

Commercial Details

1. **Commencement Date:** 01 July 2023
2. **Expiry Date** 30 June 2024
3. **Purchase Quantity** You will supply UDA with Milk on a non-exclusive basis.
You commit to supply us with the monthly volumes of Milk during the Supply Period that you nominate in the table below, subject to amendment and agreement by both parties.

	Committed Monthly Volume (in 000s of litres)
July 2023	
August	
September	
October	
November	
December	
January 2024	
February	
March	
April	
May	
June	
Total	

4. **Price** Subject to below, the Price paid to the Farmer will be fixed.
The Farmer will be paid the Price for each Collection of Milk, less
 - a) The Dairy Produce Levies and State Based Dairy levies
Please refer to
<https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/rates/dairy> and
<https://www.sahealth.sa.gov.au>
for details
 - b) Minimum collection
The minimum milk collection is 2,000 litres.

c) Milk quality fees/discounts

(Please refer to schedule 1 for milk quality fees/discounts)

Reject milk – no of occasions per month monthly discount

1 & 2	0%
3 & more	-3%

Price

The Price that you will receive per litre of milk in each month, during the 2023/24 Milk Year for the supply of Milk is set out below, subject to the above-mentioned deductions (if applicable)

Price per litre of milk

July 23 - June 24 \$0.65

This price does not include freight delivery cost.

- | | | |
|-----|---|--|
| 5. | Additional Payments | Not applicable |
| 6. | Collection Quantity | 2,000 litres of milk, minimum per Collection, subject to agreement by both parties |
| 7. | Collection or Delivery Frequency | Collection Address (Farm Location)

Delivery Address

Udder Delights Factory location:
Udder Delights Factory 15/1 Lobethal Road Lobethal South Australia 5241

On the days (Daily or every Second Day) as agreed by both parties |
| 8. | Milk Quality Requirements | Milk must comply with the milk quality requirements contained in Schedule 1 and the FSANZ Food Standards Code requirements.

Milk quality fees/discounts may apply. Please refer to Schedule 1 for details. |
| 9. | Testing Criteria | All Milk collected must be free of inhibitory substances.

Testing of each Collection will be completed by the tanker driver upon Collection (rapid test) and again by UDA (broad screen). Any abnormal results will be communicated as soon as confirmed. |
| 10. | Invoicing | Udder Delights agrees to create a Recipient Created Tax Invoice (“RCTI”) and agrees to email copies of the RCTI to you. Alternatively, the supplier may issue its own tax invoice. |

11. **Notices to UDA** Udder Delights Australia Pty Ltd
15/1 Adelaide Lobethal Road Lobethal South Australia 5241
General Manager
Contact: Phil Donnellan
Phone: +61 8 8393 6009
Email: Phil@udderdelights.com.au
12. **Notice to UDA Finance department** Tanya Badenoch
Financial Controller
Phone: +61 8 8393 6009
Email: accounts@udderdelights.com.au
13. **Notice to UDA Quality Department** Kim Sparks
Quality Manager
Phone: +61 8 8393 6009
Email: quality@udderdelights.com.au
14. **Notices to Supplier** [insert supplier contact details]

Execution

Executed as an agreement.

Signed for and on behalf of

Udder Delights Australia Pty Ltd

(ACN 620 980 565)

by its duly authorised representative

in the presence of:

Signature of witness

Signature of authorised representative

Name of witness (please print)

Name of authorised representative

(Please print)

Signed [for and on behalf of/by]

[Insert]

[by its duly authorised representative]

in the presence of:

Signature of witness

Signature of [authorised
representative/signatory]

Name of witness (please print)

Name of [authorised representative/signatory]

(Please print)

Operative provisions

1 Definitions and Interpretation

Definitions

1.1 In this Agreement, unless the context requires another meaning:

Additional Payments means the additional payments, if any, set out in the Commercial Details.

Business Day means a day other than a Saturday or Sunday and that is not a public holiday or bank holiday in South Australia, Australia.

Commencement Date means the date specified in the Commercial Details.

Commercial Details means the section at the top of this Agreement setting out specific commercial details.

