

IN THE AUSTRALIAN COMPETITION TRIBUNAL

of 2013

MURRAY GOULBURN CO-OPERATIVE CO LIMITED

**RE: PROPOSED ACQUISITION OF WARRNAMBOOL CHEESE
AND BUTTER FACTORY COMPANY HOLDINGS LIMITED**

Certificate identifying annexure

This is the annexure marked RAP48 now produced and shown to Robert Arthur Poole at the time of signing his statement on 28 November 2013.

Annexure RAP48

**General Milk Payment Terms comprising Standard Milk Payment
Terms and Flat Milk Incentive Election Form**

Filed on behalf of Murray Goulburn Co-Operative Co Limited

Prepared by:

Herbert Smith Freehills

Tel: +61 3 9288 1234

Email: chris.jose@hsf.com

Address for service

Level 43, 101 Collins Street

MELBOURNE VIC 3000

Fax: +61 3 9288 1567

Ref: CJ:ALM:82230139

Standard milk payment terms 2013-14



Summary Information

Attached to this letter is the updated standard MGC Milk Payment Terms that have been developed by MGC. As previously announced, MGC has reviewed the available payment options, and a new, simplified milk payment system will apply from 1 July 2013. Under this new payment system, there will be a single base price with the option to apply a Flat Milk Incentive which is designed to underpin off-peak production. As part of this process, MGC has also conducted a review of its Milk Payment Terms, which resulted in the creation of the revised set of standard terms accompanying this letter.

As well as reflecting the new payment system, the revised MGC Milk Payment Terms are intended to clarify the respective rights and responsibilities of Supplier/shareholders and MGC. Some of the improvements include:

- removing and minimising duplications;
- providing guidance on MGC's obligations to Supplier/shareholders;
- providing certainty on the collection of milk, quality and rejection; and
- clarifying the circumstances in which MGC may vary these supply terms.

The MGC Milk Payment Terms consist of two parts, the "Murray Goulburn Standard Milk Payment Terms" (**Terms**) and the Flat Milk Incentive Election Form (**FMI Election Form**). The Terms set out in detail the terms and conditions which apply to your supply of milk to MGC. Definitions of some of the words and phrases used in this document can be found in clause 20 of the Terms.

As the payment system and standard terms have both been updated, all Supplier/shareholders are asked to complete and sign the FMI Election Forms to confirm acceptance of the new terms and to elect to apply (or not apply) the Flat Milk Incentive.

Please note that the MGC Milk Payment Terms will replace the existing terms, and take effect, from 1 July 2013. By continuing to supply any milk to MGC on or after 1 July 2013, you are deemed to have accepted those terms, irrespective of whether you have completed and returned the FMI Election Form.

Please read the Terms and the FMI Election Form carefully before signing.

You should also refer to the Opening Price Circular for the monthly payment rates, and to the Milk Payment System Explained 2013/14 for further details on the payment system, including the Flat Milk Incentive, other incentive payments and charges.

What to do

There are two attachments to this letter - the Terms and the FMI Election Form. The FMI Election Form allows you to elect whether the Flat Milk Incentive will apply.

The FMI Election Form must be returned to MGC no later than 31 August 2013. If a Supplier/shareholder does not complete, sign and return an FMI Election Form to MGC by 31 August 2013 that Supplier/shareholder will be deemed to have elected not to apply the Flat Milk Incentive. This election will apply at all times during the 2013/2014 Financial Year and afterwards until varied as set out in clause 7.2 of the Terms.

If you produce milk on more than one Farm which supplies or will supply MGC, you should ask for a separate FMI Election Form for each Farm from your Regional Field Services Manager. You may elect to apply the Flat Milk Incentive for one or more Farms. Please complete and return a separate FMI Election Form for each Farm.

If you elect to apply the Flat Milk Incentive for two or more of these Farms and you wish to apply to combine the Farms for the purposes of calculating the Flat Milk Incentive (as set out in clause 4.4(4) of the Terms) you must complete a separate Combined Flat Milk Incentive Return Advice. These forms can be obtained from your Regional Field Services Manager and must be signed and returned to MGC

- 2 -

by 31 August 2013. Please note that MGC is solely responsible for deciding whether to accept or reject an application to combine Farms for the Flat Milk Incentive.

All Supplier/shareholders in respect of a Farm, including those who are Sharefarmers, are required to complete, sign and return the FMI Election Form. Please ensure that on each FMI Election Form the Farm, and the Owner or Sharefarmer who is completing the FMI Election Form, are clearly identified.

Only one Flat Milk Incentive Election should apply to each Farm. If you are a Sharefarmer or an Owner of a share-farming Farm, then all of the participants should discuss and agree on the Flat Milk Incentive Election to apply to that Farm. If different Supplier/shareholders make different elections in respect of a Farm, then MGC will resolve the conflict in accordance with the rules set out in clause 7.4 of the Terms.

Please complete and sign the FMI Election Form(s), and return it to MGC using the reply paid envelope.

Please note that an election to apply (or not to apply) the Flat Milk Incentive is binding until 30 June 2014, and cannot be altered prior to that date. You should make your election only after carefully considering all of the information provided to you. In particular, you should be aware that the Flat Milk Incentive can lead to either an additional payment or a deduction (which may be deducted from your final milk payment for a Financial Year or otherwise recovered by MGC).

Murray Goulburn Standard Milk Payment Terms (Terms)

1 Introduction and precedence

- 1.1 These are the "Murray Goulburn Standard Milk Payment Terms" (referred to as the "Terms" in this document).
- 1.2 To the extent of any inconsistencies between any of the documents that constitute the Supply Arrangement, they will be interpreted in the following descending order of precedence:
- (1) other additional terms (if any) as agreed in writing between MGC and the Supplier/shareholder from time to time, and which expressly refer to the Supply Arrangement;
 - (2) if applicable, a Milk Supply Agreement Details document;
 - (3) the Flat Milk Incentive Election Form;
 - (4) these Terms;
 - (5) the Relevant Standards; and
 - (6) the I&I Form.

