

COMMERCIAL IN CONFIDENCE
EXCLUSIVE MILK SUPPLY AGREEMENT
("EMSA")

Brownes Contract ID



BROWNES	Brownes Foods Operations Pty Ltd ABN 60 146 849 881 22 Geddes Street, Balcatta, WA 6021
SUPPLIER	
TRUST	
TRUSTEE	
ANCILLARY DOCUMENTS	Trust Terms <input type="checkbox"/> Personal Guarantee <input type="checkbox"/>
FARM	
COMMENCEMENT DATE	
TERMINATION DATE	
TERMINATION NOTICE DATE	
COOLING OFF PERIOD	This Agreement is subject to a cooling off period of 14 days from Commencement Date
SPECIAL TERMS	<ol style="list-style-type: none">1. The Supplier has agreed to supply a2 Beta Casein Protein Milk.2. The special terms set out in Appendix E apply to the supply of a2 Beta Casein Protein Milk.3. In addition to the payment of the Seasonal Price Brownes will pay to the Supplier a management fee calculated in accordance to Appendix F for the supply of a2 Beta Casein Protein Milk.4. The Supplier agrees to abide by and sign any requirements of supply by The a2 Milk Company (Australia) (a2MC).5. a2 Certification - In order for the Supplier to supply milk to Brownes in accordance with this Exclusive Milk Supply Agreement, and that milk be included in the a2 milk pool, the Supplier must hold and maintain an a2 Certification which the Supplier has obtained from The a2 Milk Company (Australia) Pty Ltd, which certification includes testing of each individual cow in the Supplier's herd for the presence of the A2/A2 gene.

The Agreement consists of this document referred to as the EMSA, together with the Seasonal Pricing Letter, the Standard T&Cs (Appendix D), the Ancillary Documents (Appendix B), the Farm Supply Manual (Appendix C) and Appendix E & F relating specifically to the supply of a2 Beta Casein Milk. Collectively those documents comprise the Agreement that sets out the basis on which the Supplier will supply to Brownes Foods Operations Pty Ltd (Brownes), and Brownes will collect and pay for, the Milk during the Term.

Signed for Brownes Foods Operations Pty Ltd by an authorised officer in the presence of

←

Signature of officer

Signature of witness

Name of officer and date (print)

Name of witness (print)

Office held

Executed by an authorised officer
In the presence of

Signature of Witness

←

Signature of Director

←

Name of Witness

Date

Address of Witness

1 EXCLUSIVE SUPPLY OF MILK

- (a) The Supplier must supply all the Milk exclusively to Brownes during the Term.
- (b) The Supplier must not supply any Milk or products processed from Milk (including any Milk in excess of the Annual Supply Volume or Monthly Supply Profile) to any person other than Brownes during the Term.
- (c) Subject to clause 4, Brownes will buy all of the Milk from the Supplier during the Term in accordance with the terms of this Agreement.
- (d) The Supplier and Brownes must at all times deal with each other in Good Faith.

2 PRICE FOR THE MILK

- (a) Subject to clause 2(b), for the Milk supplied in accordance with the Agreement, Brownes will pay to the Supplier the Seasonal Price, on a monthly basis. The Seasonal Price and Pricing Terms in the Seasonal Pricing Letter will take effect from the date specified in the Seasonal Pricing Letter (**Effective Date**) and will continue to apply until amended or a new Seasonal Pricing Letter is issued. At no time will the Seasonal Price or Pricing Terms be applied retrospectively.
- (b) Subject to clause 5.4 (b), the Seasonal Price may be adjusted by the Pricing Terms as set out in the Seasonal Pricing Letter.
 - (i) Any Seasonal Pricing Letter that details a Seasonal Price below Minimum Price (Unilateral Prospective Step down) can only take effect under Exceptional Circumstances.
 - (ii) Where a Unilateral Prospective Step Down in Minimum Price occurs the Supplier is afforded the right to terminate this EMSA giving 21 days' notice after receiving the notice from Brownes of the Prospective Step down. The Supplier may in turn rescind that notice of termination before the end of those 21 days.
- (c) Brownes agrees to underwrite the minimum price for all volumes specified in the Agreement for the Term of the Agreement with all other terms and conditions of the Agreement remaining in full force and effect.
- (d) Currently Minimum Price means 100% of the final net farm gate price received for all milk produced at the farm and supplied by the Supplier to Brownes during the 2020/2021 season ending on 30 June 2021 converted to equivalent cents per litre price. This price will consider the issued Seasonal Price, Milk Collection Fee, Fat Adjustment, Protein Adjustment and Quality Adjustment as issued on the Seasonal Pricing Letter for that period.

3 QUALITY OF THE MILK

- (a) The Supplier must comply with all obligations and requirements concerning the quality of Milk supplied as set out the Agreement.
- (b) Brownes or any of its employees or agents shall have the right to test Milk supplied by the Supplier at any time for any of the following:
 - (i) contamination (being the presence of antibiotics or blood);
 - (ii) dilution; and
 - (iii) fat, protein, total plate count, somatic cell count, or other tests as required from time to time.
- (c) Brownes reserves the right to cease collecting and/or paying for Milk from the Supplier as follows:

- (i) Brownes will not pay for Grade 4 Milk if the Supplier has supplied Milk in Grade 4 (as defined in Section D of the Seasonal Pricing Letter) for two or more months in any 12 month period;
 - (ii) Brownes will not pay for Grade 5 Milk (as defined in Section D of the Seasonal Pricing Letter), where such Grade 5 Milk has been delivered it is at Brownes sole discretion as to what it does with that Milk; and
 - (iii) Brownes will not collect or pay for any contaminated milk other than on the terms set out in the Seasonal Pricing Letter.
- (d) Milk quality premiums or deductions apply as per the Seasonal Pricing Letter.
 - (i) SCC tests are conducted by an independent credited laboratory (currently Farm West) daily and TPC Counts tested internally at Brownes at various times throughout the month.
 - (ii) SCC monthly average is calculated using a "normalised average" where a daily result that is more than one standard deviation from the mean (simple average) gets excluded from average calculation as it is assumed "abnormal".

The Supplier retains the right to independently test TPC should there be a significant issue with TPC results from Brownes.

4 ANNUAL SUPPLY VOLUMES AND MONTHLY SUPPLY PROFILE

- (a) The Supplier acknowledges that:
 - (i) supply of Milk in accordance with the Annual Supply Volume and Monthly Supply Profile as set out in Appendix A is critically important so that Brownes can manage its demand for milk across each Year of the Term and each month within a Year; and
 - (ii) if Brownes receives Milk in excess of the Annual Supply Volume or Monthly Supply Profile as set out in Appendix A, it may be faced with an oversupply of milk (whether in a given month or over a Year) which may affect Brownes' ability to process and sell milk profitably, and this may have an impact on Seasonal Price in future periods.
- (b) The Supplier must use best endeavours to supply Milk to meet the Annual Supply Volume and Monthly Supply Profile as set out in Appendix A throughout the Term and must operate its business in good faith with the aim of meeting those goals.
- (c) In any month where the Supplier supplies a volume of Milk which is more than 10% below the Monthly Supply Profile as set out in Appendix A, the shortfall in volume is known as a Milk Deficit.
- (d) If a Milk Deficit occurs, Brownes may require the Supplier, by written notice within 14 days of a Milk Deficit occurring, to meet to agree on corrective actions to build volumes to meet the Monthly Supply Profile. The Supplier must take all reasonable steps to act on and implement the agreed corrective actions.
- (e) If the Supplier becomes aware at any time that it is likely that it will supply a volume of Milk which is more than 10% below the Monthly Supply Profile as set out in Appendix A for that month or any future months, the Supplier must immediately advise Brownes in writing (**Milk Deficit Notice**) of the likely Milk Deficit. The Milk Deficit Notice must specify the estimated likely Milk Deficit, and the likely time periods over which the Milk Deficit will occur.
- (f) The Supplier and Brownes may at any time meet and renegotiate the Monthly Supply Profile and by mutual agreement either increase or decrease the amount of Milk defined in the Monthly Supply Profile.