Confidential Information means all data and information in electronic or any other form including, without limitation, know how, trade secrets, information and data relating to a party or its Related Companies (within the meaning of the Corporations Act), its or their business or existing or potential customers or clients, technical and business information relating to a party's inventions or products, research and development, recipes, ingredient lists, production, manufacturing and engineering processes, quality standards, employees or officers, price lists or pricing structures, marketing and sales information, business plans or dealings, financial information, plans, designs or product lines, any document marked "Confidential", or any information which a party has been informed is confidential or which a party might reasonably expect the other party to regard as confidential, and any proprietary and confidential information of clients, customers, suppliers or other third parties disclosed to a party in the course of this Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Dairy Code means the *Competition and Consumer (Industry Codes–Dairy) Regulations 2019*, or as updated from time to time.

Collection means Collection of the Milk in accordance with clause 3.4.

Collection or Delivery Frequency means the frequency in which Collection or Delivery will occur specified in the Commercial Details.

Collection Quantity means the minimum quantity of Milk per Collection specified in the Commercial Details.

Expiry Date means the date specified in the Commercial Details.

Reject Milk means any Milk supplied by the Supplier which do not comply with the Milk Quality Requirements set out in the Commercial Details and schedule 1.

Milk means the raw cow's milk produced by the Supplier.

Milk Quality Requirements means the quality requirements for the Milk specified in the Commercial Details and schedule 1.

Non-Commercial Milk means Milk that is solely for the Supplier's household or livestock consumption.

Purchase Quantity means the quantity of Milk set out in the Commercial Details.

Supply Period means the period beginning on the Commencement Date and ending on the Expiry Date.

Interpretation

1.2 In this Agreement, unless the context requires another meaning:

- (a) clause headings are for ease of reference only and shall not be relevant to interpretation;
- (b) the schedules referred to form part of this Agreement;

- (c) words importing the singular include the plural, and vice versa, and words denoting any gender include all genders;
 - (d) references to any document (including this Agreement) are references to that document as amended, consolidated or supplemented from time to time;
 - (e) a reference to a person (including a party) includes:
 - (i) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - (ii) the person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
 - (f) a reference to a law:
 - (i) includes a reference to any legislation, treaty, judgment, rule of common law or rule of any applicable stock exchange;
 - (ii) is a reference to that law as amended, consolidated, supplemented or replaced;
 - (iii) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law; and
 - (g) a reference to the word including or includes means including but not limited to, or includes, without limitation.
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2 Term

Term

- 2.1 This Agreement commences on the Commencement Date and will continue until the Expiry Date, subject to prior termination under clause 7.
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3 Milk

- 3.1 The Supplier agrees to sell, and UDA agrees to purchase, the Purchase Quantity of Milk in accordance with this Agreement.
- 3.2 The Supplier agrees to sell the Milk to UDA on a non-exclusive basis. For the removal of doubt, UDA acknowledges that the Supplier may also supply Milk to other parties.
- 3.3 The Supplier agrees that the Milk must, at the point of Collection / Deliveries:
- (a) not be Reject Milk;
 - (b) be produced by the Supplier on premises owned or controlled by the Supplier;
 - (c) not be contaminated with any other produce, goods, chemicals, medicines or substances; and
 - (d) otherwise comply with all applicable laws, regulations, codes of practice and good industry practice, including in regard to the storage of the Milk.

Collection / Delivery

- 3.4 The Supplier must supply no less than the Collection Quantity at the time of Collection or Delivery.
- 3.5 Ownership (including risk and title) of the Milk will pass to UDA from the Supplier at the time of Collection in accordance with clause 3.4. In case of delivery from the Supplier to UDA factory location, ownership of the Milk will pass to UDA from the Supplier at the time of delivery.

- 3.6 This Agreement will govern all Collections from the Supplier by UDA or Deliveries by the Supplier to UDA, and no additional or inconsistent terms or conditions in any invoice or sales and/or Collection / Delivery document issued by the Supplier will have any legal effect unless such terms and conditions have been expressly agreed to in writing by the parties.

