

EXCLUSIVE MILK SUPPLY AGREEMENT

REFERENCE SCHEDULE



Parties:

Riverina Fresh:	Riverina Fresh Pty Ltd ABN 45 614 298 314 20 Hammond Ave, Wagga Wagga NSW 2650
Supplier:	

Farm details:

Farm (address and reference, if applicable):	

Term:

Commencement Date:	
Term:	The term of this agreement will commence on the 1 July 2021 and expires on 30 June 2023, unless terminated earlier in accordance with the terms of this Agreement.

Signatures:

By signing this Agreement below or commencing to supply Milk to Riverina Fresh, the Supplier agrees to be bound by the terms and conditions of this Agreement.

Parties:	Riverina Fresh	Supplier
Signature:		
Name:		
Position:		
Date signed:		

1 Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires, in this document:

Agreement means this document (including the Reference Schedule above and any other schedules or annexures) together with the Handbook, and the Diary;

Code means the Competition and Consumer (Industry Codes – Dairy) Regulations 2019.

Confidential Information means Riverina Fresh's confidential information, including the terms and conditions of this Agreement, the terms of the Handbook and all business information, manufacturing processes, documents, records, financial information and any information created in connection with the supply of Milk to Riverina Fresh and excludes information which is in the public domain (other than as a result of a breach by the Supplier of this Agreement);

Diary means the Total Farm Dairy Diary.

Force Majeure means any event which is beyond the reasonable control of Riverina Fresh, and includes without limitation, damage to, or destruction of, Riverina Fresh's processing plants, disruption to Riverina Fresh's workforce due to strikes or other forms of industrial action, processing difficulties, pandemic, flooding, fire or an earthquake;

Handbook means Riverina Fresh's Milk Supply Handbook as published by Riverina Fresh at the date of this Agreement, a copy of which will be provided to the Supplier on or before the date of signing this Agreement;

Insolvency Event means any step taken by a mortgagee or other creditor to take possession or dispose of the whole or part of the Supplier's assets, operations, business or undertaking, or any step is taken to appoint a receiver, a trustee and manager (or either of them) (including a statutory manager), a provisional liquidator, a liquidator, an administrator or other to the Supplier;

Milk means cow's milk produced by or on behalf of the Supplier at or from the Farm during the Term;

Milk Quality Standards means the Milk quality standards and requirements set out in this Agreement and the Handbook, including the merit and demerit point system;

Minimum Price has the meaning set out in section 1.2 of Schedule 1;

Price means the price the Riverina Fresh will pay to the Supplier for the Milk during the Term, as set out in Schedule 1; and

Reference Schedule means the schedule of details so entitled and set out at the front of this document.

1.2 Terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this Agreement.

1.3 Unless the context otherwise requires, defined terms used in the Reference Schedule or the Handbook have the same meaning in this Agreement.

1.4 This Agreement is a milk supply agreement and is to be entered into in compliance with the Code. If there is any inconsistency between the terms of this Agreement and the Code, the Code prevails.

2 Cooling Off Period

(a) This Agreement is entered into with a cooling off period for the benefit of the Supplier. Accordingly, the Supplier may at any time up to and including the 14th day from the date of signing this Agreement (Cooling Off Period) terminate this Agreement in full by providing written notice of such to Riverina Fresh.

(b) If the Supplier elects to so terminate this Agreement within the Cooling Off Period in accordance with the above, all obligations of the parties will cease in full as if this Agreement was not entered into.

3 Supply of Milk

3.1 Exclusive supply

- (a) During the Term, the Supplier will supply all Milk exclusively to Riverina Fresh and subject to the terms of this Agreement Riverina Fresh will buy all of the Milk from the Supplier.
- (b) The volume accuracy assurance of Milk supplied to Riverina Fresh will be carried out in accordance with the Handbook.
- (c) Except with the prior written consent of Riverina Fresh (which Riverina Fresh may withhold at its absolute discretion) the Supplier will not:
 - (i) supply Milk to any other person;
 - (ii) permit any 'share farmer', subcontractor or equivalent to carry on activities at the Farm; or
 - (iii) grant to any other person any right or entitlement to any Milk.