5 TERM AND TERMINATION

5.1 TERM

This Agreement will commence on the Commencement Date and will continue until a party gives 12 months' notice of termination, such notice not to be given earlier than 12 months before the Termination Date, subject to earlier termination under this clause 5.

Subject to this EMSA being longer than 3 years in Term and should the circumstance arise at the Termination Date that the Supplier is unable to find an alternate processor, then the Supplier may wish to exercise an option of a further 12 months from the Termination date.

The Supplier must give the Extension Notice to Brownes

- (a) no earlier than 30 days prior to the Termination Date
- (b) no later than 7 days prior to the Termination Date.

Brownes undertakes to notify in writing the Supplier of the pending Notice of Termination period 1 month prior to the notice period taking effect, i.e. 13 months prior to the Termination Date noted on the front page of the EMSA.

5.2 TERMINATION

Either party may suspend or terminate this Agreement immediately by giving notice if:

- (a) Either party breaches this Agreement and fails to remedy the breach within 14 business days (or such longer period as agreed to between the parties) after receiving notice to remedy the breach;
- (b) any step is taken by a mortgagee to take possession or dispose of the whole or part of either parties 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 like person of the whole or part of the Supplier's assets, operations or business or a similar situation occurs; or
- (c) Brownes may terminate this agreement if it reasonably forms the view, the view being in accordance with Dairy Australia's Animal Welfare recommendations that the Supplier is failing or has failed to follow acceptable animal welfare practices.

Where Brownes suspends the performance of the Agreement, it may do so for such period as Brownes sees fit. During the period of suspension the Supplier shall not have any obligation to supply Milk and Brownes shall not have any obligation to collect or pay for Milk. The suspension of the Agreement will not have any effect on the Term of the Agreement. Brownes shall not be liable for any loss or damage suffered by the Supplier arising out of or relating to Brownes terminating or suspending the Agreement pursuant to this clause.

5.3 TERMINATION OVER MILK DILUTION

The Supplier must not intentionally or deliberately tamper with or dilute any milk supplied. Brownes may terminate this Agreement immediately by giving the Supplier notice if this condition is breached by the Supplier.

5.4 TERMINATION BY SUPPLIER

- (a) The Supplier may terminate the Agreement by giving Brownes notice if 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 like person of the whole or part of Brownes' assets, operations or business.
- (b) If an amended or new Seasonal Pricing Letter is issued by Brownes under clause 2, subject to the Seasonal Price being below the Minimum Price, which then has a material adverse impact on the Supplier, then at any time within 21 days after receiving notice of the amended or new Seasonal Pricing Letter, the Supplier may terminate the Agreement by a further 21 days-notice in

writing to Brownes (Notice Period). Subject to this clause 5.4 (b) the Supplier may rescind the termination notice at any time within those 21 days.

- (c) Before the date of termination under clause 5.4(b), either party must (on request from the other party) reasonably negotiate with the other party to seek to reach agreement on the terms of a new Seasonal Pricing Letter that are mutually acceptable to the parties. If the parties:
- (i) reach agreement prior to expiry of the Notice Period, then the Supplier's termination notice under clause 5.4(b) will automatically be withdrawn and the Agreement will continue on the terms agreed by the parties; or
 - (ii) do not reach agreement prior to expiry of the Notice Period, this Agreement will expire on the last day of the Notice Period.

5.5 TERMINATION BY EITHER PARTY

Either party may terminate this Agreement immediately by giving notice to the other party if a party (the "first party") engages in any conduct which:

- (a) constitutes intimidation or harassment, or which is offensive or abusive, or which otherwise contributes to an unsafe working environment with respect to the other party (the "second party") or its employees, and
- (b) which is in breach of the law; and

the first party fails to take steps to remedy the breach to the reasonable satisfaction of the "second party" within 5 business days (or such longer period as the second party agrees to) after receiving notice from the second party requiring it to remedy the breach. The second party shall not be liable for any loss or damage suffered by the first party arising out of or relating to a party terminating the Agreement pursuant to this clause.

5.6 ANIMAL WELFARE

Brownes may terminate this agreement if it reasonably forms the view, the view being in accordance with Dairy Australia's Animal Welfare recommendations, that the Supplier is failing or has failed to follow acceptable animal welfare practices.

6 DISPUTE RESOLUTION

If there is a dispute between Brownes and the Supplier arising out of or in relation to this Agreement, the parties must resolve their dispute in accordance with the procedure set out below. A party may not commence court proceedings, other than to seek interlocutory or interim relief without complying with the dispute resolution procedure set out below.

6.1 NOTICE OF DISPUTE AND NEGOTIATION

- (a) The party with the complaint (**Complainant**) must advise the other party (**Respondent**) in writing of:
 - (i) The nature of the dispute;
 - (ii) The relief the Complainant seeks; and
 - (iii) The steps the Complainant considers will achieve a resolution of the dispute (**Complainant's Notice**); and
 - (iv) Within 5 working days after receiving the Complainant's notice respond stating that the notice of the complainant has been received and the steps to be taken to deal with the complaint.
- (b) Following receipt of the Complainant's Notice, the Supplier and Brownes must seek to resolve the dispute by negotiation. If the Supplier and Brownes cannot resolve the dispute by negotiation within 60 days of receipt of the Complainant's Notice the parties may agree to resolve the dispute

by mediation in accordance with clause 6.2 below. If the parties do not agree to refer the dispute to mediation within 60 days of receipt of the Complainant's Notice, either party may commence court proceedings to resolve the dispute.

6.2 MEDIATION

- (a) Either party may refer the dispute to mediation in accordance with the Competition and Consumer (Industry Codes-Dairy) Regulations 2019, Section 48. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by the mediation adviser in accordance with the Competition and Consumer (Industry Codes-Dairy) Regulations 2019.
- (b) The mediation must take place in Australia.
- (c) The Supplier and Brownes must each pay an equal share of the costs of the mediator and any ancillary costs. The Supplier and Brownes must otherwise each pay their own costs of and incidental to the mediation.
- (d) The Supplier and Brownes must not disclose to any person other than that party's professional advisers or insurers information obtained during the mediation without the prior written consent of the other party or as required by law or to implement or enforce any settlement agreement.

7 SELLING OR LEASING THE FARM

- (a) If the Supplier wishes to sell, lease or transfer its Farm, with the current Brownes EMSA then the Supplier must obtain Brownes' prior written consent to that sale, lease or transfer. Brownes will not unreasonably withhold such consent if Brownes is satisfied that the new owner or lessee has the ability to comply with the terms of the Agreement and is willing to enter into an agreement to carry out the Supplier's obligations under this Agreement.
- (b) If the Supplier sells, leases or transfers the Farm, and the new owner or lessee enters into an agreement with Brownes as contemplated by clause 7(a), the Supplier will be released from any further obligations or liability under this Agreement, provided any loans or advances are fully settled.

8 RETIREMENT FROM THE DAIRY INDUSTRY

- (a) If the Supplier (or in the case of a Supplier which is incorporated, the principal controlling person who operates the Supplier) wishes to retire from the dairy industry the Supplier must notify Brownes at least 6 months before the date on which they intend retiring and ceasing the production of milk on the Farm (**Retirement Notice**).
- (b) If the Supplier has given a Retirement Notice to Brownes under clause 8(a), Brownes agrees to release the Supplier from the supply obligations and terminate the Agreement, such release and termination to take effect (subject to any notice of termination given or that may be given under clause 6 by either party) 6 months from the date on which Brownes receives that notice or the date specified by the Supplier in the Retirement Notice as the date on which the Supplier intends to retire and cease production of milk on the Farm, whichever is the latter, provided that Brownes is satisfied that the retirement is a genuine long term retirement from the dairy industry.

