

Supplier No: \_\_\_\_\_



# Milk Supply Agreement

## 1 Year

## TERMS OF AGREEMENT

### COVERSHEET- MILK SUPPLY AGREEMENT SUPPLIER

Supplier Name:		Supplier No:
Supplier Address:		Contact No:
		Dairy Licence No:
	Postcode:	Banking Instructions
Email Address:		Bank Name:
Farm Address:		Account Name:
	Postcode:	BSB No:
ACN/ABN:		Account No:

### BESTON GLOBAL FOODS

Processor Name: Beston Pure Dairies Pty Ltd	
Processor Address: 128 Maurice Road, Murray Bridge SA	
Email: <a href="mailto:bestonglobalfoods.com.au/contact-us/">bestonglobalfoods.com.au/contact-us/</a>	Phone: +61 8 85393957
ABN: Beston Pure Dairies Pty Ltd ABN 71 606 417 994.	ACN: 606 417 994

#### Term of Supply Period<sup>1</sup>

<b>Commencement Date:</b> 1/7/2022	<b>End Date:</b> 30/6/2023
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#### Price and Terms of Payment<sup>2</sup>

Minimum Fixed Monthly Pricing for FY2023
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#### FY 2023

BASE PRICE	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23
BUTTERFAT - \$/KG	5.81	5.25	5.07	5.07	5.07	5.07	5.37	5.52	5.58	5.80	5.93	6.03
PROTEIN - \$/KG	12.78	11.55	11.15	11.15	11.15	11.15	11.81	12.14	12.28	12.76	13.05	13.27

<sup>1</sup> Section 24 of the Code demands that a milk supply contract must specify the first and last days of the supply period during which milk is to be supplied under the agreement, which contains a definite end date.

<sup>2</sup> The milk supply agreement must clearly specify the minimum price or prices under the agreement. That may be a minimum single price, a schedule of minimum yearly prices or a schedule of monthly minimum prices. Section 26 of the Code.

## Additional Payments & Incentives

In addition to the fixed monthly minimum pricing above there is also a monthly and seasonal incentive program as outlined in schedule 1 (attached handbook).

## Beston Price Representation

### Model Farm

To calculate individual farmer pricing Beston use a Model Farm calculation tool.

The seasons rates for Minimum Fixed Monthly price, Productivity Incentive, Flat Milk Incentive, and Growth Incentive, are set in the calculation tool, along with all industry fees and Beston charges. The supplier's production data is entered into the calculation tool to provide individual supplier estimates for projected income and price.

The Model Farm settings consist of Minimum Fixed Monthly Pricing and Incentives for Premium Grade, 1.5million litres of Volume, 3.9% Fat, 3.2% Protein. (See Schedule 1, Supplier Handbook)

### Weighted Average

Beston's weighted average price is calculated on the projected total milk supply for the year that meets Beston's quality requirements at premium grade, based on the previous year's production.

The Weighted Average is calculated on the total amount payable for milk using Beston's FY2023 monthly minimum milk prices for all contracts, plus all incentives inclusive of industry fees and Beston charges. (See Schedule 1, Supplier Handbook). The actual amount you receive may be more or less than the weighted average.

## Timing of Payments/Billing Frequency (Enter proposed billing/payment frequency)

See attached handbook at schedule 1

## Volume of Milk Supply (either "all" or a specified amount and/or first right of refusal if specified amount)

All

## Contact for Beston<sup>3</sup>

Contact officers are listed in the handbook attached to this contract at Schedule 1 on page 3

<sup>3</sup> Complaint handling officer is required Section 43(2) of the Code.

## Execution as an Agreement

### If Supplier/Owner is an individual (including a trustee) - Signed by

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Signature of Supplier/owner

In the presence of: Signature of Witness

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Name of Supplier/Owner

Name of Witness

--	--

Date

Date

### If Supplier/Owner is a company

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Signature of Director

Signature of Company Secretary/Director

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Name of Director

Name of Company Secretary/Director

--	--

Date

Date

--	--

In the presence of: Signature of Witness

In the presence of: Signature of Witness

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Name of Witness

Name of Witness

--	--

Date

Date

### If Supplier/Owner is a partnership-Signed by the partner/s

#### Partner 1:

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Signature of Partner

In the presence of: Signature of Witness

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Name of Partner

Name of Witness

--	--

Date

Date

#### Partner 2:

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Signature of Partner

In the presence of: Signature of Witness

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Name of Partner

Name of Witness

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Date

Date

### Associated Sharefarmer Information

Sharefarmer Name:		Sharefarmer No:
Sharefarmer Address:		Phone No:
	Postcode:	Mobile No:
Email Address:		Banking Instructions
Sharefarmer Allocation: ..... %		Bank Name:
		Account Name:
ACN/ABN:		BSB No:

### Sharefarmer 1 - Signed by

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Signature of Sharefarmer

In the presence of: Signature of Witness

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Name of Sharefarmer

Name of Witness

--	--

Date

Date

### Sharefarmer 2 - Signed by

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Signature of Sharefarmer

In the presence of: Signature of Witness

--	--

Name of Sharefarmer

Name of Witness

--	--

Date

Date

**BESTON HEAD OFFICE USE ONLY**

### In the case of an authorised officer (Section 126 of the Corporations Act)

On behalf of the Beston Global Foods as an authorised officer

<b>Fabrizio Jorge</b>	
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Name of Authorised Officer

Signature of Authorised Officer

<b>CEO</b>	
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Position

Date

## Definitions

**ACCC** means the Australian Competition and Consumer Commission.

**Act** means the *Competition and Consumer Act 2010*<sup>4</sup>

**Agreement** means the Milk Purchase Contract including the coversheet and schedules. This agreement also incorporates the Beston's Handbook.

**Beston** means Beston Global Foods its subsidiary entity Beston Pure Dairies. References to Beston or Beston's in this agreement shall mean Beston Global Foods and its subsidiary entity Beston Pure Dairies Pty Ltd ABN 71 606 417 994.

**Billing frequency** means the frequency of payments made by Beston as described in the Handbook (Schedule 1 of this agreement).

**Code and Industry Code** means the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019* as regulated under the Act.<sup>5</sup>

**Collection** means the point at which milk is transferred from the supplier to the Beston or Beston's agent or milk transporter. Unless otherwise provided for, occurs as the milk passes from the supplier's vat into the coupling of Beston's hose or another collecting device.

**Coversheet** means the pages of this agreement which appear after the title page of the agreement and those pages preceding the definitions page. The coversheet forms part of the agreement.

**Dispute** means a dispute between the parties to this milk supply agreement and in relation to a matter arising under or in connection with this agreement.

**Farmer/Supplier** means a person or business that produces, or that may produce milk.<sup>6</sup>

**Handbook** means the Beston Pure Foods Handbook issued by Beston Global Foods referred to in schedule 1.

**Milk** means the lacteal fluid product of the dairy cow.<sup>7</sup>

**Milk Quality Reduction** means reductions which are in accordance with the milk quality as described in schedule 1.

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<sup>4</sup> Defined by Section 5 of the Code.

<sup>5</sup> Defined by Section 5 of the Code.

<sup>6</sup> Defined by Section 5 of the Code.

<sup>7</sup> Defined by Section 5 of the Code.

**Particular Collection Instructions** mean reasonable instructions which either party may make of the other described in this agreement or its schedule. (Beston's particular collection instructions are in the Handbook in schedule 1).

**Particular or Special Instructions** means any specific conditions either party may make of the other as described on the coversheet of this agreement or its schedule which are compliant with the Code. (Beston's instructions are in the Handbook in schedule 1).

**Payments** means the payments made by Beston to the supplier for the purchase of milk.

**Price** means the price of the milk for purchase and may be expressed in terms of milk solids, including a separation of price determined by protein, butterfat and other products inherent in the milk referred to in the Handbook at schedule 1 and/or on coversheet. Unless otherwise provided for, price will be in Australian dollars.

**Price Justification** shall mean a statement of price justification as required by section 14 of the Code as posted on the Beston Global Food website.

**Processor or Purchaser** means Beston Global Foods and its subsidiaries and associated entities.

**Purchase** means purchase in trade or commerce.<sup>8</sup>

**Retrospective Stepdown** is a variation of the milk supply agreement that reduces a minimum price for milk supplied under the agreement before the variation occurs.<sup>9</sup>

**Specifications** mean quality specifications incorporated into this agreement on the coversheet and/or in the Handbook at schedule 1.

**Stepdown** means a price adjustment which is less than the price indicated in the agreement for milk which complies with the standard agreed in this contract.

**Terms of Payment** means the terms of payment indicated on the coversheet of this agreement and in the Handbook at schedule 1.

**Transport Provider** means the provider of milk transport from the farm to the place of processing as nominated by Beston.