Inspection

- 3.7 UDA may examine and test, or cause to be examined and tested, all Milk using the Testing Criteria promptly upon receipt and notify the Supplier within fourteen (14) Business Days after Collection of the Milk of the results of the tests, including any shortage, defects or shipping errors with respect to the Milk, including details of any Reject Milk identified.

Records

- 3.8 Each party must maintain complete and accurate books, accounts and records pertaining to the supply of Milk.
- 3.9 Upon UDA's reasonable request, but not more than once per fiscal quarter, the Supplier must make available to UDA and its authorised representatives for inspection and auditing, all premises in which the Milk is produced, stored or supplied up until Collection.

4 Payment

- 4.1 UDA agrees to purchase the Milk from the Supplier for the Price set out in the Commercial Details, exclusive of any applicable taxes.
- 4.2 UDA agrees to pay the Additional Payments, if any, to the Supplier.
- 4.3 Any amounts due to the Supplier by UDA under or pursuant to this Agreement must be paid by UDA by 14 days from the end of the month an invoice is issued.

GST

- 4.4 Terms used in this clause have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 4.5 If GST is payable on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.
- 4.6 If this Agreement requires a party to pay for, reimburse or contribute to any expense, outgoing (**reimbursable expense**) incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense and any GST payable by the other party unless the first party is able to claim input tax credit with respect to the reimbursable expense.

5 Liability

- 5.1 To the full extent permitted by law, neither party will be liable to the other for any loss or damage, including loss of profits, loss of revenue, loss of goodwill or any special, incidental, indirect or consequential damages whatsoever (and whether caused by the negligence of the defaulting party or its employees or agents or otherwise).
- 5.2 Certain legislation, including the *Australian Competition and Consumer Act 2010* (Cth), may imply additional warranties or conditions or impose obligations which cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read subject to those statutory provisions.

6 Reject Milk

Reject Milk

6.1 Where the Supplier supplies Reject Milk:

- (a) UDA must notify the Supplier in writing as soon as reasonably practicable that the Milk has been rejected as Reject Milk;
- (b) UDA may, in its complete discretion:
 - (i) not pay for the Reject Milk; and
 - (ii) the Supplier shall bear any reasonable associated costs and expenses.
- (c) UDA may, in its complete discretion, elect to accept the Reject Milk but negotiate a reduced Price with the Farmer for that Milk; and
- (d) Suspend the Milk Collection / Delivery from the Farmer until the Farmer can demonstrate that they have rectified the issue and are likely to comply with the Milk Quality Requirements set out in the Commercial Details.

7 Termination

Cooling-off Period

7.1 The Supplier may immediately terminate this Agreement at any time within 14 days of the date this Agreement is executed by the Supplier by notice to UDA in writing, without any liability.

Termination

- 7.2 Either party will have the right upon written notice to the other party to terminate this Agreement (immediately or at such later date as the terminating party may specify) in the event that:
- (a) the other party materially breaches any of the provisions of this Agreement, and such breach is not remedied to the satisfaction of the non-defaulting party within 30 days after receiving written notice from the other party specifying the breach or such other period as may be agreed by the parties; or
 - (b) the other party materially breaches any of the provisions of this Agreement, and such breach is not capable of remedy.

8 Confidentiality

- 8.1 Each party undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access or processing, and not at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the other party directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any of that party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations under this Agreement.
- 8.2 Each party undertakes to disclose Confidential Information only to those of its officers, employees, agents and sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement, and to procure that such officers, employees, agents and sub-contractors are made aware of and observe the terms of the confidentiality obligations set out in this clause 8.
- 8.3 Upon the earlier of a written request from a party, or the expiration or termination of this Agreement for any reason, the other party shall return or destroy, at the first party's option, any and all of that party's Confidential Information then in its possession or control and will not retain any copies of the same.

8.4 Each party shall give notice to the other of any unauthorised disclosure, misuse, theft or other loss of a party's Confidential Information, whether inadvertent or otherwise, immediately upon becoming aware of the same.

9 Dispute resolution

9.1 If a dispute between the parties arises out of or in connection with this Agreement, then a party shall give notice in writing adequately identifying and providing details of the claim of that party to the representative of the other party specified in the Commercial Details (**Notice of Dispute**).