9 GENERAL

9.1 REPRESENTATION AND WARRANTY

- (a) The Supplier represents and warrants to Brownes, subject to the terms in clauses 4 and Appendix C below, that:
 - (i) it has control over all Milk throughout the Term;
 - (ii) no other person carries on (or will carry on) activities at the Farm where that person has (or will have) any control over any Milk at any time during the Term;
 - (iii) no other person is entitled to any milk produced at the Farm or products produced from that milk (including but not limited to all Milk); and

- (iv) it has in its possession a copy of the Farm Supply Manual, being the version that is current at the time of entering into this Agreement.

9.2 FARM SUPPLY MANUAL (APPENDIX C)

- (a) Brownes may, from time to time vary, remove or replace terms of the Farm Supply Manual (Appendix C).
- (b) Brownes will use reasonable endeavours to provide reasonable notice to the Supplier of any changes to the Farm Supply Manual and seek written agreement prior to those changes taking place.
- (c) Where such change leads to a material adverse impact on the supplier, and Brownes is unable to remedy the situation within 15 days of receiving notice from the supplier, the supplier may issue notice to Brownes to terminate the EMSA without penalty.
- (d) Clause 9.2 (c) shall not apply where such change is the result of a regulatory or statutory change to industry practice.

9.3 CONFLICT BETWEEN DOCUMENTS

If there is any inconsistency between them, these documents will prevail in the following order: the provisions in the Seasonal Pricing Letter; then this document; then the Farm Supply Manual (Appendix C) and then the Standard T&Cs (Appendix D).

9.4 NOTICES

All notices under this Agreement must be in writing. Either party may give notice to the other in writing by email or by delivering or posting it to the address stated on the front page of in this document (as amended by notice from time to time).

9.5 JOINT AND SEVERAL

A promise on the part of two or more persons binds them jointly and severally.

9.6 GOVERNING LAW

This document and the balance of the Agreement shall be governed by laws of the State of Western Australia. The parties irrevocably agree that the courts of the State of Western Australia shall have exclusive jurisdiction.

9.7 ADVICE

The Supplier represents and warrants to Brownes that it has had the opportunity to seek such legal and other advice as the Supplier believes appropriate in the context of this document and the balance of the Agreement.

9.8 COSTS

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

9.9 PRIOR AGREEMENTS

- (a) This Agreement replaces all previous agreements between the parties concerning its subject matter and constitutes the entire agreement between the parties.
- (b) For the avoidance of doubt, clause 9.9(a) does not affect any rights and obligations of the parties accrued in respect of any previous agreement prior to the date of this Agreement.
- (c) For the avoidance of doubt where an EMSA is entered into immediately post the expiry of a preceding EMSA and the new EMSA is subsequently terminated under the 14 days cooling off period, the requirement for 12 months' notice still applies.

9.10 FORCE MAJEURE

Where any failure or delay by the Supplier in the performance of its obligations under this Agreement is caused, directly or indirectly, by any act, event or cause, other than a lack of funds, which directly or indirectly results in the Supplier being prevented from or delayed in performing any of its obligations under this Agreement and is beyond the reasonable control of the Supplier (**Force Majeure Event**):

- (a) the Supplier must as soon as practicable give Brownes written notice of that fact;
- (b) the Supplier is not liable for that failure or delay;
- (c) the Supplier's obligations under this Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event; and
- (d) if the Force Majeure Event continues for more than 90 consecutive days and while it continues, Brownes may, at its sole discretion, terminate this Agreement by giving written notice to the Supplier.

9.11 UNILATERAL CHANGES TO THIS AGREEMENT

Brownes reserves the right to unilaterally change this agreement in accordance with the Competition and Consumer (Industry Codes-Dairy) Regulations 2019, Section 33 if there is a change in a Commonwealth, State or Territory law:

- (i) to the extent necessary to comply with the law; but
- (ii) without reducing the minimum price

10 DEFINITIONS

In this EMSA:

Annual Supply Volume means the annual Milk supply volume requirements as set out in Appendix A of this document as amended from Year to Year in accordance with paragraph 3 in Appendix A.

Exceptional Circumstances has the same meaning as in section 28 of the Dairy Code, namely circumstances that;

- (a) Are temporary; and
- (b) 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 decisions made by the processor.

Extension Notice means notice given to Brownes with the intent to the extend the termination date by 12 months.

Farm means properties known by farm numbers

Farm Supply Manual means the manual prepared by Brownes titled the Brownes Farm Supply Manual as amended by Brownes from time to time in accordance with clause 9.2.

Good Faith has the same meaning as in section 11 of the Dairy Code

Milk means cow's milk produced at the Farm during the Term which meets the requirements for the quality of milk set out in the Seasonal Pricing Letter and the Standard T&Cs.

Milk Deficit has the meaning given in clause 4(h).

Milk Deficit Notice has the meaning given in clause 4(j).

Monthly Supply Profile means the monthly supply requirements set out in Appendix A.

Seasonal Price means the Seasonal Price set out in Section A of the Seasonal Pricing Letter from time to time.

Seasonal Pricing Letter means the 'Brownes Seasonal Pricing Letter' issued to the Supplier and any subsequent amendment to it. The Seasonal Pricing Letter shall contain:

- (a) the Seasonal Price, any adjustments to the Seasonal Price and
- (b) any other price penalties, payments, adjustments or rebates (**Pricing Terms**).

The Seasonal Price and Pricing Terms in the Seasonal Pricing Letter may be adjusted by Brownes from time to time. If a Seasonal Pricing Letter states that the Seasonal Price is 'fixed' for a specified period, Brownes will neither increase nor decrease the Seasonal Price for supplies of Milk during that period. Brownes will provide the Supplier with the Seasonal Pricing Letter no less than 2 months prior to its Effective Date.

Standard T&Cs means Brownes Australian Standard Terms and Conditions for the Purchase of Cow's Milk as published by Brownes and provided to the Supplier at the time of entry into this agreement.

Term has the meaning given in clause 5.1.

Unilateral Prospective Step Down has the same meaning as in section 28 of the Dairy Code and is a unilateral variation of the milk supply agreement by the processor the reduces a minimum price for milk supplied under the agreement after the variation occurs. **Year** means each year during the Term from 1 July to 30 June.

APPENDIX A ANNUAL SUPPLY VOLUME

ANNUAL SUPPLY VOLUMES

Farm Numbers:

1) ANNUAL SUPPLY VOLUMES

The initial Annual Supply Volume, covering the period from 1 July 2020 to 30 June 2021 is supplied in accordance with the Monthly Supply Profile set out in the table below.

2) MONTHLY SUPPLY PROFILE

The Monthly Supply Profile for each period and Year is set out in the table below.

3) ANNUAL REVIEW OF THE ANNUAL SUPPLY VOLUMES

The Supplier and Brownes may meet to conduct an annual production review during which the parties may renegotiate in good faith a new Annual Supply Volume and Monthly Supply Profile for the next Year commencing on 1 July.

The parties must take into account Brownes' forecast demand requirements for Milk for the next Year and the Supplier's current production capacity when negotiating the new Annual Supply Volume and Monthly Supply Profile.

Where the parties have not agreed to a new Annual Supply Volume by 31 March of a Year the Annual Supply Volume and Monthly Supply Profile for the previous Year shall continue to apply.