**Unilateral Prospective Stepdown** is a unilateral variation of the milk supply agreement by Beston that reduces a minimum price for the milk supplied under the agreement after the variation occurs.

**Writing** includes electronic writing in email or facsimile.

## **Interpretation**

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<sup>8</sup> Defined by Section 5 of the Code.

<sup>9</sup> Defined at section 27(2) of the Code Retrospective stepdowns are banned by the Code.

1. If there is an inconsistency arising out of particular conditions and particular collection instructions in the Handbook (schedule 1) as referred to on the coversheet and the rest of this agreement, the body of the agreement will override the provision of the particular conditions to the extent of the inconsistency.
2. If there is an inconsistency arising out of this agreement between the operation of the Code and the agreement, the Code will override the agreement to the extent of the inconsistency.
3. In this agreement:
  - a. a reference to a party to this agreement includes the party's proper assigns, proper substitutes and successors.
  - b. words expressed in singular terms include the plural and visa versa.
  - c. where a word is defined its similar grammatical forms have the same applicable meaning.
  - d. words indicating a gender include all genders.
  - e. any reference to legislation, including subordinate legislation or any provisions of legislation or subordinate legislation shall incorporate such legislation as amended from time to time.
  - f. any reference to a legal personality shall include a corporation, partnership, trust, incorporated association, local government authority or individual capable of legal personality.
  - g. a reference to a week shall mean a seven-night period commencing on a Monday and concluding the next Sunday following.
  - h. a reference to a month shall mean a calendar month.
  - i. a reference to a year shall mean a financial year.
  - j. footnotes do not form part of this agreement.
4. Where a party to the contract employs the use of an agent the agent may represent the party in this agreement.

## **Good Faith**

5. Parties to this agreement shall at all times deal with each other in good faith.<sup>10</sup>
6. Without limitation, in determining whether either party has acted in good faith in dealing with the other party, the following shall be taken into account:
  - a. whether the first party has acted honestly;
  - b. whether the first party has tried to cooperate with the other party to achieve the purposes of this agreement;

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<sup>10</sup> Good faith is a requirement of the Code and cannot be contracted away. Good faith is prescribed for both farmers and processors alike. Failure to act in good faith carries penalties. Refer to Section 11 of the Code.



- c. whether the first party has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
- d. whether the first party has not acted in a way that constitutes retribution against the other party for past complaints and disputes;
- e. whether the first party's relationship with the other party has been conducted without duress, unconscionable conduct or undue influence;
- f. whether the first party's relationship with the other party has been conducted in recognition of the need for certainty regarding the risks and costs of supplying or purchasing Milk;
- g. whether the first party has undermined, or denied the other party, a benefit of this agreement;
- h. whether the first party has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint or dispute with the other party; and
- i. whether, in dealing with the first party, the other party has acted in good faith.

## **Terms of Agreement**

- 7. This agreement has a cooling off period of 14 days after the signing of this contract. A supplier may exercise the right to rescind this agreement within those 14 days by notifying Beston in writing.<sup>11</sup>
- 8. This agreement becomes operational on the start date written in the coversheet and will end at midnight on the day on which the term expires as described in the coversheet. (Unless the contract is terminated for other reasons described in this agreement or for grounds articulated in the Code).
- 9. Beston shall in writing at least 60 days prior to the end of this agreement, notify the supplier of Beston's intention to renew, extend or end the agreement.
- 10. Where Beston informs the supplier of an intention to extend or renew the agreement the supplier shall within 14 days notify the processor of their intention to agree to or reject the proposal.<sup>12</sup>
- 11. If Beston or the supplier do not provide written notices to each other regarding renewal or extension of this existing agreement, the agreement will be deemed to continue until terminated by either party with not less than 30 days' notice of the termination. (Unless a shorter period of termination is agreed by the parties in writing).

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<sup>11</sup> The 14-day cooling off period is mandated by the Code. Refer to Section 23 of the Code.

<sup>12</sup> If the contract is longer than 3 years different rules apply. Refer to Section 36 of the Code regarding these arrangements.

