalis' cost of production for those products;
- (b) Prices offered or expected to be offered by other buyers of milk across the relevant region;
- (c) Given the national market for milk in Australia, any price in this region would need to consider the price of milk from other regions plus freight;
- (d) Lactalis has contractual obligations to supply numerous retail customers and distributors on a day by day basis and offers its highest minimum base price for committed volumes whether provided under an exclusive MSA or under a non-exclusive MSA with committed supply quantities. Non-exclusive MSAs that seek to have Lactalis buy spot or represent undefined milk volumes do not meet our market profile and are therefore of lesser value.
- (e) The quality bonus is an incentive offered to suppliers to encourage higher quality milk and to reward highest quality milk;
- (f) Volume incentives paid reflect both the economic efficiency of collecting from large farms as opposed to the cost of collecting from a larger number of smaller farms but also the opportunity cost of replacing larger farms with many smaller farms;
- (g) Logistics proximity incentives or levies (where paid) reflect a sharing with the supplier of the benefit or cost impact of milk collection closer to the processing site (benefit) or significant distance (levies) verse average farm distances for the region. In offering logistics incentives/levies the Lactalis key measure remains the overall competitive cost of milk delivered factory;
- (h) Milk collection charges (where applied) reflect the underlying fixed cost of stopping a tanker to do a milk pick-up and are set to promote logistics efficiency;
- (i) Non-Exclusive Pricing for MSA "2" reflects the uncertainty of uncommitted milk volumes and that Lactalis is being asked to be a buyer of residual volumes on an ad-hoc basis.

Non-exclusive MSA "3" & "4" price adjustments for under or oversupply represent the cost to either buy or sell milk on spot market or shift milk back and forward across large geographical distances.

### Item 3: Special Conditions

- a. **Records:** The Dairy must ensure that proper, complete, up-to-date and accurate records and other data relating to this agreement are kept. Within 5 Business Days of a request by the Purchaser, the Supplier must provide such information, produce copies of, or procure all necessary access for the Purchaser's representatives to inspect and take copies of, all such records and data.
- b. **Audit:** The Purchaser may audit the Dairies' records, other data, premises and facilities for compliance with this agreement. The Dairies will permit the Purchaser, or its representatives, to enter, inspect and take copies of the records, other data, premises and facilities (including, without limitation the equipment and methods used) at any reasonable times and will cooperate with all reasonable requirements of the Purchaser for such purpose.

### Annexure 1: Quality Standards (clause 4)

The quality standards applied to this agreement are as specified in the Lactalis Australia Milk Supplier Handbook. Victoria & Riverina, South Australia and Tasmania – Edition 2 effective from 1<sup>st</sup> July 2021.

<https://www.mountainmilkcoop.com.au/media/1090/national-supplier-handbook-edition-2-2021-final.pdf>

### Annexure 2 : Processor's Complaints Handling Process (clause 17)

1. This agreement cannot cater for every possible set of circumstances that may arise between the parties. The parties agree to consider each difference or dispute on its merits.
2. The parties agree to stay in regular communication with each other, and confer with each other about issues that a reasonable person would consider to affect this agreement.
3. In the event that the parties disagree on any part of this agreement, and the disagreement cannot be resolved by virtue of clauses 12-13 the parties agree to resolve the disagreement as follows:
  - a. In the first instance, seeking the assistance of the professionals that were involved in developing this deed to the value of \$1000 provided by each party (\$2,000 in total);
  - b. Next, seeking the assistance of a mediator to the value of \$5,000 provided by each party (\$10,000 in total);
  - c. Next, appointing an arbitrator to the value of \$10,000 provided by each party (\$20,000 in total).
4. The parties agree that they will only commence litigation in the event that the suite of options in clause 14 have been exhausted and the disagreement has not been resolved.