3.2 Milk Quality Standards

The Supplier must strictly comply with the Milk Quality Standards and acknowledges that Riverina Fresh:

- (a) is not obliged to accept or pay for any Milk that does not comply with the Milk Quality Standards and if Riverina Fresh does not accept any Milk it will as soon as possible so notify in writing the Supplier;
- (b) may charge the Supplier for the costs of transporting and disposing of Milk that does not comply with the Milk Quality Standards; and
- (c) has the right to terminate the Agreement for non-compliance with the Milk Quality Standards in accordance with the Agreement.

3.3 Milk Quality tests

- (a) Riverina Fresh will undertake testing of the Milk and use sampling procedures as set out in the Handbook.
- (b) Riverina Fresh will as soon as practicable provide the Supplier with a written copy of the results of any testing from the sampling procedures that we do of the Milk to determine if the Milk meets the Milk Quality Standards, including also details of the quantity of Milk collected.

3.4 Title and Risk

Title to the Milk (including any parts or items supplied as part of a service) passes to Riverina Fresh on pick up by Riverina Fresh of the Milk from the Farm once it passes any on Farm testing.

3.5 Milk price and payment

- (a) Subject to the terms and conditions of this Agreement, Riverina Fresh will pay to the Supplier the Price for the Milk in accordance with the terms of this Agreement and on dates provided for in the Schedule. The Price comprises all of the components set out in Schedule 1, including the Minimum Price.
- (b) The Price is in Australian dollars and is exclusive of all taxes, including goods and services tax (GST), duties, fees or other government levies and charges.
- (c) Riverina Fresh will provide a written statement to the Supplier each month of the Price for Milk supplied in the previous month.
- (d) Where the Supplier makes a Taxable Supply, payment by Riverina Fresh will be subject to receipt from the Supplier of a valid Tax Invoice or an authorised issue by us of a Recipient Created Tax Invoice.

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- (e) If any amount is payable by the Supplier to Riverina Fresh, Riverina Fresh is entitled to set that amount off against any amount payable by Riverina Fresh to the Supplier.

4 Termination

- 4.1 If a party (**Defaulting Party**) fails to comply with any material obligation in this Agreement (**Default**) and if capable of remedy the Defaulting Party fails to remedy the Default to the satisfaction of the other party (**Non-Defaulting Party**) within a reasonable period (which need not be any more than 30 days) after the Non-Defaulting Party notifies the Defaulting Party in writing of the Default detailing the Default, the Non-Defaulting Party may terminate or suspend (for such period as the Non-Defaulting Party sees fit) the operation of this Agreement or any portion thereof with immediate effect by notice to the Defaulting Party.
- 4.2 If the Supplier suffers an Insolvency Event, Riverina Fresh may terminate this Agreement with immediate effect by notice in writing to the Supplier.
- 4.3 If, without the prior written consent of Riverina Fresh (which Riverina Fresh may withhold in its absolute discretion), the whole or any part of the Farm or the Supplier's Milk supply operation under this Agreement is assigned, sold, leased, subleased, transferred, subcontracted or otherwise disposed of, including by way of a change in the ownership or ownership structure, Riverina Fresh may terminate this Agreement with immediate effect by giving notice in writing to the Supplier.
- 4.4 Termination of this Agreement does not affect any accrued rights or remedies of either party.

5 Confidentiality

- 5.1 The Supplier must keep the Confidential Information confidential and not disclose it to any third party other than to the Supplier's professional advisors and then only on a need to know basis in connection with the supply of Milk to Riverina Fresh.
- 5.2 Nothing in clause 5.1 prevents the Supplier from disclosing Confidential Information to the extent necessary to comply with any law.

6 Force Majeure

If a Force Majeure event occurs:

- (a) Neither party is liable for any failure to perform an obligation it is unable to perform due to the occurrence of the Force Majeure event;
- (b) Riverina Fresh can decide not to collect the Supplier's Milk if it is not practical to do so;
- (c) It is the Supplier's responsible for disposing of and covering associated costs of Milk that Riverina Fresh does not collect;
- (d) If Riverina Fresh has already collected the Supplier's Milk, Riverina Fresh may decide not to process that Milk;
- (e) Riverina Fresh is not required to pay the Supplier for the Milk that it would have paid had the Force Majeure event not occurred; and
- (f) Each party will as soon as practicable notify the other party if it is affected by the occurrence of a Force Majeure.