Period Ending 30 June 2021

Annual Supply Volume

Monthly Supply Profiles	Year Ending 30 June 2021
July	
August	
September	
October	
November	
December	
January	
February	
March	
April	
May	
June	
TOTAL	

APPENDIX B ANCILLIARY DOCUMENTS

1 TRUSTEE PROVISIONS

1.1 AGREEMENT WITH TRUSTEE

If this Agreement is entered into between Brownes and one or more Trustees of a Trust(s), this Agreement binds each Trustee in its personal capacity and in its capacity as trustee of each Trust in respect of which it is the trustee.

1.2 REPRESENTATIONS AND WARRANTIES

Each Trustee that has entered into this Agreement represents and warrants to Brownes that:

- (a) Trustee has full and valid power and authority under the Trust in respect of which it is the trustee to enter into this Agreement and to carry out the transactions contemplated by this Agreement;
- (b) this Agreement does not conflict with the operation or terms of the Trust in respect of which it is the trustee;
- (c) Trustee has the right to be indemnified out of, and a lien over, the assets of the Trust in respect of which it is the trustee for all liabilities incurred by it under this Agreement. This right has not been limited in any way. The Trustee has no liability which may be set off against that right of indemnity;
- (d) Trustee enters in this Agreement and the transactions evidenced for the proper administration of the Trust in respect of which it is the trustee and for the benefit of all of the beneficiaries of that Trust;
- (e) there has been no resolution or direction to remove Trustee as trustee of the Trust;
- (f) Trustee is the sole trustee of the Trust;
- (g) the Trustee will adhere to its duties as trustee in respect of which it is the trustee;
- (h) without the prior written consent of Brownes;
 - (i) the trust deed in respect of the Trust (in respect of which it is the trustee) will not be amended in any way;
 - (ii) there will be no change in trustee of the Trust in respect of which it is the trustee;
 - (iii) the capital of the Trust in respect of which it is the trustee will not be distributed in any way; and
 - (iv) on any change in trustee of the Trust in respect of which it is the trustee, the Trustee will ensure that any replacement trustee executes all documents necessary to ensure the effectiveness of this Agreement, including the representations and warranties under this clause 1 of Appendix B.

2 GUARANTEE BY THE GUARANTOR

2.1 GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to Brownes the due and punctual performance and observance by the Supplier of all of the obligations that must be performed and observed by the Supplier and contained in or implied under this Agreement, including any obligation in respect of any breach of a warranty or representation given in this Agreement.

2.2 EXTENT OF GUARANTEE

Clause 2 of this Appendix applies and the obligations of the Guarantor under clause 2 of this Appendix remain unaffected despite: (a) an amendment of this agreement or any other Transaction Agreement, as applicable, whether with or without Brownes knowledge or consent; (b) a rule of law or equity to the contrary; (c) any Insolvency event affecting a person or the death of a person; (d) a change in the constitution, membership, or partnership of a person; or (e) the partial performance of the Guaranteed Obligations.

APPENDIX C

FARM SUPPLY MANUAL

1. Introduction

Brownes Food Operations Pty Ltd (Brownes) is committed to maintaining its position as the pre-eminent dairy business in Western Australia. Our business is based on sourcing high quality milk from local Brownes farmers. We recognize the key contribution of our Suppliers in developing a successful fresh dairy business, and the need to work closely together to ensure long term success.

This document outlines several key areas through which we operate, and provides working guidelines. We will update this document from time to time as we work together to implement positive changes to our business.

2. Milk and Payment

Brownes will pay Suppliers electronically for the previous month's supply, into nominated bank accounts on the last working day prior to the 15th of the month. A record of the milk payment in the form of a monthly statement will be posted or emailed to the supplier's nominated address on or after that date.

To assist with cash flow, Brownes can, if requested by the Supplier, make a payment to the Suppliers of approximately 30% of the Supplier's monthly estimated milk payment on the 1st working day after the 1st of the month. This payment is calculated by reference to the first 10 days' supply of the previous month.

Milk Income Estimates (as described below) for the season can also be provided to Suppliers if requested.

Any changes to banking details and other Supplier information must be notified in writing.

Note: Changes to bank account details must be accompanied by a copy of a bank statement or deposit slip or other document that proves the ownership of the account.

For changes to bank accounts or farm ownership, Brownes will require:

- If the farm is in joint ownership, all joint owners to sign;
- If the farm is owned by a partnership, all partners to sign;
- If the farm is owned by a trust, all trustees to sign;
- If the farm is owned by a company, a director or a duly authorized signatory on behalf of the company to sign; and
- If there is a share farming arrangement in place on the farm, all parties to sign.

If an attorney is to sign an instruction or notice they must provide to Brownes the power of attorney under which they have been provided authority to sign. They will also be required to confirm to Brownes' satisfaction that the power has not been revoked.

The Supplier must provide to Brownes any instructions to change its personal information (including bank accounts) in writing before the end of the month to which the payment relates.

A monthly statement will be provided at the beginning of the month detailing payment for the previous months Milk in the form of a Recipient Created Tax Invoice and Recipient Created Adjustment Note, this statement will include: Base price and Litres supplied Quality and Component Adjustments, Charges and Other Adjustments and Loans and Advances along with daily collection records in volume, components and quality measures and Industry Levies.

3. Supplier Services

MADCAP Portal

The MADCAP Portal represents a valuable web based tool to assist our Suppliers to manage their business. The Supplier can access milk supply and quality data, graphs, comparative data and financial information online at <http://madcap.brownesdairy.com.au/madcapweb/>.

Brownes will also provide SMS notification of daily milk quality data (including fat, protein and Somatic Cell Count data and weekly Total Plate Count data) upon receipt of those results from the laboratory.

Brownes can, if practical for Brownes to do so and authorized by the Supplier, grant access to a Supplier's individual farm data to the Supplier's agent.

Herd Testing Incentive

Brownes recognizes the importance of testing individual cows to assist decision making around milk production and quality. As set out in the Seasonal Pricing letter, the Herd Testing Rebate provides Suppliers with a rebate being the lower of 30% of the actual cost of herd testing per cow tested, or \$3.50 per cow tested, subject to Brownes being satisfied that the herd testing costs have actually been incurred.

4. Milk Quality

Brownes farmers in South West Western Australia have been long term partners to the Brownes business and have a proud tradition of supplying fresh high quality milk. From a quality perspective Suppliers are required to:

- Undertake and maintain a Hazard Analysis and Critical Control Point (HACCP) plan based on a farm accreditation program, audited by the Western Australian Department of Health.
- Store milk in a vat that meets Australian Standard 1187 (1996) "Refrigerated Milk Tanks" and only supply Brownes with milk from that vat.
- Adhere to the following milk temperature requirements:
 - o The Supplier must cool Milk within 3.5 hours from the commencement of milking.
 - o The Supplier must use its best endeavours to ensure that the Milk is cooled and maintained at a temperature of between 1^o C and 4^o C whilst stored. The Milk temperature must not exceed 5^o C at any time after the Milk has been initially cooled.
- Immediately notify Brownes of any quality problems which may make the milk unsuitable for collection (including but not limited to milk which does not meet the temperature requirements set out above, dilution or contamination of milk).
- Dispose of any rejected milk in accordance with local council and other regulatory environmental guidelines.

Brownes is willing, where reasonable and feasible for it to do so, to assist Suppliers to improve their milk quality, which increases returns to Suppliers, and improves the quality of raw milk for processing. However, the ultimate responsibility for milk quality rests with the Supplier.

Brownes will reimburse Suppliers for one consignment of contaminated milk in each 12 month rolling period where Brownes has been notified in advance of collection of the contaminated milk on the terms set out in the Seasonal Pricing Letter. Conversely if a Supplier supplies contaminated milk into a tanker and in doing so

contaminates the entire tanker load of milk, the Supplier is responsible for the cost of the entire load and costs associated with disposing of the entire contaminated milk load on the terms set out in the Seasonal Pricing Letter.