2 Term

- 2.1 Subject to clause 2.2, if the Supplier/shareholder was supplying Farm Output to MGC prior to 1 July 2013 and continues to do so following that date, then each Supply Arrangement with respect to that Supplier/shareholder commences on 1 July 2013. Otherwise, each Supply Arrangement will commence on the date on which the Supplier/shareholder accepts in writing the terms of the Supply Arrangement, either indicated by a Flat Milk Incentive Election Form or a Milk Supply Agreement Details document. Each Supply Arrangement will continue until terminated in accordance with clause 17 or by law.
- 2.2 If the Supplier/shareholder was supplying Farm Output to MGC prior to 1 July 2013 under a Fixed Term Supply Commitment then the term of that Fixed Term Supply Commitment will remain unchanged, including in respect of the commencement date, but these Terms will apply to that Fixed Term Supply Commitment from 1 July 2013.

3 Supply

- 3.1 The Supplier/shareholder agrees to continually supply, and to procure the continuous supply of, all of the Supplier/shareholder's Farm Output in respect of each Farm, during the Supply Arrangement.
- 3.2 Unless otherwise agreed by MGC in writing or expressly set out in the Supply Arrangement, the Supplier/shareholder must not supply any Farm Output to any other person during the term of the Supply Arrangement.

4 Incentive Payments

4.1 Classification of Farms

Farms are classified into "Conversion Farms", "Dry Farms", "Existing Farms", "New Farms" and "Returning Farms". MGC will determine the classification of each Farm at its discretion, and such decision will be final and binding. MGC may from time to time reclassify a Farm to reflect any changes in relevant circumstances, but otherwise the classification of a Farm will remain during the term of the Supply Arrangement. The following definitions provide guidance on the intended meaning of each classification, but MGC is not bound by these definitions and may classify a Farm based on other circumstances.

- (1) **Conversion Farm** means a Farm which supplies milk on or after the 2010/2011 Financial Year, where that Farm has never supplied milk to MGC or any other dairy company or milk processor prior to the commencement of the supply of milk to MGC from that Farm during or after the 2010/2011 Financial Year. For the purposes of clarification, if the Supplier supplies Farm Output from multiple Farms, some of the Farms may be Existing Farms while other Farms may be Conversion Farms.
- (2) **Dry Farm** means a Farm which supplies milk on or after the 2010/2011 Financial Year, where that Farm has previously supplied milk to MGC or another dairy company or milk processor, but from which milk has not been supplied to any dairy company or milk processor (including MGC) in the 2 years immediately preceding the date on which the

- 4 -

supply of milk to MGC from that Farm commences during or after the 2010/2011 Financial Year. For the purposes of clarification, if the Supplier supplies Farm Output from multiple Farms, some of the Farms may be Existing Farms and other Farms may be Dry Farms.

- (3) **Existing Farm** means a Farm which is supplying milk to MGC as at 30 June 2013. Such term applies to that Farm whilst the Supplier/shareholder continues to supply all of his/her Farm Output from that Farm to MGC after 30 June 2013. For the purposes of clarification, if the Supplier supplies Farm Output from multiple Farms, some of the Farms may be Existing Farms and other Farms may be Conversion Farms or Dry Farms.
- (4) **New Farm** means a Farm which has previously supplied milk to a dairy company or milk processor other than MGC, and:
- (a) has never supplied milk to MGC; or
- (b) has supplied milk to MGC, but more than 10 years prior to recommencing supply of milk to MGC during or after the 2012/2013 Financial Year.
- (5) **Returning Farm** means a Farm which has previously supplied milk to MGC less than 10 years prior to recommencing supply of milk to MGC during or after the 2010/2011 Financial Year, and which supplied a dairy company or milk processor (other than MGC) during all or any part of the period between ceasing to supply MGC and recommencing supply of milk to MGC during or after the 2010/2011 Financial Year. The term excludes a Dry Farm and an Existing Farm.

4.2 (General qualifying criteria for Incentive Payment)

The Supplier/shareholder is entitled to payment of Incentive Payment if and only if:

- (1) the Supplier/shareholder has continued to actively supply all of its Farm Output to MGC up to and including the date on which the

Incentive Payment is due for payment; or

- (2) the Supplier/shareholder has ceased supplying Farm Output to MGC solely because the Supplier/shareholder (including in the case of a corporate Supplier/shareholder, each individual who is a director or shareholder of the Supplier/shareholder) has fully retired from dairying, and remains fully retired up to and including the date on which the Incentive Payment is due for payment. MGC may determine conclusively and at its discretion whether a Supplier/shareholder or any individual has fully retired from dairying and remains fully retired as at any particular date.

4.3 (Milk produced at the end of a Financial Year)

If MGC collects any Farm Output from a Farm within 1 Business Day after the end of a Financial Year, then MGC may, at its discretion, treat all or part of the collected Farm Output as being supplied in the previous Financial Year for the purposes of calculating the Incentive Payment, to the extent MGC considers (at its discretion) that such Farm Output was produced in the previous Financial Year.