## Purchasing the Milk

12. The supplier agrees to sell milk to Beston and Beston agrees to purchase the milk from the supplier:
  - a. for the agreed price on the coversheet and consistent with the incentive schemes as described in the Handbook (schedule 1)<sup>13</sup>
  - b. at the standard outlined in the coversheet and the Handbook (schedule 1)
  - c. at agreed volumes<sup>14</sup>
  - d. at the times indicated
  - e. complying with any particular collection instructions including those in the Handbook (schedule 1)
13. The supplier will comply with all laws and standards to deliver a merchantable product to Beston.
14. The standards of the milk to be delivered by the supplier are described in the Handbook (schedule 1). Any other terms and conditions not encompassed in this agreement are not a term or condition of this agreement.
15. If on the coversheet of this document Beston indicates that Beston will take all of the milk the supplier produces the contract is an exclusive supply contract.
16. If on the coversheet of this document Beston indicates they wish to exercise a first right of refusal for milk produced in excess of an agreed amount, the excess will be purchased at the same price (or greater) than the agreed price indicated on the coversheet. The agreement is an exclusive supply contract until Beston declines to purchase the excess milk.
17. If on the coversheet the parties indicate the supply of a specific volume of milk only, the contract is not an exclusive supply agreement and the supplier is at liberty to sell any additional milk to any third party.
18. Milk will be supplied in accordance with the specifications described in the Handbook (schedule 1). Any alteration to the specifications may only be made in accordance with the variation clauses of this contract and the Code.
19. No penalty shall arise for a supplier where the supplier has agreed to produce a fixed volume and the volume produced is up to 10% over the indicative volume described on the coversheet. Beston shall accept delivery of the excess milk.
20. The supplier shall be paid for the milk in accordance with the price agreed on the coversheet and incentives as contemplated by the Handbook (schedule 1).

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<sup>13</sup> The milk supply agreement must clearly specify the minimum price or prices under the agreement. Refer Section 26 of the Code.

<sup>14</sup> Note that combining both exclusive supply and a maximum volume in the same agreement is banned by the Section 31 of the Code.

## **Ownership and Transport**

21. Ownership of the milk is transferred from the supplier to Beston when the milk passes through the coupling on the hose of the milk supply truck. It occurs where that coupling attaches to the supplier's vat, if there is some other transport device, it occurs where the milk passes from the supplier's vat to the transport device.<sup>15</sup>
22. Cost of transport is to be borne by Beston, however Beston may impose a stop charge and freight cost as indicated in the attached Handbook (schedule 1) or a charge as indicated in the "Particular Collection Instructions" section on the coversheet.<sup>16</sup>
23. Losses arising after the change of ownership from the supplier to Beston shall be borne by Beston.
24. Beston is to arrange for the collection and transport of the agreed volumes of milk from the farm.
25. Beston will abide by all reasonable requests and directions of the supplier regarding access to the farm and the farm's vat.
26. The supplier will make available safe, all-weather access to the farm and vat to enable Beston to collect the milk as indicated in the attached Handbook (schedule 1).

## **Testing**

27. Test samples are to be collected from a point as close as reasonably practicable to the coupling at the time the milk is transferred from the vat to Beston's milk truck.
28. At the request of the supplier, Beston will provide a test sample to the supplier of the milk collected. The supplier's sample will be taken from the same place as Beston's test sample is drawn.
29. Beston will test the milk at Beston's expense.
30. If the supplier seeks to test the milk the supplier can test the sample given to them at the supplier's expense.
31. Beston's sample will be tested within 24 hours of the collection of the milk on a weekday. Where the test occurs on weekend or public holiday, the following working day. Any test result that exceeds these periods may not be relied upon by Beston to make any assertion regarding

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<sup>15</sup> Section 30 of the Code provides that "*The milk supply agreement must specify when the processor becomes the owner of the milk supplied under the agreement.*"

<sup>16</sup>This is an example of a fee for service. If any other fees for services are described they have to be in the agreement on a yearly basis. Requirement of Section 29 of the Code

the quality of the milk received.

32. Beston will endeavour to inform the farmer within 24 hours of the results of the test, but in any instance, not less than 4 working days after the sample is taken.
33. The information in the written notification to the supplier shall reflect the results which are reported on and in compliance with the standards outlined in the Handbook (schedule 1).
34. Beston will inform the supplier in writing of the test results.<sup>17</sup> For the purpose of this section writing may include electronic transmission via SMS text message.
35. To avoid adverse test results the supplier and Beston will take all necessary steps to ensure that the equipment, couplings, hoses or any other equipment associated with the transfer of the milk from the vat are clean, well maintained and serviceable.
36. Beston will take all reasonable measures to ensure the milk collected from the vat has had a reasonable time for the milk to be brought to a temperature between 0 and 5 degrees Celsius. Where milk is collected at a higher temperature within 3 hours and 30 minutes of the commencement of milking and the milk is above the temperature, no action lies against the supplier by Beston. This clause may only be relied upon in circumstances arising from early collection after milking. Where the milk temperature is too high arising out of equipment failure or poor equipment maintenance Beston reserves the right to grade or reject the milk in accordance with the Handbook (schedule 1).