5. Milk Collection

Brownes will take delivery of the Supplier's milk when it is loaded into a Brownes contracted milk tanker from the vat at the dairy on the Farm.

Milk tanker drivers are the initial point of contact for Suppliers. They have a very important role in assessing the milk to be collected, following correct sampling procedures, and are required to enter the property under the control of the Supplier.

Suppliers are responsible for providing safe access for the tanker to the dairy in all weather. Suggested guidelines for the tanker access are shown below. Suppliers need to communicate directly with the Brownes Transport Manager to agree on collection times (unless collection times are specified by Brownes in accordance with the Brownes Australian Standard Terms and Conditions), and to help ensure prompt service and give 48 hours' notice before:

- Collection
- Material changes in milk quantities
- Special collections (being collections outside normal collection times) for vat maintenance and changes to milking times.

Milk collection times will normally be between 7:00am and 4:00pm, and between 7:00pm and 4:00am. Alternate times may be agreed between Suppliers and the Transport Manager, when convenient for both parties.

The minimum collection of milk is 400 litres per stop. A milk collection fee will be charged as set out in the Seasonal Pricing Letter.

The Supplier shall agitate the milk before collection. The tanker driver shall collect a representative sample while the tanker is being loaded (including to test for contamination as set out in the Exclusive Milk Supply Agreement). The tanker driver shall rinse the vat (or start the automatic wash) before leaving the property.

6. Colostrum

Brownes does not collect colostrum or any other material intended for feeding calves. The Supplier must keep colostrum segregated from the milk supplied to Brownes and label vats used to store milk or colostrum intended for feeding calves as 'Not for collection'. The label must be positioned directly above the outlet valve on the vat for such time as the vat is used to store milk or colostrum intended for feeding calves.

Colostrum should be kept separate from normal milk in the main collection vat for a period of 8 milkings (i.e. 4 days from calving). Cows need to be carefully stripped prior to inclusion of their milk in the main vat to ensure no colostrum enters the Brownes processing chain.

7. Supplier Meetings and Communication

Brownes will, where reasonably practicable for it to do so, host Supplier meetings to keep Suppliers informed on business progress and the market situation and to provide an opportunity for Suppliers and management to meet. It is expected that Brownes will host meetings twice a year.

Brownes may communicate with Suppliers, including via Milk Income Estimates (an estimate of income based on Seasonal Pricing and forecasted volumes), Milk Statements (statements provided from MADCAP detailing amounts to be paid based on supply for a given period), Tanker Dockets (statements provided by the milk collection tanker detailing the date of collection, volume of milk, milk temperature and time of collection), email and internet access. Suggestions to improve communications are welcome and can be made by contacting the Milk Supply Manager.

Brownes may also conduct meetings from time to time as needs arise.

8. Records and Your Privacy

Brownes will keep records of Suppliers' supply history and payments for a period consistent with current tax office requirements. All records (including test results) are treated as accurate unless it can be proved to Brownes that the records are inaccurate or defective in some way.

Brownes will collect, use, store and disclose Suppliers' information, and where appropriate allow its related bodies corporate to use that information for:

- Business purposes;
- Collating its financial information;
- Meeting its legal obligations;
- Research;
- Administering its relationship with you; and
- For other purposes relating to the dairy industry.

All information is kept at appropriate premises by, or on behalf of, Brownes. Suppliers can access and correct their information by contacting the Milk Supply Manager.

9. Working Relationship

Brownes understands that it has a positive, working relationship with Suppliers. The relationship should be based on mutual respect and dignity, to promote a safe, positive and pleasant working environment for all. Brownes does not tolerate behaviour which constitutes intimidation, harassment, or which is offensive or abusive or which otherwise contributes to an unsafe working environment.

In turn Brownes' policies prohibit its employees from engaging in behaviour which constitutes intimidation, harassment, or which is offensive or abusive or which otherwise contributes to an unsafe working environment.

10. Animal Health and Welfare

Animal Welfare is vital to all stakeholders of the dairy industry including Suppliers, customers and Brownes staff. Brownes is fully supportive of good animal management practices and requires Suppliers to adopt high animal welfare standards. For information on Animal Welfare please refer to the Dairy Australia Web site;

<http://www.dairyaustralia.com.au/Animals-feed-and-environment/Animal-welfare.aspx>

11. Tanker Access and Milk Collection Requirements.

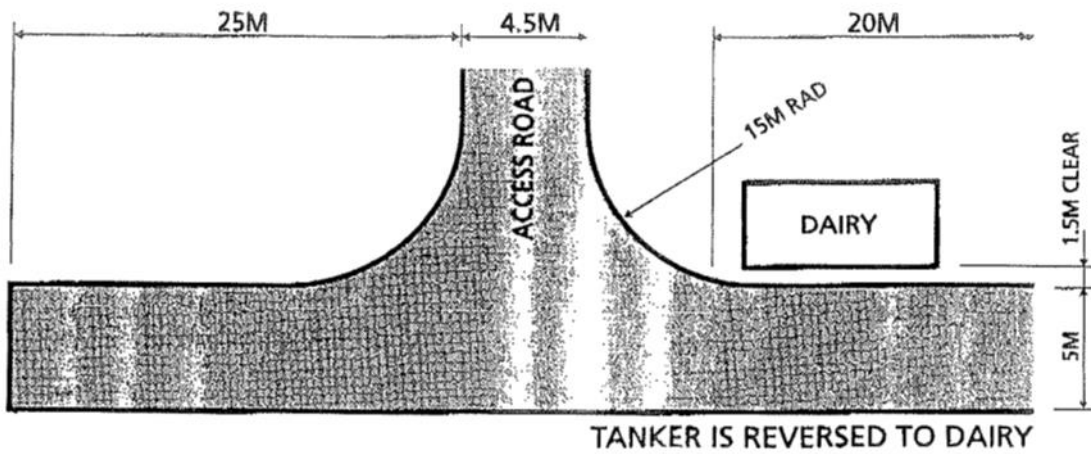
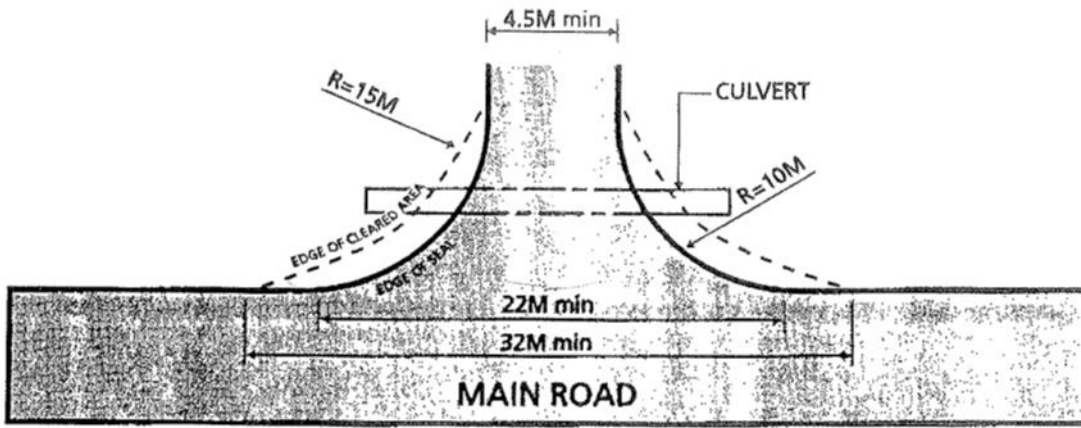
It is the responsibility of each Supplier to provide safe farm access to Brownes milk tankers or contractor, Milk Supply Manager, agents or representatives.

