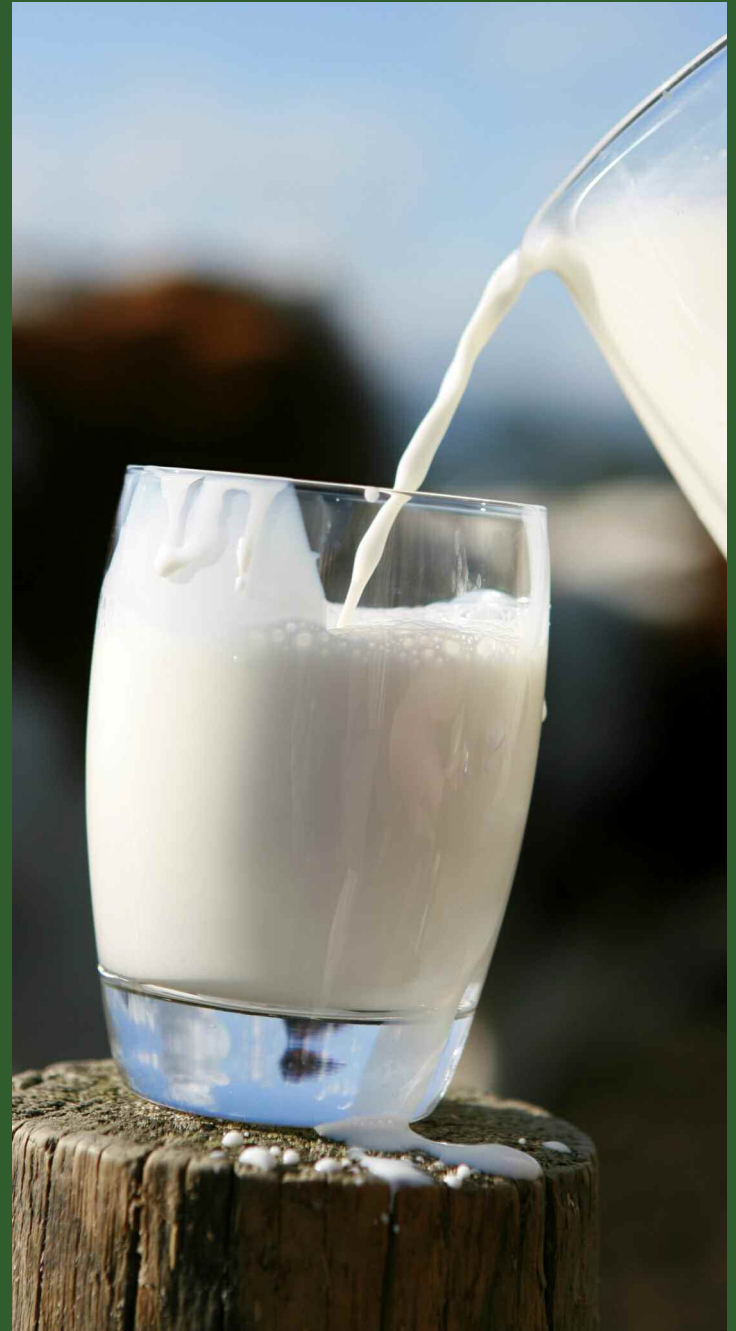
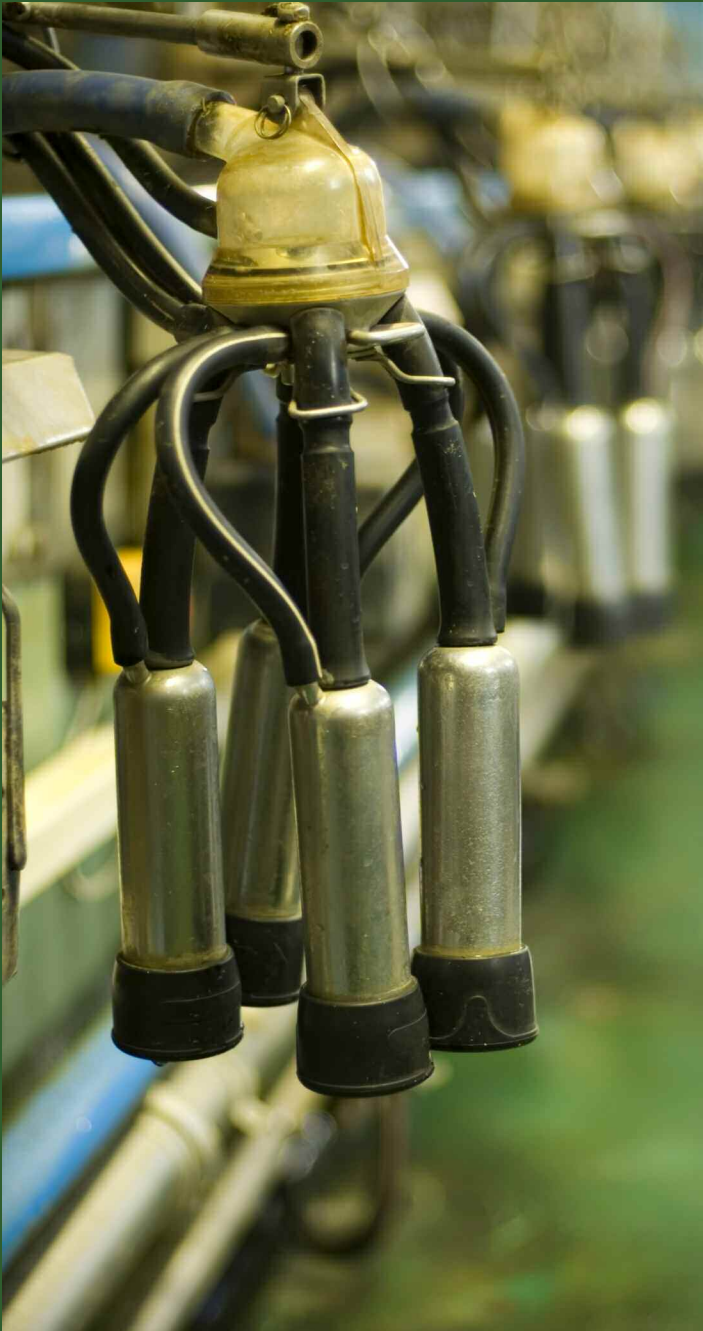