7 Intellectual Property and Confidentiality

- 7.1 The Supplier agrees that:
 - (a) It does not need any authorisation from any person to enable Riverina Fresh to own, possess, use or resell Milk, any good or any component;

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- (b) any intellectual property (including any design, data, specifications, know-how or any other form of intellectual property) that is specifically developed for Riverina Fresh as part of the provision of any Milk or service will be owned by Riverina Fresh; and
- (c) all Confidential Information and any intellectual property provided by Riverina Fresh to the Supplier in connection with the supply of Milk remains at all times the property of Riverina Fresh. The Supplier can only use such information to enable it to perform its obligations under this Agreement. Any such information or property must be returned to Riverina Fresh at any time on request by Riverina Fresh.

8 Warranties

8.1 The Supplier warrants to Riverina Fresh that:

- (a) It has the power and authorisation to sign this Agreement;
- (b) each service will be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons and to the best industry standards and be fit for the expected purpose;
- (c) all Milk (and its components) will:
 - (i) be fit for the expected use and purpose;
 - (ii) conform to the specification, quality and standards described by this Agreement (including the Handbook);
 - (iii) not be subject to any mortgage, charge, lien, encumbrance or retention of title;
 - (iv) be free from any defect (including any latent defect) and not contain any contaminant or hazardous substance;
- (d) Riverina Fresh's ownership, possession, use or resale of any Milk (including as manufactured or comingled with other goods) or the use or result of a service supplied by you will not infringe any proprietary or other intellectual property right or interest of any person; and
- (e) all Milk supplied and/or services provided under this Agreement will comply with all applicable laws or regulations and the Supplier will hold and maintain in good standing all necessary licences, registrations, permits, authorisations, consents and approvals required by or from any governmental, provincial or local department or agency.

8.2 These warranties are additional to any other warranties given by the Supplier or implied by custom or law, whether statutory or otherwise.

8.3 The Supplier will promptly remedy each warranty claim to the reasonable satisfaction of Riverina Fresh.

9 Indemnities

9.1 The Supplier will indemnify and keep indemnified Riverina Fresh and all of its Related Companies, together with all of its or their employees, agents and contractors (**Indemnified Parties**) against all claims, expenses, losses, damages and costs (**Liabilities**) (including all Liabilities arising as a result of damage to a third party's property or injury to or death of any person, and all legal costs in relation to any Liabilities) sustained or incurred by any of the Indemnified Parties arising from:

- (a) any breach by the Supplier of this Agreement;
- (b) any negligent or wrongful act or omission of the Supplier or any of its employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of its obligations under this Agreement; or
- (c) any fraud, dishonesty, misrepresentation or wilful default by the Supplier or any of its employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of its obligations under this Agreement.

10 Dispute

- 10.1** If any dispute arises between the parties, the parties shall for no less than 14 days seek to resolve that dispute through good faith discussions.
- 10.2** If a dispute is not resolved by following the good faith discussions set out in clause 10.1, either party (**Complainant**) may require that the dispute be dealt with in accordance to the following dispute procedures:
- (a) the Complainant must notify in writing the other party to the Agreement (Respondent) in writing of the following:
 - (i) the nature of the complaint;
 - (ii) that the Complainant wishes the complaint to be dealt with in accordance with these dispute procedures; and
 - (iii) the outcome the Complainant wants, (together, the Complaint Notice).
- 10.3** Within 5 business days after receiving the Complaint Notice, the Respondent must give a written acknowledgement to the Complainant stating:
- (a) that the Complaint Notice has been received; and
 - (b) the steps it proposes to be taken to deal with the Complaint.
- 10.4** If the Complaint is not resolved within 60 days after the acknowledgement was given to the Complainant following discussions between the parties, either party may take action to have the complaint resolved by mediation as set out in clause 11.
- 10.5** The Complainant may, at any time, withdraw the Complaint by notice in writing to the Respondent.
- 10.6** In the event that a Supplier has any complaint about matters arising under or in connection with this agreement, they are to direct their complaints to the Milk Supply Manager in writing, who is the complaint handling officer for the purposes of the Code.

11 Mediation

If a party wishes to take a dispute to mediation following efforts to resolve that dispute in accordance with the above provisions of clause 10, the mediation will follow the process set out in the Code.