## **Payment**

37. The price paid to the supplier will be in accordance with the price identified on the coversheet, (or higher).
38. The supplier will be paid the full price indicated on the coversheet minus:
  - a. any deduction arising from a downgrading of the milk described in the Handbook (schedule 1),
  - b. the Dairy Produce Levy, and
  - c. any other deduction authorised by law or by the supplier.
39. Beston agrees to generate a recipient created tax invoice (RCTI) which complies with the provisions of the *A New Tax System (Goods and Services Tax) Act 1999*.
40. Beston will issue a RCIT in accordance with the billing frequency identified on the coversheet and in the Handbook (schedule 1).

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<sup>17</sup> Section 25(c) of the Code.

41. Beston may pay a loyalty or location payment to the supplier.
42. Beston will not impose upon the loyalty or location payment a condition that the supplier:
- a. supply milk to Beston after the agreement ends, or
  - b. agree to vary the agreement to postpone the end of the supply period, or
  - c. enter into a new milk supply agreement with Beston.<sup>18</sup>
43. If this agreement is terminated before the end of the supply period, the supplier is entitled to a *pro rata* payment of the loyalty or location payment of the completed portion of this contract prior to the termination.<sup>19</sup>
44. Beston may withhold a loyalty or location payment for a material breach of this agreement.
45. Beston will assess the need for step-ups as the season progresses, but in any case, the Beston weighted average closing price per kilogram of milk solids will be higher than the publicly available advertised weighted average closing price per kilogram of milk solids paid by the nominated processing companies purchasing Milk in South Australia, namely, Saputo, Fonterra and Bega Cheese in each supply year.
46. Flat Milk Incentives, Growth Incentives and Productivity Incentives are not loyalty payments. They are incentive payments payable for consistency of supply and enhanced productivity efforts by the supplier.

## **Defects**

47. Where there are defects in the milk as described in the Handbook (schedule 1), Beston may proceed by way of a price penalty as described in the Handbook (schedule 1) of this contract.
48. If Beston rejects the milk because of a failure to meet the expectations described in the Handbook (schedule 1), Beston will, as soon as practicable, inform the supplier of the grounds for the reduction or rejection in writing.<sup>20</sup>
49. A price quality reduction is not a stepdown contemplated by this agreement. A price quality reduction is a reduction arising out of a quality of milk that is below the specifications described on the coversheet and the Handbook (schedule 1) of this agreement.
50. A price quality reduction shall be in accordance with the structure outlined in the Handbook (schedule 1) of this agreement.

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<sup>18</sup> Subsections (a), (b) and (c) are required by Section 35 of the Code.

<sup>19</sup> Section 42 of the Code provides penalties for withholding loyalty payments.

<sup>20</sup> Requirement of the Code Section 25(e)

51. The grading systems identified in the Handbook (schedule 1) of this agreement shall reflect reasonable operating norms of quality expected in the dairy industry in Australia.

52. If Beston intends to take an adverse action regarding a defect, Beston must issue a notice to the supplier as soon as practicable but in any instance within 15 days of the sample being tested, in writing.

53. Where Beston or the supplier become aware of:

- a. any possible actual or potential defect, contamination, fault or other condition in any milk supplied,
- b. any matter that may impact on compliance with any health standard, public policy or code,
- c. any matter which may affect compliance with any law or regulatory health standard,

Beston or the supplier must, as soon as possible, advise the other party to the contract of the nature of the defect or issue, details of the collections impacted and the actions that have been taken or are proposed to be taken to diminish the impact of the defect.

54. Beston and the supplier will co-operate to the fullest extent possible to diminish any risk to the public from the defect including (but not limited to) compliance with laws, assisting each other in investigating the source of the defect and taking such remedial action as necessary to ameliorate the impact of the defect. Such steps include assisting government authorities and disseminating information to the public where necessary.