Milk Purchase Agreement



NFU/ NFU Scotland Approved Milk Purchase Agreement

The parties

This Agreement is between:

Name and details of milk purchaser

(insert the name and address of the Purchaser if unincorporated; for companies give the name of the company and details of incorporation such as a company registered in England whose company number is ... and whose registered office is at ...)

(‘the Purchaser’)

and

Name of producer

[insert partnership name if a partnership; for companies give the company’s name and details of incorporation such as a company registered in England whose company number is ... and whose registered office is at]

(‘the Producer’)

Name and address of farm premises

(‘the Farm(s)’)

to record the terms on which the Purchaser will purchase milk supplied by the Producer.

It is agreed as follows:

1. Definitions

In this Agreement:

‘the Agreement’ means the Milk Purchase Agreement and associated Schedules only and it does not include any other documentation.

‘Milk Quality Requirements’ means the requirements set out in Schedule 3 of the Agreement.

2. (A) Commencement and term

This Agreement shall take effect on [date] (‘the Commencement Date’) and will continue until terminated in accordance with the terms of this Agreement.

OR*



(B) Commencement and term

This Agreement shall take effect on [date] ('the Commencement Date') and will continue for a term of [1 year] from the Commencement Date. Thereafter the contract will continue for further periods of [1 year] from the anniversary date until it is terminated by either party by giving [] weeks written notice to the other party prior to the completion of each [1 year] period.

**The parties must select either clause A or clause B and delete the unwanted clause. With clause A the contract will continue indefinitely without a fixed term, whereas with clause B the contract will become a rolling [1 year] contract until the contract is terminated by one of the parties.*

3. (A) Sale and purchase obligations for Producer entire output of milk

With effect from the Commencement Date, the Producer agrees to sell to the Purchaser, and the Purchaser agrees to buy from the Producer, throughout the term of this Agreement, the entire milk output of the Producer from the Farm, [other than milk retained by the Producer for his own consumption or processing].

OR*

(B) Sale and purchase obligations for defined volume of milk

With effect from the Commencement Date, the Producer agrees to sell to the Purchaser, and the Purchaser agrees to buy from the Producer, the quantities of milk set out in Schedule 1 of this Agreement produced on the Farm(s).

For the avoidance of doubt, the Producer may also sell milk to other purchasers and is not subject to any exclusivity restrictions in favour of the Purchaser whether express or implied.