12 General

12.1 Notices

Either party may give notice to the other in writing by delivering or posting it to the address stated in this Agreement (as amended by written notice from time to time).

12.2 Governing law

This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

12.3 Entire agreement

This Agreement:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

12.4 Priority

If there is any inconsistency between the documents comprising this Agreement, the documents are to be interpreted in the following order of priority:

- (a) this Agreement (including any schedules and attachments to this document);
- (b) the Handbook, and
- (c) the Diary.

12.5 Advice

The Supplier has had the opportunity to seek such legal, financial and other advice as Supplier believes appropriate in the context of this Agreement.

12.6 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

12.7 Assignment

The Supplier may not assign, novate, sub-contract or otherwise deal with any right or obligation under this Agreement, or purport or attempt to do so, without the prior written consent of Riverina Fresh (which Riverina Fresh may withhold in its absolute discretion).

12.8 Amendment

This Agreement may only be amended by written agreement of the parties, with the exception being a when variation is required due to a change of law in accordance with clause 12.9.

12.9 Change of Law

If there is a change in the laws or regulations of the Commonwealth of Australia or any state or territory of Australia, Riverina Fresh may unilaterally amend this Agreement as is required in order for this Agreement to comply with the changed law or regulation. Any such change to this Agreement cannot reduce the Price.

As soon as practicable after the variation, Riverina Fresh must provide the Supplier in writing with the variation, the reason for the variation, and notice of the day the variation takes effect.

12.11 Severability

If a provision or part of a provision in this Agreement is illegal or unenforceable, it will be severed from this Agreement and the remaining provisions or parts of provisions of this Agreement will continue to apply.

12.12 No encumbrances

The Supplier will not encumber, secure or grant any charge over all or any part of the Milk without the prior written consent of Riverina Fresh (which Riverina Fresh may withhold in its absolute discretion).

12.13 Waiver

A party does not waive a right, power or remedy under this Agreement if it fails to exercise, or delays in the exercise of, that right, power or remedy. Any such waiver is only binding if it is in writing signed by the party giving it. A single or partial exercise of a right, power or remedy under this Agreement does not prevent another or further exercise of that or another right, power or remedy under this Agreement.

12.14 Rule of construction

A rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

12.15 Relationship

Nothing in this Agreement creates a relationship of employment, trust, agency, partnership or other fiduciary relationship between Riverina Fresh and the Supplier.

Schedule 1 – Price

The Price payable to the Supplier under this Agreement is calculated in accordance with this Schedule, and for guidance comprises the following elements:

- i. The Minimum Price (being the base rates) as per section 1 below;
- ii. The production payment determined by reference to the total milk solids (fat and protein) supplied (Production Payment) as per section 2 below;
- iii. The assessed quality of the milk (Quality Incentives and Quality Deductions as per section 3 below); and
- iv. Any agreed milk growth incentive (Milk Growth Incentive) as per section 4 below.

For full transparency and ease of reference, Riverina Fresh has included the fees that we charge for Milk collection in this Schedule.

1. Minimum Price

The minimum base monthly prices for the duration of the term of this Agreement are set out in the table below (**Minimum Price**). At their request, the Supplier may receive an income estimate based on their historical supply curve or the Supplier’s forecast production. The income estimate will outline the minimum price plus any applicable Production, Quality & Milk Growth Incentive payments less any relevant charges to provide an estimate of income for the nominated supply period.

		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Contract Pricing	\$/KG Fat	4.67	3.85	3.85	3.85	3.85	4.67	4.67	4.67	4.67	4.67	4.67	4.67
	\$/KG Protein	10.20	8.41	8.41	8.41	8.41	10.20	10.20	10.20	10.20	10.20	10.20	10.20

This is the lowest price Riverina Fresh will pay for Milk sold to Riverina Fresh provided such Milk meets the Milk Quality Standards.

2. Production Payment

The “**Production Payment**” is paid on top of the Minimum Price. It is determined by reference to the total milk solids (fat and protein) supplied by the Supplier to Riverina Fresh during the term of this Agreement.

Production Payments will be made for every kilogram of milk solids supplied at the relevant band (based on total kilograms of milk solids) reached by the Supplier for the month. The Production Payment will be made monthly in arrears and is payable on the combined total milk solids supplied by the Supplier for the month.