4.4 Flat Milk Incentive

- (1) A Flat Milk Incentive only applies if the Flat Milk Incentive Election in respect of the Farm elects to apply the Flat Milk Incentive.
- (2) A Flat Milk Incentive may be a negative amount, in which case such amount is a debt owed by the Supplier/shareholder to MGC, which MGC may deduct from future payments from the Supplier/shareholder (or recover by any other means).
- (3) The Flat Milk Incentive is calculated at the rates shown in the Milk Payment System Explained (under the heading "Flat Milk Incentive (FMI)"), based upon the Supplier/shareholder's FMI Percentage in respect of that Financial Year, as calculated in accordance with the relevant provisions of the Milk Payment System Explained (under the heading "Flat Milk Incentive (FMI)"), based on the Farm Output supplied

- 5 -

by the Supplier to MGC in that Financial Year.

- (4) Farm Output supplied from another Farm(s) where the Supplier/shareholder has also elected to apply the Flat Milk Incentive may, subject to MGC agreeing at its discretion, be combined for the purposes of calculating the Flat Milk Incentive. MGC will not consider agreeing to combine the calculation of the Flat Milk Incentive from multiple Farms unless such Farms have the same majority ownership and the ABN and payment instructions are the same in respect of each Farm. The Supplier/shareholder may request to combine the calculation of Flat Milk Incentive from other Farms by completing, signing and returning a Combined Flat Milk Incentive Return Advice (available from the applicable Regional Field Services Manager) before 31 August in the Financial Year. The Supplier/shareholder acknowledges that combining the calculation of Flat Milk Incentive from multiple Farms may result in a worse Flat Milk Incentive outcome than if each Farm had been calculated separately, and MGC is not liable for any such difference.
- (5) To be eligible for the payment of Flat Milk Incentive in a given Financial Year, the Supplier/shareholder must:
- (a) have continuously supplied all of its Farm Output to MGC for a minimum period of 9 months during that Financial Year (or such shorter period as is determined by MGC from time to time at its discretion); and
 - (b) not otherwise be disqualified from receiving a Flat Milk Incentive payment under the terms of the Supply Arrangement.
- (6) If the Supplier/shareholder has elected to apply the Flat Milk Incentive but is not entitled to receive the Flat Milk Incentive under the terms of the Supply Arrangement, then in respect of that Financial Year, MGC may (at its discretion) deem the Supplier/shareholder to have incurred a negative Flat Milk Incentive based on the negative rate

shown in the Milk Payment System Explained.

- (7) The Flat Milk Incentive will be calculated on Qualifying Milk Solids following the completion of a Financial Year. MGC will apply the Flat Milk Incentive (whether positive or negative) to the June milk supply payment (which usually occurs on or about 15 July in each year).

4.5 Growth Incentive

- (1) The Growth Incentive applies to all Supplier/shareholders. MGC commits to the Growth Incentive at least until 30 June 2015.
- (2) Farm Output supplied to MGC from another Farm/s cannot be combined for the purposes of calculating Growth Incentive.
- (3) The Growth Incentive will only be paid if all of the following are satisfied:
 - (a) the Supplier/Shareholder is not a party to any rebate or other arrangement with MGC which provides that the Supplier/Shareholder is not entitled to receive Growth Incentive in respect of this Supply Arrangement;
 - (b) there is a net Growth (as that term is defined below) in the total quantity of butterfat and protein in Qualifying Milk Solids supplied by the Farm; and
 - (c) the sum of the following in respect of a Farm in a Financial Year produces a net positive amount:
 - (i) Growth in butterfat in Qualifying Milk Solids supplied by the Farm in that Financial Year (either positive or negative), multiplied by the butterfat Growth Incentive rate set out in the Milk Payment System Explained; and
 - (ii) Growth in protein in Qualifying Milk Solids supplied by the Farm in that Financial Year (either

- 6 -

positive or negative), multiplied by the protein Growth Incentive rate set out in the Milk Payment System Explained ,

where **Growth** will be determined in accordance with clause 4.5(5) below.

- (4) The Growth Incentive will be calculated and, if payable, paid on Qualifying Milk Solids that constitute Growth following the completion of a Financial Year, multiplied by the applicable Growth Incentive rates set out in the Milk Payment System Explained. The Growth Incentive is payable together with the July milk supply proceeds (which usually occurs on or about 15 August in each year).
- (5) For the purposes of paragraph (3), the **Growth** in butterfat and protein supplied from a Farm is determined (separately and as either a positive or negative amount) as follows:
- (a) if the Farm is an Existing Farm – Growth is determined by subtracting the average butterfat and protein (as applicable) in Qualifying Milk Solids supplied to MGC from the Farm in the previous 2 Financial Years from the butterfat and protein (as applicable) in Qualifying Milk Solids supplied to MGC in the current Financial Year.
- (b) if the Farm is a Conversion Farm or Dry Farm:
- (i) in respect of the first Financial Year of the Supply Arrangement – MGC may at its discretion, treat all of the butterfat and protein in Qualifying Milk Solids supplied to MGC from the Farm in that first Financial Year as Growth;
- (ii) in respect of the second Financial Year of the Supply Arrangement – Growth is determined by subtracting the actual butterfat and protein (as applicable) in Qualifying Milk Solids supplied to MGC from the Farm in the

first Financial Year from the butterfat and protein (as applicable) in Qualifying Milk Solids supplied to MGC in the current Financial Year; and

- (iii) in respect of the third and subsequent Financial Years – Growth will be determined as if the Farm was an Existing Farm; and
- (c) if the Farm is a New Farm or Returning Farm:
- (i) in respect of the first Financial Year of the Supply Arrangement – MGC may, at its discretion, treat up to 50% of the butterfat and protein in Qualifying Milk Solids supplied to MGC from the Farm in that first Financial Year as Growth;
- (ii) in respect of the second Financial Year of the Supply Arrangement – MGC may, at its discretion, treat up to 25% of butterfat and protein in Qualifying Milk Solids supplied to MGC from the Farm in that second Financial Year as Growth; and
- (iii) in respect of the third and subsequent Financial Years – Growth will be determined as if the Farm was an Existing Farm.