55. Where a defect is detected, both Beston and the supplier are expected to act in good faith.

## **Stepdowns**

56. Unilateral retrospective processor stepdowns are not allowed by this agreement.<sup>21</sup>

57. Unilateral prospective processor stepdowns are only permitted in extraordinary circumstances that are temporary and involve a change in market conditions that occur outside Australia, have a highly significant effect on supply, demand or costs in the dairy industry and are not caused by decisions made by Beston.<sup>22</sup>

58. Where Beston cannot demonstrate they have taken all reasonable steps to prevent or limit the impact of the extraordinary event, or there are no such steps that Beston can take to demonstrate that the stepdown is unavoidable, Beston may not impose a prospective stepdown.

59. Where Beston has not provided the ACCC or the supplier 30 days' notice of the prospective stepdown, Beston may not impose the stepdown.<sup>23</sup>

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<sup>21</sup> Defined at section 27(2) of the Code Retrospective stepdowns are banned by the Code.

<sup>22</sup> Section 28 (4) of the Code.

<sup>23</sup> Section 28 (4)(c) of the Code outlines the steps required for ACCC notification.

60. Where Beston intends to impose a prospective stepdown the supplier may, within 21 days terminate this agreement.

### **Guarantees/Warranties**

61. Beston guarantees the testing procedure used to test milk samples.<sup>24</sup>

62. Beston guarantees the accuracy of volumetric measuring of milk collected.<sup>25</sup>

63. Beston guarantees the cleanliness of all equipment upon taking ownership of the milk.

64. Both parties warrant that they will abide by the procedures of milk production and processing which reflect minimum standards and practices in the dairy supply chain and furthermore, warrant that they are compliant with all relevant laws, regulations and codes of practice relevant to the production and processing of milk in Australia.

65. The supplier guarantees that the milk supplied is not adulterated, tainted or contaminated when it is collected by Beston.

66. Both Beston and supplier warrant that they are possessed of all necessary authorisations, licences, approvals and permits for the conduct of their respective businesses.

67. Both Beston and supplier warrant that their respective employees are legally entitled to work in Australia and that each party will comply with legal requirements regarding their employees.

68. Each party will inform the other if they become aware of a breach of the warranties or guarantees described in this agreement.

69. If a party becomes aware of a wilful breach, false or misleading representation in relation to any warranty under this agreement, they will inform the other party.

70. A party who is affected by a breach may rely on the indemnities provided by this agreement.

71. Both parties respectively warrant that at the date of signing the agreement that each party has the power to lawfully execute the agreement and all necessary actions have been taken to authorise the execution of the agreement.

72. The supplier warrants that they will comply with all reasonable standards of animal welfare and management reflecting the minimum standards as anticipated by the law and the generally accepted standards of animal husbandry as practiced in the dairy industry in Australia.

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<sup>24</sup> Section 25 (b)(i) of the Code requires this guarantee.

<sup>25</sup> Section 25 (b)(ii) of the Code requires this guarantee.

## **Termination of Agreement**<sup>26</sup>

73. This contract may be terminated by consent of both parties. Where the parties consent to termination Beston will provide a written record to the supplier within 30 days.
74. Where Beston intends to impose a prospective stepdown the supplier may, within 21 days terminate the agreement by notice in writing.<sup>27</sup>
75. Either party may terminate the contract immediately if:
- a. the other party to the contract has committed a fundamental or material breach of the contract and has not remedied it in 30 days
  - b. the other party has committed a material breach which cannot be remedied
  - c. the other party has become insolvent, bankrupt or has made an assignment to creditors
  - d. a party has appointed to its assets, an agent in possession, a mortgagee in possession, a trustee in bankruptcy, a liquidator, a receiver or a receiver and manager, or
  - e. in the case of a natural person, dies, is deprived of capacity or is imprisoned.
76. A party to this contract may terminate this contract in writing in circumstances that:
- a. the other party conducts themselves in such a fashion as to diminish the reputation of the terminating party
  - b. that either party assigns their interest in this agreement to a third party without the permission of the other party.
77. Unless otherwise provided for, the termination of the contract must be in writing with accompanying reasons for the termination as well as the date upon which the termination takes effect.<sup>28</sup>
78. A supplier may terminate this agreement by giving 90 days' notice to Beston if the supplier intends to exit the dairy industry.

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<sup>26</sup> The rules for termination are in Section 34 of the Code.

<sup>27</sup> Requirement of the Code, Section 28(5)(a)

<sup>28</sup> Required by Sections 34 (4) and (6) of the Code.