**The parties must select either the defined volume clause, or the entire output clause and delete the unwanted clause.*

4. Price and payment

- 4.1 The Purchaser will pay to the Producer the price of the milk as determined in accordance with Schedule 1 of this Agreement ("the Price").
- 4.2 The Purchaser will pay the Price to the Producer for milk made available to the Purchaser that either was or should have been collected by the Purchaser in accordance with the terms of this Agreement. Such payment will be paid monthly, on or before the [] day of the month, in the month following the month of collection (or the month in which the milk should have been collected). The payment will be made by BACS transfer.

5. Term and termination

This Agreement will, subject to Clause 6 (variation), Clause 15 (termination on breach), Clause 16 (assignment) and Clause 21 (force majeure), continue in force until terminated either by the Producer giving [.....] months' notice in writing to the Purchaser, or by the Purchaser giving [.....] months' notice in writing to the Producer.

This Clause should be deleted in its entirety if the parties have opted for option B, the fixed term contract, at Clause 2 above. If this Clause is removed, then the parties will have to make sure that the numbering of all subsequent Clauses and references to Clauses is corrected (because Clause 6 will become Clause 5 and so on).



6. Variation

- 6.1 The parties may vary the Schedules to this Agreement, provided that any such variation must be agreed by both parties. Any variation must be recorded in writing and must be signed by both parties to this Agreement.
- 6.2 Either party may propose a variation to the Schedules of this Agreement. The proposed variation must be notified in writing to the other party.
- 6.3 In the event that the parties are unable to come to an agreement following a proposed variation to the Schedules of this Agreement in accordance with Clause 6.2 within a period of [8] weeks then the Agreement may be terminated by either party with immediate effect.

7. Licensing of the Farm

The Farm, including any production and processing areas and linked holdings, must be licensed for the production of milk by the appropriate authority.

8. Quota

- 8.1 The Producer will hold sufficient quota to comply with all relevant quota regulations in force from time to time. The Producer will on request supply the details and documentation of quota to the Purchaser, if the Purchaser reasonably requires it, and will inform the Purchaser of relevant changes to quota within a reasonable period.
- 8.2 Under the appropriate EU Regulation, the Purchaser, as the receiving dairy, would be liable to pay Superlevy on all supplies received from their contracted producers in excess of the cumulative total of all the individual producers' quota. This would only apply if the total quota in the UK was exceeded. In the event of this occurring, the Purchaser may identify those producers that have exceeded their available quota and in turn deduct the appropriate proportion of the Superlevy from them.

9. Sampling

- 9.1 The Producer will allow the Purchaser or its duly authorised representative(s) to take samples of the milk made available by the Producer for collection by or on behalf of the Purchaser. On undertaking any such sampling, the Purchaser will follow the sampling procedures and use the analytic tests set out in Schedule [2] of this Agreement.
- 9.2 The test results established in accordance with Schedule [2] of this Agreement will be used by the Purchaser to fix quality and compositional payments (in accordance with Schedule [1] of this Agreement) and will be communicated to the Producer as soon as reasonably practicable.
- 9.3 Where the test results demonstrate a failure in respect of antibiotic presence, the Producer may request that dilutions are performed on the sample. Where the Producer has further reason to suspect that the results of an antibiotic test are invalid, he may also request independent verification of the test results by an independent laboratory. The parties agree that they will use their best endeavours to reach an agreement on the appointment of the independent laboratory. The results of independent verification shall be taken by both Producer and Purchaser as conclusive.
- 9.4 The Producer may request access to traceability samples from the Purchaser in order to perform additional milk quality testing.



10. Collection

- 10.1 The Purchaser will arrange collection of the milk made available by the Producer, and the Producer will ensure that the milk is available for collection at or around the collection time agreed with the Purchaser. The Producer will maintain the access route and collection area to a reasonable standard.
- 10.2 On collection of the milk made available by the Producer, the Purchaser will accurately measure the volume of milk collected from the Producer by way of a flow meter or otherwise. The Purchaser shall ensure that any flow meter or other volumetric measurement is regularly calibrated. At each collection, the Producer may request from the Purchaser, and on such request the Purchaser will duly supply, a printed or electronic receipt detailing the volume of milk collected on that occasion.
- 10.3 On the [] th day of each month, the Purchaser will send to the Producer a written summary of all milk collected from the Producer in the previous month. The summary will detail the date of each collection and the volume of milk collected on that day.
- 10.4 If on any given occasion the Purchaser is unable to accurately measure the volume of milk collected from the Producer, then the volume for that occasion will be deemed to be the average of the volumes collected on the two collections immediately before and the two collections immediately after the occasion in issue.