4.6 Productivity Incentive

- (1) The Productivity Incentive applies to all Supplier/shareholders.
- (2) Upon request from the Supplier/shareholder, the Farm Output supplied from other Farms may, subject to MGC agreeing at its discretion, be combined for the purposes of calculating the Productivity Incentive. MGC will not consider agreeing to combine the Farm Output from multiple Farms in the calculation of the Productivity Incentive unless such Farms have the same majority ownership and the ABN and payment instructions are the same in respect of each Farm.

- 7 -

- (3) The Productivity Incentive will be calculated and paid for on a monthly basis based upon the total number of kilograms of butterfat and protein in the Qualifying Milk Solids supplied to MGC by the Supplier/shareholder during the relevant calendar month, at the rates shown in the Milk Payment System Explained. The Productivity Incentive in respect of a month is payable together with the monthly milk supply proceeds of that month (which usually occurs on or about the 15th day of the following month).
- 4.7 **(Incentive Payments under a current Owner/Sharefarmer Supply Arrangement)** If an Owner and one or more Sharefarmers supplies Milk from a Farm in any one Financial Year, then each of the incentive Payments will be calculated on the total Farm Output supplied to MGC from the Farm under the Owner and each Sharefarmer in that Financial Year. The amount of Incentive Payment payable will be paid to the Owner and each Sharefarmer in proportions based on their contribution of Qualifying Milk Solids to the overall supply for the relevant Financial Year, calculated in accordance with the terms of the applicable I&I Forms.
- 5 Collection**
- 5.1 Subject to these Terms, MGC will collect the Farm Output from the Farm.
- 5.2 MGC may, at its discretion, collect the Farm Output daily or on alternate days. MGC will give the Supplier/shareholder reasonable prior notice of any change from daily collection or alternate day collection. If the Farm meets the requirement (as specified in the Farm Milk Quality Standard) for collection to occur on alternate days but MGC collects the Farm Output daily, then MGC will calculate the Collection and Volume Charge on an alternate day collection basis and provide the Supplier/shareholder a rebate in accordance with the terms of the Farm Milk Quality Standard and/or the Milk Payment System Explained.
- 5.3 The Supplier/shareholder must:
- (1) ensure that MGC and its representatives have safe and unrestricted access to each Farm as is necessary to collect the Farm Output at any time on each collection day;
 - (2) ensure that each Farm complies with the Relevant Standards; and
 - (3) immediately notify MGC of any circumstances that may affect MGC's ability to collect Farm Output.
- 5.4 MGC may collect Farm Output from each Farm at any time on each collection day. MGC will use reasonable endeavours to schedule collection of Farm Output outside the milking time at each Farm.
- 5.5 MGC may, at its discretion, refuse to collect Farm Output for such period of time as MGC may reasonably determine if, in MGC's reasonable view:
- (1) the Supplier/shareholder, the Farm or the Farm Output does not comply with any of the Relevant Standards;
 - (2) collection from the Farm is not safe; or
 - (3) the volume of Farm Output available for collection does not meet the minimum pick up requirement (if any) set out in the Relevant Standards,
- and MGC will notify the Supplier/shareholder of the reason for such refusal. MGC is not liable to the Supplier/shareholder for any Loss suffered by the Supplier/shareholder arising from the refusal to collect.
- 6 Testing and rejection**
- 6.1 MGC may inspect and test the Farm Output prior to collection (including any tests referred to in the Relevant Standards), and may, at its discretion, reject and not collect any Farm Output if:
- (1) the Farm Output fails any of the tests conducted; or
 - (2) the Farm Output does not comply with the pick up requirements (if any) set out in the Relevant Standards.
- 6.2 MGC is not liable to the Supplier/shareholder for any Loss suffered by the Supplier/shareholder arising from any rejection under clause 6.1.

6.3 MGC is not obliged to inspect or carry out any testing of the Farm Output, or to identify any non compliance. In particular:

- (1) the testing (or non-testing) of any Farm Output at the time of collection will not affect the Supplier/shareholder's obligations under the Supply Arrangement; and
- (2) the collection of Farm Output by MGC does not indicate that the Farm Output is compliant.

6.4 In addition to inspecting and testing at the time of collection MGC may also take samples of the Farm Output at any time for the purposes of confirming whether the Farm Output is compliant and determining the quality and composition of the Farm Output.

6.5 MGC will promptly make the test results available to the Supplier/shareholder in accordance with the process set out in the Relevant Standards.

7 Flat Milk Incentive Election

7.1 The Supplier/shareholder is required to elect whether to apply the Flat Milk Incentive in the completed Flat Milk Incentive Election Form. If the Supplier/shareholder has not returned a signed Flat Milk Incentive Election Form in respect of the Farm, then the Supplier/shareholder is deemed to have elected not to apply the Flat Milk Incentive in respect of that Farm.

7.2 A Flat Milk Incentive Election by the Supplier/shareholder will continue until:

- (1) the Supplier/shareholder submits another Flat Milk Incentive Election in accordance with clause 7.3; or
- (2) MGC removes the Flat Milk Incentive in accordance with clause 8.4.

7.3 Subject to clause 7.4, the Supplier/shareholder may vary its Flat Milk Incentive Election in respect of each Farm once each Financial Year, which will apply with effect from the commencement of that Financial Year, provided that the Supplier/shareholder notifies MGC of the selection (by completing and signing the relevant form specified by MGC from time to time), by 31 August of that Financial Year. Unless otherwise agreed to by MGC (at its discretion), the

Supplier/shareholder may not vary its Flat Milk Incentive Election other than in accordance with this clause 7.3.