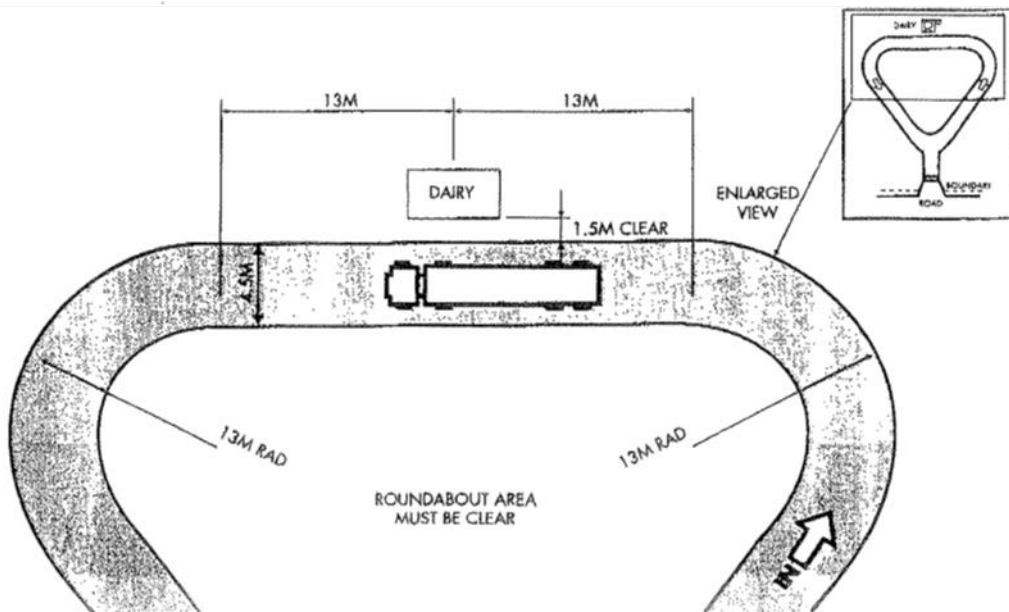
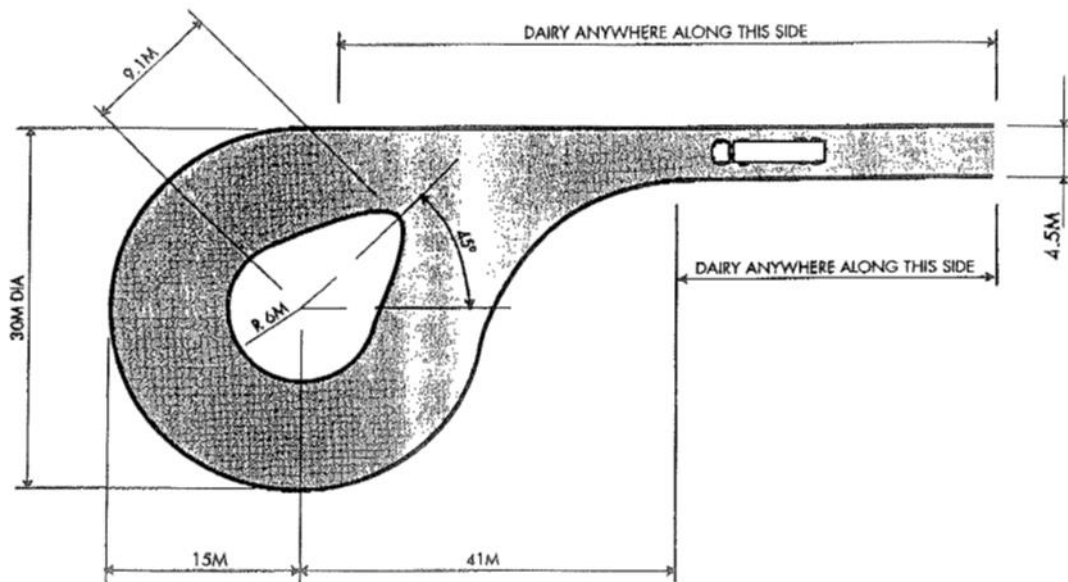
Suppliers must meet the following standards for milk tanker access:

- Provide a splayed entrance which complies with the rules in the local authority plan and is accessible by a truck and trailer without the vehicle having to cross the centre of the road when turning left into a farm road.
- Provide clear, all-weather road access from the farm entrance to the dairy, suitable for a milk tanker travelling at reasonable speed.
- Maintain a clear access from the road to the Supplier's dairy at all times.
- Keep roads free from obstructions at all times (e.g. corrugations, potholes, trees, overhanging or fallen branches, buildings, vehicles, implements and stock).
- Roads must have a clearance of 4.25 metres, with one clear metre on each side of the road; have a 200 mm crown and drainage either side of the road; be fenced off and kept clean and well maintained.
- Roads must not be used as stock tracks or holding yards.
- Ensure that if its roadway is longer than 1 km a milk tanker can safely maintain a speed of up to 50km/hour.
- Ensure that if its roadway is shorter than 1km, a milk tanker can safely maintain a speed of up to 15km/hour.
- Ensure roads do not have corners on steep roadways which are so sharp that a milk tanker cannot corner safely.
- Ensure effluent from roadway crossings drains into the farm's effluent disposal system.
- Make every effort to ensure milk tankers do not need to reverse on farm.
- Ensure bridges or crossings are the same width as the road, preferably on a straight section of road and allow safe crossing by a fully laden milk tanker travelling at a reasonable speed. They must be built and maintained so that the milk tanker meets all legal requirements in using and maintaining the bridge or crossing.

Please note: if an event occurs which Brownes or its representatives or agents believe will affect the safety of a bridge or crossing, the Supplier must comply with requests from Brownes to have the bridge or crossing inspected by an authorized engineer. Brownes may refuse to use the bridge or crossing until a certificate has been issued confirming the safety of use of the bridge or crossing.

For more specific advice about individual farms, Suppliers can contact their Regional Transport Office.





APPENDIX D

BROWNES AUSTRALIAN STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF COW'S MILK

1 DEFINITIONS

1.1 The following definitions are used in these terms:

- (a) **you** and **your** means the supplier of the cow's milk or services to us;
- (b) **we, our** and **us** means Brownes Company and/or any Related Companies that purchase the cow's milk or services from you;
- (c) **Brownes Company** means Brownes Foods Operations Pty Ltd ABN 60 146 849 881;
- (d) **Insolvency Event** means any step is taken by a mortgagee to take possession or dispose of the whole or part of your 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 like person of the whole or part of your assets, operations or business or a similar situation occurs;
- (e) **Related Company** means any company that, directly or indirectly, is controlled by Brownes Company or by another company that also controls a Brownes Company; and
- (f) **Taxable Supply, Tax Invoice** and **GST** have the same meaning as is set out in *A New Tax System (Goods and Services Tax) Act 1999* and *A New Tax System (Goods and Services Tax Transition) Act 1999* (Cth.) and any related tax impositions or administration legislation and includes legislation which is enacted to validate, recapture or recoup the tax imposed by such legislation.

2 TERMS APPLYING

- 2.1 These terms apply to all purchases of cow's milk and/or services from you. They are in addition to the terms and conditions of any document or agreement between the Brownes Company and you concerning the sale and supply of the cow's milk and/or services by you to the Brownes Company, including the Exclusive Milk Supply Agreement, the Seasonal Pricing Letter and the Farm Supply Manual (**Other Documents**).
- 2.2 Any terms or conditions of supply on any invoice or other document provided by you will be of no effect and will not replace or vary any of these terms or the Other Documents unless we expressly agree in writing.