11. Property

Property and risk in the milk collected from the Producer shall pass to the Purchaser upon the milk entering the equipment of the Purchaser or the Purchaser's agent on collection.

12. Warranty

- 12.1 The Producer warrants that the milk made available to the Purchaser under this Agreement is fit for human consumption and is free from any abnormality which might be injurious to public health, or directly affect the sale of the product.
- 12.2 The Producer warrants that the milk is produced by cows that are in good health and to the best of the Producer's knowledge free of any disease which could materially affect the milk and is produced in accordance the milk quality standards specified in Schedule 3.
- 12.3 The Purchaser may reject all or part of any consignment which does not comply with any of the requirements set out in Schedule 3.
- 12.4 The Producer will notify the Purchaser before, during, or [immediately/ within a specified time-frame] after collection if he becomes aware that the milk does not meet the standards set out in Schedule 3.
- 12.5 The Producer shall ensure that milk produced on the farm complies with the standards of the Assured Dairy Farms Scheme.

13. Indemnities

- 13.1 The Producer agrees to indemnify the Purchaser for any direct costs it reasonably incurs as a result of any breaches by the Producer of the relevant quota regulations in force from time to time.
- 13.2 The Producer agrees to indemnify the Purchaser for any direct costs it reasonably incurs as a result of a breach by the Producer of the Milk Quality Requirements arising from milk supplied by the Producer which is mixed with the milk from other producers.



14. Insurance and limitation of liability

14.1 The Producer shall arrange:

14.1.1 appropriate product and public liability insurance [up to £5 million]; and

14.1.2 insurance to cover any direct costs and consequential losses of the Purchaser, [up to £5 million], whether or not the Producer would be liable for those costs and losses under the terms of this Agreement;

and on demand the Producer will provide evidence of such insurances to the Purchaser.

14.2 The Purchaser agrees that, to the extent permitted by law, in all circumstances the Producer's liability to the Purchaser (whether under this Agreement or otherwise) is limited to the sums for which the Producer is insured under the Producer's insurance policy, obtained by the Producer in accordance with Clause 14.1.

15. Termination on breach

15.1 If the Purchaser properly rejects all or part of a consignment of milk for not complying with the Milk Quality Requirements 3 or more times within a 1 month reference period, the Purchaser may terminate this Agreement by giving 1 month's written notice to the Producer.

15.2 Either party may terminate this Agreement if they have given 14 days' notice in writing to the other party to remedy a material breach, and the other party has failed to remedy the breach or is unable to remedy the breach within that period.

15.3 Either party may terminate this Agreement with immediate effect if the other party ceases to carry on its business, or a substantial part of its business, or becomes unable to meet its debts as they fall due, or otherwise becomes insolvent, has a Receiver, Liquidator or Administrator appointed, or is wound up or sequestrated.

16. Assignment

16.1 Subject to Clause 16.2, the rights and obligations of the parties under this Agreement are personal and shall not be assigned, sub-contracted, delegated, transferred, mortgaged, charged or otherwise disposed of.

16.2 The rights and obligations of the parties under this Agreement may be assigned to the parties' successors in title where:

16.2.1 the party assigning to its successor in title gives notice in writing to the other party of the assignment, detailing who the successor in title will be; and

16.2.2 the party receiving notice of the assignment does not object to the assignment within 60 days of receiving the notice of the assignment;

16.3 If the party does object, it is to make its objection in writing to the other party within 60 days of receiving the notice of the assignment. If a party wishes to assign its rights and obligations under this Agreement in accordance with Clause 16.2, but the other party objects to the assignment in accordance with Clause 16.2.2, then, following the service of the objection, either party may terminate this Agreement by giving 3 months' written notice to the other. This right of termination may not be exercised if the notice of assignment is subsequently withdrawn.



17. Contracts (Rights of Third Parties) Act 1999

The application of any rights derived from S.1(2) of the Contracts (Rights of Third Parties) Act 1999 is expressly excluded, and the parties intend that no term of this Agreement may be enforced by a third party.

18. Notice

All notices to be given under this Agreement will be in writing and will be sent by recorded delivery post to the other party's address as set out in this Agreement, or as otherwise agreed in writing. Notices sent in accordance with this Clause will be deemed served 2 business days after the date of posting.