7.4 Only one Flat Milk Incentive Election should apply to each Farm. The Owner and Sharefarmers of a Farm should discuss and agree on whether to apply the Flat Milk Incentive in respect of the Farm, and make the same Flat Milk Incentive Election in respect of that Farm. If an Owner and a Sharefarmer or Sharefarmers make different Flat Milk Incentive Elections in respect of a single Farm (whether as set out in a Flat Milk Incentive Election Form or subsequently amended pursuant to clause 7.3), MGC will resolve any conflicting elections as follows:

- (1) the Flat Milk Incentive Election made by the Supplier/shareholder who is entitled to the greatest percentage share of the payment for milk supplied from the Farm (as disclosed in the current I&I Form) will apply; except
- (2) if two or more Supplier/shareholders hold equal greatest percentage shares of milk supply payments and make different Flat Milk Incentive Elections, the Flat Milk Incentive Election of the Owner will apply (whether or not the Owner is one of the Supplier/shareholders having the greatest percentage share of milk supply payments).

7.5 MGC will indicate the Flat Milk Incentive Election recorded by MGC on the milk proceeds statement to each Supplier/shareholder. The Supplier/shareholder is responsible for ensuring that its Flat Milk Incentive Election has been accepted and recorded by MGC, and must notify MGC by 30 September of any discrepancy. MGC may (at its discretion) correct any discrepancies.

7.6 The Supplier/shareholder must not transport or transfer Farm Outputs between Farms unless such transfer is expressly approved by MGC in writing, which may be withheld or given at MGC's discretion. If the Supplier/shareholder commits a breach of this clause 7.6, then without limiting the rights and remedies of MGC, MGC may, at its discretion:

- (1) recover from the Supplier/shareholder any financial

benefit that the Supplier/shareholder has received from MGC as a result of such breach, including any amounts which are in addition to the payments MGC would otherwise have been required to make to the Supplier/shareholder, if such transportation of Farm Output had not occurred; and/or

- (2) disqualify the Supplier/shareholder from receiving any Flat Milk Incentive in that Financial Year (but, to avoid doubt, the Supplier/shareholder will not be relieved of any debt payable to MGC under the Flat Milk Incentive).

8 Administration and changes

- 8.1 **(Regular pricing review)** On or about the commencement of each Financial Year, MGC will provide the Supplier/shareholder with a revised Opening Price Circular that applies in respect of that Financial Year.
- 8.2 **(Other pricing changes)** In addition to clause 8.1, MGC may, at its discretion, but acting reasonably, vary (including reduce) the Opening Price at any time provided that MGC must give the Supplier/shareholder at least 10 Business Days prior notice of any reduction in the Opening Price. The Opening Price will be adjusted with effect from the expiry of the notice period.
- 8.3 **(Changes to Relevant Standards)** To the extent permitted by law, MGC may from time to time, at its discretion, introduce new Relevant Standards, or amend or repeal existing Relevant Standards, provided that:
- (1) all such amendments apply generally across the suppliers of MGC, and are not targeted at the Supplier/shareholder; and
 - (2) MGC gives the Supplier/shareholder at least 20 Business Days prior notice of the amendment.
- 8.4 **(Changes to Incentive Section)** To the extent permitted by law, MGC may from time to time, at its discretion, amend, add to or remove any part of the Incentive Section (including the availability of the Flat Milk Incentive), provided that:
- (1) such amendments do not apply to any Supply Arrangement until the following Financial Year;
 - (2) such amendments will not automatically place the Supplier/shareholder into a Fixed Term Supply Commitment; and
 - (3) if the amendments results in an amendment or removal of the Flat Milk Incentive, the Supplier/shareholder is given at least 20 Business Days prior notice of the amendment.
- 8.5 **(I&I Form)** The Supplier/shareholder is responsible for ensuring that the information set out in the I&I Form is accurate and up to date. The Supplier/shareholder must notify MGC if any of the information contained in the I&I Form is no longer up to date, and must upon request complete and sign a revised I&I Form with the correct information. MGC may, at its discretion, use information provided in a Flat Milk Incentive Election Form to update an I&I Form.
- 8.6 **(Other changes to these Terms)** Without limiting other provisions of this clause 8, MGC may, to the extent permitted by law, from time to time amend any part of these Terms (with the effect of varying the Supply Arrangement with the Supplier), provided that, in MGC's reasonable opinion, the amendment:
- (1) is a clarification or administrative variation which does not affect the substantive or material rights of the Supplier/shareholder under the Supply Arrangement; or
 - (2) is for the benefit of the Supplier/shareholder.
- 8.7 **(Notification)** MGC will notify the Supplier/shareholder of any amendments made under this clause 8. All such amendments will take effect on and from the date of notification, or such other date as MGC may specify in the notification.
- 8.8 **(Giving effect to amendments)** Upon request from MGC, the Supplier/shareholder must execute and enter into such amendment or restatement deed as reasonably required by MGC to formalise and document any amendments made under this clause 8.