3 YOUR OBLIGATIONS

- 3.1 You must supply the cow's milk and/or services in accordance with these terms and the Other Documents.
- 3.2 You must hold all consents, permits and licences necessary to provide the cow's milk or perform the services.
- 3.3 Where the Other Documents include provision of training or support and maintenance services you must promptly and/or at the correct intervals supply those services in accordance with best industry practice.
- 3.4 You must strictly comply with all obligations concerning quality of cow's milk set out in these terms or the Other Documents and acknowledge that we:
- (a) are not be obliged to accept and/or pay for any cow's milk that does not so comply;
 - (b) may charge you for the costs of transporting and disposing of non-compliant cow's milk; and

- (c) may terminate these terms and the Other Documents for such non-compliance (in the circumstances set out in these terms or the Other Documents).

3.5 While on our sites you must at all times comply with:

- (d) our site rules and site access and security requirements;
- (e) the provision of any relevant legislation, codes or standards; and
- (f) any other reasonable directions given by us.

4 DELIVERY AND ACCEPTANCE

4.1 If directed by us to do so, you must deliver the cow's milk to or provide the services at the address shown on the Exclusive Milk Supply Agreement.

4.2 We may inspect, test and observe at all reasonable times the supply of the cow's milk or services.

4.3 We may carry out any reasonable acceptance tests of any cow's milk or services or any part thereof

You will assist us with testing as requested.

4.4 Where the Other Documents provide a time for delivery of the cow's milk and/or services that time shall be the essence of the contract.

4.5 We may vary the delivery time at any time prior to delivery by providing you with reasonable written notice of those changes.

4.6 TITLE AND RISK

4.7 Title to any cow's milk (including any parts or items supplied as part of a service) passes to us on delivery, defined by milk passing into the tanker and being registered on the flow meter, but where we pay any part of the price before delivery then title passes on payment.

(a) The flow meters for milk cartage are required to be calibrated yearly at a minimum.

4.8 Risk remains with you until completion of delivery and acceptance of the cow's milk by us.

5 PRICING

5.1 The price is as determined in accordance with the Other Documents and is the only amount we must pay for the cow's milk. Unless otherwise stated in the Other Documents any price is in Australian dollars and is exclusive of all taxes, duties, fees or other government levies and charges.

5.2 Unless GST is expressly included, all amounts referred to in these terms or the Other Documents are exclusive of any GST. Provided that the relevant supplier of any Taxable Supply under or in connection with these terms or the Other Documents provides a Tax Invoice, such amounts will be increased by an amount equal to the GST payable by that supplier on that supply and the recipient of that Taxable Supply must pay the amount of GST in addition to the first mentioned amount.

5.3 We will pay for the cow's milk delivered or services provided in accordance with these terms and the Other Documents.

5.4 Without limiting clause 10.2, we may set off against any amounts we owe to you for cow's milk supply any amounts you owe to us, including any adjustments for overpayments.

6 INTELLECTUAL PROPERTY

6.1 You agree that:

- (a) where any license or other authorisation from any person is required to own, possess, use or resell any good or any component you supply, you will, and at no extra cost to us, procure an irrevocable and unrestricted licence or authorisation on a non-exclusive and transferable basis for us to own, possess, use and resell the good; and
- (b) all proprietary rights in any intellectual property (including any design, data, specifications, know-how or any other form of intellectual property) that is specifically developed for us as part of the provision of any cow's milk or service will become our property.

6.2 All confidential information and any intellectual property provided by us in connection with these terms or any Other Documents remains at all times our confidential and proprietary information and must be used solely to complete the relevant order and for no other purpose. Any such information must not be disclosed to any third party and be returned to us at any time on request by us.

7 WARRANTIES

7.1 You warrant to us that:

- (a) 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;
- (b) all cow's milk (and its components) will:
 - (i) be fit for the expected use and purpose;
 - (ii) conform to the specification, quality and description required by the Other Documents;
 - (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;
- (c) our ownership, possession, use or resale of any cow's 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 you must provide within the price any licence or other authorisation from any person necessary in order for us to obtain the full benefit and use of the cow's milk or service.
- (d) all cow's milk supplied and/or services provided will comply with all applicable laws or regulations and you will, at your cost, 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.

7.2 These warranties are additional to any other warranties given by you or implied by custom or law, whether statutory or otherwise. You will pass on to us the benefit of any warranty relating to the cow's milk or service received from any other person and we may have recourse against those persons either directly or through you for a breach of those warranties.

7.3 You will promptly remedy each warranty claim to our reasonable satisfaction. Warranties start again for the full period on completion of remedying each defect.

8 INDEMNITIES

8.1 You will indemnify and keep indemnified us and all of our Related Companies, together with all of our and their employees, agents and contractors (**Our 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 Our Indemnified Parties arising from:

- (a) any breach of these terms or the Other Documents by you;
- (b) any negligent or wrongful act or omission of you or any of your employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of your obligations under these terms and / or the Other Documents; or
- (c) any fraud, dishonesty, misrepresentation or wilful default by you or any of your employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of your obligations under these terms and / or the Other Documents.

You are not however required to indemnify any of the Indemnified Parties for Liability to the extent that is caused by the contributory negligence or fault of the Indemnified Parties

9 TERMINATION, RIGHTS AND LIABILITIES

- 9.1 If you materially breach a provision of these terms or Other Documents and fail to properly remedy the situation to our satisfaction within 14 days (or such other reasonable time as may be specified in the notice) after we notify you of the breach or failure, or if you suffer an Insolvency Event, then we may, without limitation to any other right or remedy under these terms and the Other Documents or at law:
- (a) terminate or suspend (for such period as we see fit) the operation of these terms and the Other Documents or any uncompleted portion thereof with immediate effect by notice to you;
 - (b) set off against any amount we owe you, any sum you owe us or that we are claiming from you in respect of these terms and the Other Documents;
 - (c) recover from you any direct, indirect and consequential damage, loss or cost (including full legal costs) suffered by us.
- 9.2 If you suffer an Insolvency Event, we may terminate the Other documents with immediate effect by notice to you.
- 9.3 Except to the extent required by law, our liability is limited to the direct costs (including legal costs) suffered by you in connection with a notified material breach of these terms or of the Other Documents.

10 MISCELLANEOUS

- 10.1 These terms and the Exclusive Milk Supply Agreement may only be amended in writing signed by an authorised representative of each party.
- 10.2 If any amount is payable by you to us under these terms or the Other Documents we are entitled to set that amount off against any amount payable by us to you.
- 10.3 Subject to Brownes prior written consent, which shall not be unreasonably withheld, you may not assign or sub-contract any of your rights and obligations in respect of these terms and the Other Documents.
- 10.4 You acknowledge and agree that we may assign, transfer or create a security over our rights under these terms and the Other Documents without your prior written consent.
- 10.5 Nothing in these terms and the Other Documents evidences any employment relationship, partnership, joint venture or agency or a relationship of trust or a fiduciary relationship.
- 10.6 Any unlawful or invalid provision in these terms or the Other Documents will be severed and the remaining provisions will be enforceable.
- 10.7 These terms and the Other Documents constitute the entire agreement between you and us concerning their subject matter and supersede all previous agreements, arrangements or understandings between you and us concerning that subject matter. Neither party has relied on any statement by the other party not expressly included in these terms or the Other Documents.