19. Severability

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, then that term or provision will not affect the other terms or provisions of part or the whole of this Agreement, and that term or provision will be deemed to be modified to the extent necessary in the court's opinion to render that term or provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties in this Agreement.

20. Waiver

No failure or delay or other indulgence on the part of either party to exercise any right or remedy under this Agreement will be construed or operate as a waiver, nor will any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies by law.

21. Force majeure

21.1 Neither party will be in breach of this Agreement if, as a result of circumstances beyond that party's control, the performance of its obligations under this Agreement becomes either physically or legally impossible.

21.2 If either party suspends its performance of its obligations in the circumstances set out in Clause 21.1 for longer than [28] consecutive days, then either party may terminate this Agreement with immediate effect on sending written notice to the other party.

21.3 If either party suspends its performance of its obligations in the circumstances set out in Clause 21.1 on 3 or more separate occasions in any [6] month period, then either party may terminate this Agreement by giving [3] months' written notice to the other.

22. Entire agreement

This Agreement and the Schedules constitute the entire agreement between the parties and supersede all previous agreements made between the parties.

23. Governing law and jurisdiction

This Agreement shall be governed by and interpreted by the laws of [England and Wales] [or Scotland]. Subject to any agreement by the parties to submit to alternative dispute resolution under Clause 24, this Agreement shall be subject to the jurisdiction of the courts of [England and Wales] [or Scotland].



24. Dispute resolution

The parties agree that, in the event of any dispute arising between them in relation to this Agreement, they will consider resolving the dispute using an appropriate form of alternative dispute resolution, before issuing Court proceedings.

[Signatures]

[Dates]



SCHEDULE 1:

PRICE, COMPOSITION AND SEASONALITY

Base milk price

The Base Price should be inserted here. It must be objectively defined to ensure legal certainty, and may be either:

- a. a nominal sum*
- b. a formula*

[Contracted milk supply volume]

NB applicable only in where Clause 2B of the Contract is used

[Agreed and fixed [monthly] volume(s)]

NB applicable only where Clause 3B of the Contract is used.

Tolerance

=/- [] %/ litres

NB applicable where Clause 3B of the Contract is used to allow the parties to determine an appropriate [monthly] tolerance in respect of the defined volume that will be supplied by the Producer to the Purchaser under the Contract

Compositional payments

This section should detail the basic compositional requirements of the Contract, together with any penalties or bonuses that may be applicable. for example:

Butterfat

- b. Penalties
- c. Bonuses

Protein

- a. Penalties
- b. Bonuses

Seasonality/ Profile

The Schedule should, where applicable detail the bonuses or deductions that are made to the base price in accordance with seasonality arrangements and/or any determined milk production profile.

Other specifications

To include bonuses/ charges for collection arrangements, transport and so on



SCHEDULE 2:

TESTING

1. Sampling procedures

The details of the process by which raw milk is sampled by the purchaser and the frequency of sampling should be entered here. This section should also detail the standards to which any samples retained by the Purchaser and Producer should be maintained to ensure that, as far as possible, both have been maintained in uniform conditions in the event of any discrepancy arising. This section should also detail any follow-up testing that is undertaken by the purchaser (for example where a sample tests positive for antibiotic presence).

2. Analytic tests

This section should set out the tests that are used by the milk purchaser to analyse the milk, notably for the presence of antibiotics or other inhibitory substances. This allows the producer to verify his own samples with the same test as the purchaser.

3. Appeals procedure

This section should outline an appropriate appeals procedure in relation to milk payment testing.



SCHEDULE 3:

MILK QUALITY REQUIREMENTS

1. Temperature

All milk made available to the Purchaser at collection must be cooled to a temperature of [] degrees Celsius within [30] minutes of the completion of milking.

2. Hygienic quality specification and adjustments

Details of failure levels and penalties should be entered as appropriate, for Bactoscan, somatic cell count, antibiotic presence/ other inhibitory substances and extraneous water

3. Freezing point depression

Deductions may be applied where freezing point depression is less than 0.509 m_C

4. Milk protein

(Where applicable, minimum content standard)

5. Butterfat

Minimum requirement 3.5%

6. Colostrum

Milk collected by the Purchaser shall not be not produced from any cow which has calved within the previous 72 hours and should not contain any colostrum

7. Veterinary medicines

Milk collected by the Purchaser shall not be produced from any cow which has been treated with veterinary medicines unless the veterinary medicines are used as prescribed and the correct milk withdrawal period for those veterinary medicines has been observed.



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