9 Price and payment

- 9.1 **(Obligation to pay)** For all Farm Output supplied by the Supplier/shareholder (and collected by MGC), MGC will pay the Purchase Price in respect of the Farm Output, less the applicable Collection and Volume Charge and compulsory industry surcharges and levies imposed by Applicable Laws. To avoid doubt, MGC is not liable to pay the Supplier/shareholder for any Farm Output that MGC rejected or otherwise did not collect.
- 9.2 **(Determination of Purchase Price)** The Purchase Price of Farm Output is determined by:
- (1) the then current Opening Price;
 - (2) plus any applicable Step-Up; and
 - (3) less any applicable discounts based on the quality grading of the Farm Output, as set out in the Farm Milk Quality Standard or the Milk Payment System Explained.
- 9.3 **(Payment of Purchase Price)** MGC will pay the Purchase Price of the Farm Output on or about the middle of each calendar month, in respect of Farm Output collected in the previous calendar month.
- 9.4 **(Incentive Payments)** MGC will calculate the Incentive Payments to which the Supplier/shareholder is entitled, in accordance with the terms of the Incentive Section. Subject to clauses 4.2, 7.6(2), 17.2(4) and 17.4 and the Supplier/shareholder meeting the relevant criteria for payment, MGC will pay the Supplier/shareholder the Incentive Payments in accordance with the terms of the Incentive Section.
- 9.5 **(Backpay)** Subject to clause 9.6, MGC will calculate the amount of Backpay to which the Supplier/shareholder is entitled, in accordance with the terms announced by MGC in respect of the Backpay and applying any applicable discounts based on the quality grading of the Farm Output, as set out in the Farm Milk Quality Standard or the Milk Payment System Explained, and pay the Supplier/shareholder in accordance with those announced terms.

- 9.6 **(General qualifying criteria for Backpay)** The Supplier/shareholder is entitled to Backpay if and only if:

- (1) the Supplier/shareholder has continued to actively supply all of its Farm Output to MGC up to and including the date on which the Backpay is due for payment; or
- (2) the Supplier/shareholder has ceased supplying Farm Output to MGC solely because the Supplier/shareholder (including in the case of a corporate Supplier/shareholder, each individual who is a director or shareholder of the Supplier/shareholder) has fully retired from dairying, and remains fully retired up to and including the date on which the Backpay is due for payment. MGC may determine conclusively and at its discretion whether a Supplier/shareholder or any individual has fully retired from dairying and remains fully retired as at any particular date.

- 9.7 **(Method of payment)** MGC will make all payments in accordance with the payment instructions of the Supplier/shareholder as set out in the applicable I&I Form.

10 Risk and title

- 10.1 The Supplier/shareholder warrants that it owns the Farm Output supplied to MGC, and that it has the right and authority to supply and sell the Farm Output to MGC free from any mortgage, charge or other security interests.
- 10.2 Risk in the Farm Output collected by MGC will pass to MGC when the Farm Output is loaded into the tanker at the Farm. Title to the Farm Output passes to MGC at time of collection or on payment of the Purchase Price by MGC, whichever occurs earlier.

11 Insurance

- 11.1 The Supplier/shareholder must, at its own cost, effect and maintain adequate public liability insurance with a reputable insurer in respect of the Farm and the delivery and collection of Farm Output. The cover must be for a minimum of \$10 million per occurrence.
- 11.2 On request, the Supplier/shareholder must provide MGC satisfactory evidence

- 11 -

that the Supplier/shareholder has complied, and continues to comply, with its obligations under this clause 11.

12 Compliance

- 12.1 Each party must comply with all Applicable Laws in performing their obligations under the Supply Arrangement. The Supplier/shareholder must, at its own cost, hold and maintain all necessary licences, approvals, permits and the like required by any government authority or agency (including Dairy Food Safety Victoria).
- 12.2 The Supplier/shareholder must ensure that all Farm Output complies with all Applicable Laws and Relevant Standards.
- 12.3 If there is any conflict between the requirements of Applicable Laws and the Relevant Standards, the higher standard must be complied with.
- 12.4 The Supplier/shareholder must promptly notify MGC if the Supplier/shareholder has any reasonable basis to suspect that any Farm Output may not comply with the Relevant Standards or Applicable Laws.

13 Inspection

- 13.1 The Supplier/shareholder must permit MGC to, at any reasonable time during the term of the Supply Arrangement and for a period of 12 months thereafter:
- (1) monitor the steps involved in, and relating to, the production and supply of the Farm Output;
 - (2) undertake any investigation or tests at the Supplier/shareholder's property and the Farm that MGC reasonably considers necessary; and
 - (3) enter the Supplier/shareholder's property and the Farm for the purposes of assessing the Supplier/shareholder's compliance with the Supply Arrangement.

14 Quality and system improvement program

- 14.1 If the Farm Output does not comply with the Applicable Laws or the Relevant Standards or the Supplier or a Farm otherwise does not comply with the terms of the Supply Arrangement, then without

limiting the rights and remedies of MGC, including under clause 17:

- (1) upon request from MGC, the Supplier/shareholder must prepare an improvement plan that sets out how the Supplier/shareholder will make improvements and reduce the likelihood of non compliance, and submit the plan to MGC for review and approval;
- (2) MGC will review the improvement plan submitted by the Supplier/shareholder, and may, acting reasonably, require amendments to the plan, which the Supplier/shareholder must carry out and
- (3) upon approval of the improvement plan by MGC, the Supplier/shareholder must implement and carry out the plan in accordance with its terms.

15 GST

- 15.1 Words or expressions used in this clause 15 which have a particular meaning in the *New Tax System (Goods and Services Tax) Act 1999* as amended have the same meaning, unless the context otherwise requires.
- 15.2 Unless otherwise expressly stated, all prices or other sums to be paid or provided for any supply made under or in connection with the Supply Arrangement does not include GST.
- 15.3 To the extent that any supply made under or in connection with the Supply Arrangement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided.
- 15.4 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

15.5 If the I&I Form in respect of the Farm indicates that the parties elect to use recipient created tax invoices, then:

- (1) each party warrants to each other that it is registered for GST, and agrees to notify the other party if it ceases to be registered;
- (2) the Supplier/shareholder agrees that it will not issue tax invoices in respect of the Farm Output supplied by it under the Supply Arrangement;
- (3) MGC will issue tax invoices in the form of recipient created tax invoices in respect of the Farm Output supplied to it under the Supply Arrangement; and
- (4) MGC may issue an adjustment note in relation to GST adjustment events, where applicable.