Applicable GST will be added to the amounts below.

Production Payment Bands			
Butterfat & Protein / month	Approximate litres*	c/kg Butterfat	c/kg Protein
2,001 – 5000 kg	28001 - 70,000	5.0	11.0
5,001 – 9,000 kg	70,001 – 125,000	10.0	22.0
9,001 – 14,000 kg	125,001 – 195,000	12.0	26.0
14,001 – 19,000 kg	195,001 – 264,000	17.0	37.0
19,001 kg – 24,000 kg	264,001 – 333,000	21.0	46 .0
24,001 kg – 35,000 kg	333,001 – 486,000	25.0	55.0
35,0001 kg and above	486,001 and above	30.0**	66.0**

* Actual payments are based on Butterfat & Protein

** The numbers for 35,0001kg and above represent minimum amounts.

3. Quality

Riverina Fresh awards merit and demerit points to the Supplier according to the quality of the Milk that they supply. These points can attract either a financial bonus or penalty, as outlined below.

3.1 Quality Incentives

There are two milk quality incentives available to the Supplier - an Annual Quality Bonus and a Monthly Quality Bonus.

The Annual Quality Bonus and Monthly Quality Bonus consist of a financial incentive from Riverina Fresh. Both incentive payments are paid at the rates set out in the table below. Payments are made based on milk solids supplied during the applicable period.

Incentive	c/kg Fat	c/kg Protein
Annual Quality Bonus	4.0	10.0
Monthly Quality Bonus	3.0	7.5

For each month of the season, if the Supplier has supplied milk to Riverina Fresh and received zero scaled demerit points then they will be eligible to receive the Monthly Quality Bonus.

The Annual Quality Bonus will be awarded to the Supplier if it has supplied Milk to Riverina Fresh for a minimum of nine months of the season and received a maximum of 10 scaled demerit points per month.

Further details regarding the incentives are available in Handbook.

3.2 Quality Deductions

Based on the calculation of the scaled monthly demerit points as described in this schedule and the Handbook, the amount that would otherwise be payable to the Supplier for milk solids they supply to Riverina Fresh is adjusted according to the percentages set out in the table below:

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Scaled Monthly Demerit Points	0-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-100	101-120	121-140	141-160	161-180	>180
Percentage Adjustment to Milk Payment	0%	-1%	-2%	-3%	-4%	-5%	-10%	-15%	-20%	-25%	-30%	-35%	-40%	-50%

4. Milk Growth Incentive

If Riverina Fresh has agreed in writing to the Supplier's planned increase in production then in addition to the Minimum Price a "Milk Growth Incentive" will be payable to the Supplier. The Milk Growth Incentive is calculated using the previous season (July - June) as the base. The payment will be made on the agreed planned increased supply of fat and protein above each month's production base. This will be paid as:

	August – November	December – July
Butterfat (c/kg)	22	50
Protein (c/kg)	10	23

Further details regarding the Milk Growth Incentive are available in the Handbook.

5. Fees – Stop Charges and Volume Charges

Collections by a milk tanker at a farm incur two collection fees, known as stop charges and volume charges. These charges and adjustments are automatically deducted from monthly milk proceeds and apply to all Milk delivered to Riverina Fresh. The following zone charges apply:

Zone	1	2	3
Stop Charge (\$ / stop)	\$11.42	\$11.42	\$11.42
Volume charge (cents per litre)	0	2.0	3.0

Zone 1 is for farms located in the Wagga Wagga region. Zone 2 is for farms located in the Southern Riverina-Finley Region. Zone 3 is for farms located in the Northern Victoria-Murray Valley region.

6. Milk Payments

The Supplier is paid the Price for the Milk supplied each month plus applicable GST.

Payment for milk supplied during the previous month is made electronically into the Supplier's nominated bank account on or about the fifteenth of the month, unless otherwise agreed with the Supplier.

The Supplier will receive a record of their milk pay in the form of a monthly statement, which will be posted and/or emailed to their nominated address on or about the fifteenth of the month.

7. Justification of Minimum Price

The Minimum Price above has been adopted based on Riverina Fresh's assessment of factors including the current market dynamics for farmgate fresh milk, current and expected seasonal conditions, the current and expected needs of our customers, our production requirements, and current and expected future prices for dairy products.