9.2 Notwithstanding the existence of a dispute, the parties shall continue to perform the Agreement, subject to termination of this Agreement.

9.3 Within fourteen (14) days of service of a Notice of Dispute, the Parties shall confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. The parties must make a genuine attempt to resolve any disputes during this conference. At any such conference, each Party shall be represented by a person with authority to agree on resolving the dispute.

9.4 If the dispute has not been resolved within fourteen (14) days of the service of the Notice of Dispute (or such additional other period agreed by the parties in writing), then the parties will refer the dispute either:

(a) to a mediation adviser for a mediator to be appointed; or

(b) to an arbitration adviser for an arbitrator to be appointed.

9.5 The parties agree to comply with the Dairy Code in regard to mediation or arbitration under this Agreement.

10 Notices

10.1 Any notice, demand, consent or other communication by a party under this Agreement must be in English and sent by email (followed in writing by pre-paid express, registered or certified post) to the address for the party stated in the Commercial Details or such other address designated by a party by notice to the other party.

10.2 Without limiting any other means by which a party may be able to prove that a notice has been received by the party, a notice will be considered to have been received by email upon receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address.

11 Force Majeure

11.1 Neither the Supplier or UDA is liable to the other for any failure to perform an obligation under this Agreement (other than the payment of money) where that party is prevented from performing because of an act of God, natural disaster, war or any other occurrence beyond that party's reasonable control (Force Majeure Event).

12 General

12.1 The parties acknowledge and agree that nothing in this Agreement transfers or assigns any right, title or interest in or to the other party's intellectual property rights.

12.2 Each party agrees to comply with applicable laws, regulations, codes of practice and good industry practice, including specifically the Dairy Code.

12.3 A party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with any of its rights under this Agreement without the prior written consent of the other party.

12.4 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements and understandings. The parties' duties, obligations and liabilities will be limited to those expressly provided in this Agreement, and no other duties, obligations and liabilities will be implied except as provided by law.

12.5 The parties' relationship will be that of independent contractors. Neither party will have (and will not represent that it has) any power, right or authority to bind the other or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name. Nothing stated in this Agreement will be

construed as constituting the parties as partners or as creating the relationship of employer and employee, master and servant or principal and agent between the parties.

- 12.6 Any provision of this Agreement which is invalid or unenforceable will be severed to the extent of that invalidity or unenforceability. The remaining provisions of this Agreement, which are self-sustaining and capable of separate enforcement without regard to the severed provision, are, and continue to be, valid and enforceable in accordance with their terms.
- 12.7 No failure of either party to exercise and no delay or forbearance in exercising any right or remedy in respect of any provision of this Agreement shall operate as a waiver of such right or remedy.
- 12.8 This Agreement may be amended only by an agreement in writing signed by an authorised representative of each of the parties.
- 12.9 This Agreement may be signed in counterparts, and all counterparts taken together constitute one document.
- 12.10 This Agreement will be governed by and construed according to the laws of the State of SA, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of SA, Australia.

Milk Supply Agreement

Schedule 1 – Milk Quality Requirements Milk quality fees / discounts may apply.

Quality test	Standard	Reject	Test Frequency	Conducted by
Milk must have been produced no more than 72 hours prior to Collection.	< 72 hours	> 72 hours		Notified by the supplier to the tanker driver
Temperature (° C)	0 – 5 ° C	> 5 ° C No prior notification of cooling failure; milk will be rejected. Prior notification of cooling failure; milk will not be collected unless approved by UDA	Every collection of milk, prior to loading by the tanker driver	Tanker driver
Antibiotics	Clear (undetected)	Present (detected) Milk will be rejected	Every collection of milk, prior to loading by the tanker driver; Prior to unloading milk at the factory (vat sample)	Tanker driver UDA
Bactoscan Plate count (cfu/ml)	< 50,000	Not applicable	One time per fortnight	UDA
Bactoscan Somatic cell count (cells/ml)	< 300,000	Not applicable	One time per fortnight	UDA