16 Confidentiality

16.1 The terms of the Supply Arrangement, and all confidential or commercial information relating to the subject matter of the Supply Arrangement and disclosed to the Supplier/shareholder by or on behalf of MGC, is confidential to MGC (**Confidential Information**).

16.2 The Supplier/shareholder must not and must not permit any of its personnel, subcontractors or related entities to use or to disclose to any person any Confidential Information other than for the purposes of complying with its obligations under the Supply Arrangement without the prior written consent of MGC.

16.3 Clause 16.2 does not apply to any information which:

- (1) is generally available to the public (other than as a result of the wrongful disclosure by the Supplier/shareholder); or
- (2) which the Supplier/shareholder obtains independently from a third party on a non confidential basis without that third party being in breach of any obligations of confidence.

16.4 The Supplier/shareholder is not in breach of clause 16.2 to the extent it is required to disclose any Confidential Information by law, provided that the

Supplier/shareholder (to the extent permitted by law) gives reasonable notice to MGC prior to disclosure and to assist MGC in any legal means to minimise or oppose disclosure.

16.5 The Supplier/shareholder acknowledges that a breach of this clause 16 would be harmful to the business interests of MGC and monetary damages alone would not be a sufficient remedy. In addition to any other remedy which may be available in law or equity, MGC is entitled to interim, interlocutory and permanent injunctions or any of them to prevent breach of this clause 16 and to compel specific performance of it.

17 Default and termination

17.1 (**Termination for convenience**) If the Supply Arrangement is not a Fixed Term Supply Commitment, or if the Supply Commitment Period has expired, then:

- (1) the Supplier/shareholder may terminate the Supply Arrangement at any time by giving MGC written notice; and
- (2) MGC may terminate the Supply Arrangement by giving the Supplier/shareholder at least 20 Business Days prior written notice.

17.2 Default and rectification

(1) If the Supplier/shareholder commits any breach of the Supply Arrangement (**Default Event**) and that Default Event is capable of being remedied, then without limiting any rights and remedies of MGC, MGC may give a notice (**Rectification Notice**) to the Supplier/shareholder, specifying:

- (a) the nature of the Default Event; and
- (b) a reasonable time period for the Supplier/shareholder to remedy the Default Event (which period must be at least 5 Business Days).

(2) MGC will withdraw the Rectification Notice if the Supplier/shareholder demonstrates to the reasonable satisfaction of MGC that the Default Event referred to in the Rectification Notice has been remedied.

- 13 -

- (3) MGC may also withdraw the Rectification Notice at its own discretion for any reason.
- (4) If the Rectification Notice is not withdrawn by MGC by the expiry of the remedial period specified in the Rectification Notice, then the Supplier/shareholder is disqualified from, and is not entitled to, any unpaid and future Loyalty Payments (including Loyalty Payments that have accrued but not been paid).

17.3 (Termination for cause) MGC may terminate the Supply Arrangement with immediate effect by written notice to the Supplier/shareholder if:

- (1) the Supplier/shareholder is the subject of an Insolvency Event;
- (2) the Supplier/shareholder or one of its officers engages in conduct that, in the reasonable opinion of MGC, adversely affects the reputation of MGC;
- (3) the Supplier/shareholder has committed one or more Default Events that is not capable of being remedied; or
- (4) the Supplier/shareholder fails to remedy the Default Events the subject of a Rectification Notice, and the remedial period specified in the Rectification Notice has expired.

17.4 (Termination of Fixed Term Supply Commitment but not the Supply Arrangement) If the Supplier/shareholder commits any breach of the Supply Arrangement and that Supply Arrangement is a Current Fixed Term Supply Commitment, then without limiting the other rights and remedies of MGC, MGC may, by notice to the Supplier/shareholder, deem the Supply Commitment Period to have expired, in which case:

- (1) the Supply Arrangement will continue as if it is not a Fixed Term Supply Commitment;
- (2) the Supplier/shareholder is disqualified from, and is not entitled to, any unpaid and future Loyalty Payments (including Loyalty Payments that have accrued but not

been paid) will cease immediately; and

- (3) the Supplier/shareholder must pay the Early Termination Payment to MGC on demand.

17.5 (Indemnity) The Supplier/shareholder indemnifies MGC from and against all Losses incurred by MGC arising from or in connection with any breach of the Supply Arrangement by the Supplier/shareholder.

17.6 Consequences of termination

- (1) Clauses 20, 6.2, 6.3, 9, 10, 13, 15, 16, 17, 18 and 19 of these Terms, and other terms of the Supply Arrangement which are intended to have operation following termination, will survive termination of the Supply Arrangement for any reason.
- (2) Termination or expiry of the Supply Arrangement, however caused, is without prejudice to any rights or liabilities of the parties accruing as at the date of termination.
- (3) If the Supply Arrangement is terminated under clause 17.1, the Supplier/shareholder:
 - (a) is not entitled in contract, tort, in equity or otherwise to any payment or compensation for any Loss incurred as a result of the termination of the Supply Arrangement, other than amounts due and payable for Farm Output supplied up until the effective date of termination; and
 - (b) remains liable for any amount due to MGC under the Flat Milk Incentive in respect of the Financial Year in which the Supply Arrangement was terminated.
- (4) If the Supply Arrangement:
 - (a) is a Current Fixed Term Supply Commitment; and
 - (b) is terminated under clause 17.3,
 then without limiting the rights and remedies of MGC, the Supplier/shareholder must pay the

Early Termination Payment to MGC on demand.

- (5) The parties agree that the Early Termination Payment represents a reasonable and genuine pre-estimate of the minimum anticipated or actual loss or damage which would be incurred by MGC as a result of the early termination of the Fixed Term Supply Commitment. The parties want to avoid the difficulties of proof of damages and agree that the Early Termination Payment is reasonable and not a penalty.