- 10.8 A party does not waive a right, power or remedy under these terms or the Other Documents if it fails to exercise, or delays in the exercise of, it. Any such waiver is only binding if in writing signed by the party giving it. A single or partial exercise of a right, power or remedy under these terms or the Other Documents does not prevent another or further exercise of that or another a right, power or remedy under these terms or the Other Documents.
- 10.9 Each party must use all reasonable efforts to comply with all laws applicable to occupational health and safety as applicable to the subject matter of these terms and the Other Documents.
- 10.10 A rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of the these terms and the Other Documents or any part of them.
- 10.11 Specifying anything in these terms or the Other Documents after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- 10.12 These terms and the Other Documents are governed by the laws in the State or Territory set out in the Other Documents and you agree to submit to the exclusive jurisdiction of the courts of that State or Territory. If no State or Territory is specified in the Other Documents, or more than one is, the laws of Western Australia will apply and the Courts of that State will have exclusive jurisdiction.
- 10.13 You must strictly comply with the requirements set out in the Brownes Farm Supply Manual in respect of all supplies of cow's milk or services to us.
- 11 FORCE MAJEURE**
- 11.1 Neither party is liable for any failure or delay in performing an obligation if due to a cause beyond the affected party's reasonable control. An affected party must notify the other party of the cause and likely delay as soon as practicable.
- 11.2 Without limiting clause 11.1, we are not liable for any payment in respect of cow's milk which we are unable to collect due to a cause outside our reasonable control, including road damage, fire, flood, other natural disasters or strikes.

APPENDIX E – SPECIAL TERMS

1 A2 Beta Casein Protein Milk Supply Terms

1.1 HERD TESTING

- (a) The Supplier has agreed to supply A2 Beta Casein Protein Milk to Brownes under the terms of this Agreement.
- (b) All cows used by the Supplier for producing raw A2 Beta Casein Protein Milk for supply to Brownes must have been tested and identified as A2 Cows in accordance with this clause 1.1.
- (c) The Supplier acknowledges and agrees that Brownes will not accept any milk from the Supplier as A2 Beta Casein Protein Milk until Brownes has received written confirmation from The a2MCA that:
 - (i) The Supplier has obtained a2 Certification for the Supplier to supply milk to Brownes in accordance with this Exclusive Milk Supply Agreement, and that milk be included in the a2 milk pool, the Supplier must hold and maintain an a2 Certification which the Supplier has obtained from The a2 Milk Company (Australia) Pty Ltd, which certification includes testing of each individual cow in the Supplier's herd for the presence of the A2/A2 gene.
 - (ii) the Supplier has entered into a written agreement with a2MCA for the testing, selection, identification and formation of a herd or herds of A2 Cows; and
 - (iii) the Supplier's cows have been tested and identified as A2 Cows by an A2 Approved Tester by prior arrangement of a2MCA.
- (d) The Supplier agrees that it will not carry out any testing or appoint any third party to conduct testing for the purpose of identifying cows as A2 Cows.
- (e) The Supplier acknowledges and agrees that Brownes may cease to obtain any raw A2 Beta Casein Protein Milk from any Farmer if so directed in writing by a2MCA due to the suspension or revoking of the a2 Certification from the a2 Milk Company (Australia).

1.2 RECORDS AND SAMPLES

- (a) The Supplier must keep in writing true and accurate records of such information as Brownes or a2MCA may reasonably request from time to time be retained including records relating to the raw A2 Beta Casein Protein Milk and that the Supplier supply to Brownes and make all such records available to Brownes, a2MCA (or any authorised representative of a2MCA) when requested to do so.

1.3 FARMING PRACTICES

- (a) The Supplier represents, warrants and undertakes to Brownes that:
 - (i) it produces milk in accordance with best farming practices in accordance with a2 Certification from The a2MCA.
 - (ii)
 - (iii) all milk produced by the Supplier complies with the requirements of the a2 Certification from the a2MCA.
 - (iv) it will only supply raw A2 Beta Casein Protein Milk from cows which have been tested and identified as a2 Cows by an a2 Approved Tester with the results of such testing being confirmed in writing by a2MCA;
 - (v) it will not denigrate A2 Beta Casein Protein Milk or non- A2 Beta Casein Protein Milk and will not at any time during or after the Term (whether by expiry or earlier termination) be a party to any

act, matter or thing as a result of which, in a2MCA's opinion, the goodwill, trade, business or reputation of a2MCA or A2 Corporation or a2™ Milk, or any related intellectual property is, or may be, prejudicially affected or brought into disrepute;

- (vi) without limiting subclause (v), the Supplier will not make any statement about a2™ Milk, a2MCA or A2 Corporation without a2MCA's prior written approval;
- (vii) while the Supplier remains contracted to Brownes they will not, directly or indirectly, produce, supply, distribute or sell milk as A2 Beta Casein Protein Milk, or milk where the beta-casein is only, or contains an increased proportion of, the A2 type of beta-casein protein or milk with the properties of A2 Beta Casein Protein Milk (including milk designated as "A2 protein only milk" or "A1 protein free milk"), or as milk from cows tested for the A2 gene and the absence of the A1 gene at any time during or for a period of 12 months after the Term to any person other than the Brownes or a2MCA without a2MCA's prior written approval;
- (viii) the Supplier has and will maintain at their cost, adequate policies of insurance (including public liability insurance and any statutory workers compensation insurance) with insurance carriers satisfactory to Brownes and a2MCA, giving full and comprehensive coverage both to the amount and risks involved in its operations and the obligations contemplated by this Agreement; and
- (ix) records, reports, and any other information the Supplier provides to Brownes, a2MCA and/or A2 Corporation will be complete, true and accurate in all respects.

1.4 NOTIFICATION

- (a) The Supplier must notify Brownes immediately of any failure of the Supplier to meet the requirements of the a2 Certification from the a2 Milk Company (Australia) and the Supplier must take immediate steps to rectify and avoid or minimise any negative impacts of such a failure as soon as possible. Without limiting any other rights that Brownes may have under this Agreement, Brownes will not be required to pay the Supplier the A2 Management Fee for any A2 Beta Casein Protein Milk that does not meet the requirements set out in this Agreement or the Control Manual.

1.5 ANNUAL A2 Beta Casein Protein MILK SUPPLY VOLUME

- (a) Subject to clause (b) below the Supplier agrees to maintain the production of A2 Beta Casein Protein Milk in accordance with the A2 Beta Casein Protein Milk Supply Profile as adjusted from time to time in accordance with clause 4 of this Agreement.
- (b) In any Year of the Term after the first Year, the Supplier must not supply less than 80% of the A2 Beta Casein Protein Milk required to be supplied in accordance with the prior years A2 Milk Supply Profile.

2 DEFINITIONS

In this Agreement:

A2 Approved Tester means an entity that has a current certification from A2 Corporation Limited authorising it to use certain methodologies and techniques for the identification and testing of A2 Cows.

A2 Corporation means A2 Corporation Limited (New Zealand Companies Office number 1014105).

A2 Cow means a cow which is homozygous for the beta-casein variant A2, or related A2 variants (being beta-casein A3, D, E, or H or any other beta-casein which has a proline amino acid in position 67 of the beta-casein molecule).

a2MCA means The a2 Milk Company (Australia) Pty Ltd ABN 52 125 331 213

A2 Management Fee means fees payable to the Supplier calculated in accordance with Appendix F of this Agreement.

A2 Beta Casein Protein Milk means milk which has been produced by lactating A2 Cows and in which at least 99% of the beta-casein present is beta-casein variant A2 and which does not contain more than 1% beta-casein variant A1; and/or any other beta-casein variant having a histidine amino acid at position 67 of the beta-casein molecule; and/or any other protein or protein fragment having the hexapeptide sequence Pro-Gly-Pro-Ile-His-Asn.

A2 Milk Supply Profile means the supply profile A2 Beta Casein Protein Milk set out in Appendix A of this Agreement.

APPENDIX F – SPECIAL TERMS

1 A2 Management Fee

1.1 PRICE

- (a) Brownes will pay the Supplier a management fee of 5 cents per litre per month in addition to the Seasonal Price for A2 Beta Casein Protein Milk collected in accordance with this Agreement, the management fee will be underwritten by Brownes Dairy depending on the milk pool contribution from Woolworths rebate and the balance from Brownes Dairy. (The measure of volume will be based on the flow meter reading on the Brownes milk tankers on collection)