## **Indemnities**

79. To the maximum extent permitted by law the supplier will not be liable to Beston should the supplier fail to provide the required volume of milk during the operational period of this contract.
80. Excepting those warranties imposed by statute and this contract, the supplier excludes all express or implied warranties or representations regarding the milk supplied.
81. The supplier indemnifies Beston against any claims which arise out of a death or injury or damage to property because of the supplier's breach of the agreement with the exception that the conduct of Beston contributes to the death, injury or loss.
82. The supplier is not liable to Beston for any losses of savings or profits incurred by Beston arising out of the execution of this agreement.
83. The supplier indemnifies Beston from any unlawful or improper conduct of the supplier or the supplier's employees, agents or representatives.
84. Beston indemnifies the supplier from any unlawful or improper conduct of Beston or Beston's employees, agents or representatives.

## **Insurances**

85. The supplier must, at the supplier's cost, maintain public liability and product liability insurance to an amount of at least \$10 million for each occurrence in respect of any death, injury, or loss arising out of the supplier's negligence or any other defect in the milk supplied to Beston.
86. Where Beston requests evidence of the insurance being current, the supplier will furnish such evidence to the reasonable satisfaction of Beston.

## **Force Majeures**

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

## **Variations**

89. A party may not unilaterally vary a term of this contract other than a variation imposed by law.
90. The contract may be varied by the parties by way of written consent only if the variation complies with the provisions of the Code. Where a variation by consent occurs Beston will provide a written record of the variation within 30 days.
91. Any variation agreed to by the parties is limited to compliance with the law or the Code. If the variation to the contract is inconsistent with a law or the Code the law or Code will prevail to the extent of the inconsistency.
92. An agreed variation which is not written in the first instance will be written and transmitted by Beston to the supplier within 30 days.<sup>29</sup>
93. If a law or the Code is amended to such an extent as to render the contract inoperable the contract is frustrated on the day of the change of the law.

## **Confidentiality**

94. The parties must keep confidential and must not disclose or make available directly or indirectly to any third party any confidential information unless:
- a) the disclosure of the confidential information is necessary to comply with any laws or the lawful requirements of any public, statutory, governmental, semi-governmental, local governmental or judicial body entity, or authority;
  - b) at the time of the disclosure, the information was in the public domain; or
  - c) subsequent to the disclosure, the information becomes part of the public domain (other than because of a breach of this clause).
95. The parties must not use, disclose, or access confidential information for any reason except as is necessary to perform this agreement.
96. At the end of the term or upon earlier termination or completion of this agreement, Beston must deliver to the supplier or as it otherwise directs any confidential information in Beston's possession that is capable of being delivered. Beston must delete, erase, or otherwise destroy any confidential information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the supplier or as it directs.
97. For the avoidance of doubt, the parties' obligations in clause 95 apply to any information disclosed or obtained in dealing with or resolving the complaint or dispute under this

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<sup>29</sup> Required by Section 19 of the Code which makes it an offence to have a non-compliant variation to processors.

agreement in accordance with section 54 of the Code.

98. For the purpose of this clause confidential information means the terms of this agreement and (whether or not in material form and whether disclosed before or after the date of this agreement) any information of whatever kind relating to a party that is disclosed or becomes known to the other party in the course of their discussions and negotiations regarding or in connection with this agreement and which:

- a) is by its nature confidential;
- b) is designated by the party disclosing the information as confidential; or
- c) the party receiving the information knows or ought reasonably to know is confidential;

but does not include any part of the information that:

- d) is generally known to the public at the time of disclosure or becomes generally known to the public through no wrongful act on the part of the party receiving the information;
- e) is in the possession of the party receiving the information at the time of disclosure otherwise than as a result of that party's breach of a legal obligation;
- f) becomes known to the party receiving the information through disclosure by sources other than the other party provided that, in so far as is known to that source, it is not prohibited by law or contract from disclosing the information to the party receiving the information;
- g) is independently developed by the party receiving the information outside the scope of the relationship with the other party; or
- h) is required to be disclosed by court order, subpoena or other law or legal process.

99. Beston may make information available to a third party, such as an agent, employee or contractor in circumstances needed for the successful execution of the obligations of the processor relating to this contract. Where Beston makes such information available Beston will ensure that there is also a confidentiality agreement in place with that agent, employee or contractor.

### **Compliance with Law and Corruption**

100. Each party shall at all times comply with legislation, subordinate legislation and regulations. A serious and wilful breach of the law amounts to a fundamental breach of the contract.

101. If either party engages in conduct, whether related to this contract or not, which would be considered 'corrupt' by the law or generally accepted standards of the community, such conduct amounts to a fundamental breach of this contract.

## Complaints and Dispute Resolution<sup>30</sup>

102. All disputes are subject to the provisions of the Code relating to disputes.
103. Where a dispute arises out of, or in connection with, the performance of this contract both parties, acting in good faith, will use all reasonable endeavours to bring the issue to the attention of the other party in a timely fashion and in any instance not more than 90 days after the event occurs which leads to the dispute.
104. Notification will include:
- a. the nature of the complaint
  - b. that the aggrieved party wishes to resolve the dispute in accordance with this contract, and
  - c. the desired resolution
105. The party receiving the complaint will in writing notify the other party they have received the complaint within five days and articulate the steps intended to resolve the dispute.
106. Beston will supply the names of people who are contacts in the case of a dispute. Those people are the field service officers identified in the Handbook (schedule 1). Beston may, in writing, advise the supplier from time to time as to changes of field service officers to be contacted, without triggering the variation clauses of this contract.
107. Where a notification of a dispute is made to the other party of the contract both parties will act, in good faith, to resolve the dispute.
108. Upon completion of the exchange of written material both parties agree that, on a without prejudice basis, they will meet at least twice in face to face meetings in an effort to resolve the dispute.<sup>31</sup>
109. If after attempting to resolve the dispute, and in any instance not before the elapse of 60 days after notification, the parties are not reconciled, both parties agree to subordinate themselves to a mediation process as articulated in the Code.
110. Both parties to this agreement agree that should mediation be unsuccessful they will subordinate themselves to arbitration as described in the Code.
111. The costs of a mediation and/or arbitration will be borne by each party equally, unless otherwise agreed. If a party seeks legal representation in the mediation or arbitration process,

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<sup>30</sup> This dispute mechanism is required by, Subdivision F - Complaints and Disputes, of the Code. Arbitration is a voluntary matter for the parties under the Code however forms a term of this agreement, note clause 106.

<sup>31</sup> Clauses 109 and 112 are the complaints handling procedure as contemplated by Section 47 of the Code.

such legal costs will be borne by that party, unless otherwise agreed.

112. Nothing in this dispute resolution procedure will prevent a party seeking an injunction.

### **General and Other Matters**

113. Without prior and written permission of the other party, neither party will assign the milk supply arrangement.

114. Each party will be restrained from making a public statement about the other party without first obtaining written permission from the other party.

115. The parties remain independent of each other. Nothing in this agreement may be read down as creating any form of legal relationship beyond a contractual obligation. This contract does not create a partnership, trust arrangement, joint venture, agency, employment relationship or other relationship that is not contractual in nature.

116. This contract represents the whole contract between the parties.

117. If a party chooses not to demand enforcement of a term of this contract the choice cannot be interpreted as a waiver of the term. An aggrieved party may seek damages or specific performance for breach of this contract where appropriate.

118. Subject to compliance with the dispute resolution processes articulated in this contract and the Code, the remedies in this contract do not exclude remedies available to a party in law or equity.

119. Expiry or termination of this contract does not limit any rights or obligations a party had prior to the expiry or termination.

120. Both parties will keep a record or a copy of a record, of this agreement for at least 6 years following the end of this agreement.<sup>32</sup>

121. Clauses which are intended to operate beyond the term of the contract may be relied upon by a party beyond the term of the contract.

122. Invalidity of a term shall only impact on the contract to the extent of the invalidity. Remaining provisions which are capable of execution remain binding on the parties.

123. Beston is liable for any stamp duties arising out of this contract.

124. This agreement will be governed by the laws of the state or territory in which the milk is collected from the supplier.

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<sup>32</sup> Section 55(3) of the Code

## **Statement of price justification<sup>33</sup>**

### **Statement of Price Justification**

In setting our price for season 2022 /2023 Beston has paid close consideration to the following factors:

1. Sustainability of Dairy Farming in South Australia and regional farm milk production trends of the past 2 years.
2. Increasing milk supply growth needs of Beston this year and for following years.
3. Beston product contract values, domestic and international market conditions, and outlook.

### **Milk Contract - Outline of Circumstances**

Beston's season 2022/2023 contract is available to producers in each of South Australia's major dairy regions defined as:

- Fleurieu Peninsula
- River and Lakes
- Adelaide Hills
- Mid North
- South East

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<sup>33</sup> Required by Section 14 of the Code for a published standard form contract.