18 Notices

18.1 A notice or other communication connected with the Supply Arrangement (**Notice**) has no legal effect unless it is in writing.

18.2 A Notice must be:

- (1) sent by prepaid post to the address of the addressee; or
- (2) delivered at the address of the addressee.

18.3 If the Notice is sent or delivered in a manner provided by clause 18.2, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post, on the 3rd Business Day (at the address to which it is posted) after posting; or
- (2) if otherwise delivered before 5pm on a Business Day at the place of delivery, and otherwise on the next Business Day at the place of delivery.

18.4 The address of MGC for the purposes of Notices is the address of its registered office.

18.5 The address of the Supplier/shareholder is the postal address specified in the Supplier/shareholder's I&I Form, or such other address notified to MGC from time to time.

19 General

19.1 (**No Supplier Terms**) Any terms or conditions on any invoice, delivery note or other document provided by the Supplier/shareholder will be of no effect

and will not replace or vary any terms of the Supply Arrangement unless MGC expressly agrees in writing that they do so.

19.2 (**Relationship of parties**) Nothing in these Terms is to be construed as constituting one party as employer, agent or partner of the other party or in joint venture with the other party. No party has authority to bind or purport to bind the other party.

19.3 (**Variation**) Subject to clause 8, an amendment or variation to any part of the Supply Arrangement is not effective unless it is in writing and signed by the parties.

19.4 (**Set off**) MGC may set off any amount due by it to the Supplier/shareholder, against any amount payable by the Supplier/shareholder to MGC (whether under the Supply Arrangement or any other agreements).

19.5 (**Assignment**) The Supplier/shareholder may not assign or otherwise deal with the Supply Arrangement except with the prior written consent of MGC, which consent may be withheld at MGC's discretion. MGC may, subject to giving prior notice in writing to the Supplier/shareholder, assign or novate the Supply Arrangement to any other person. The Supplier/shareholder must, upon request, enter into such assignment or novation deeds as reasonably required by MGC to give effect to the assignment or novation.

19.6 (**Waiver**) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

19.7 (**Severability**) If any provision in the Supply Arrangement is unenforceable, illegal or void or makes the Supply Arrangement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of the Supply Arrangement remains in force.

19.8 (**Parties acting as trustees**) If a party is or becomes the trustee of a trust for the purposes of the Supply Arrangement, that

party and its successors as trustee of the trust will be liable in its own right and as trustee of that trust. Nothing releases the party from any liability in its personal capacity. The party warrants that, to the extent it is a trustee:

- (1) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (2) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by the Supply Arrangement on behalf of the trust and that the Supply Arrangement are being entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (3) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

19.9 (**Force Majeure**) Neither party is liable for any failure or delay in performing an obligation, to the extent that such failure or delay is caused by an event or circumstances beyond the reasonable control of that party. The affected party must promptly notify the other party as soon as possible, use reasonable endeavours to mitigate against the effect of such event or circumstances, and resume performance of its obligations as soon as possible.

19.10 (**Supplier/shareholders having multiple Farms**) Except as expressly set out otherwise, each Supply Arrangement relates to the supply of Farm Output at one Farm, and the breach or termination of one Supply Arrangement does not necessarily affect other Supply Arrangements (including other Supply Arrangements between MGC and the same Supplier/shareholder).

19.11 (**Jurisdiction**) The laws of Victoria govern the Supply Arrangement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

20 Definitions and interpretation

20.1 In these Terms, unless the context otherwise requires:

- (1) **Applicable Laws** means all laws, regulations and mandatory codes of practices (as amended from time to time) applicable to milk production, broking, carriage and distribution.
- (2) **Backpay** means any backpay or retrospective payment announced by MGC from time to time, the frequency and amount of which may vary from time to time, at the discretion of MGC.
- (3) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in Victoria, Australia.
- (4) **Collection and Volume Charge** means the amounts that MGC may deduct from the Purchase Price in respect of the collection of Farm Output, as specified and calculated in accordance with the Relevant Standards and/or the Milk Payment System Explained.
- (5) **Commencement Date** means the commencement date of a Supply Arrangement, as determined by clauses 2.1 and 2.2.
- (6) **Current Fixed Term Supply Commitment** means a Fixed Term Supply Commitment of which the Supply Commitment Period has not expired.
- (7) **Default Event** has the meaning given in clause 17.2.
- (8) **Early Termination Payment** means the sum of all Incentive Payments that the Supplier received during the Supply Commitment Period.¹
- (9) **Farm** means each dairy farm the subject of a Supply Arrangement, as identified in the I&I Form.
- (10) **Farm Milk Quality Standard** means the document of that name or titled Farm Milk Quality Policy, as

¹ Early Termination Payment is only applicable to Supplier/shareholders on a Fixed Term Supply Commitment.

- 16 -

published and updated by MGC from time to time.

(11) **Farm Output** means, in respect of a Farm and the Supplier/shareholder, all cow's milk produced at or in respect of that Farm, and includes:

- (a) all milk produced from dairy herds which are located on any part of the Farm from time to time (whether or not such herds are milked on that Farm); and
- (b) all milk produced from the milking of dairy herds at the Farm from time to time (whether or not the dairy herds from which such milk is produced are located on that Farm),

but excludes:

- (c) milk solely for the domestic use of the Supplier/shareholder; and
- (d) any milk in such other quantities or produced in such circumstances as may be agreed by MGC in writing at its discretion.

(12) **Financial Year** means each period of 12 months commencing on 1 July and ending on the following 30 June.

(13) **Fixed Term Supply Commitment** means a Supply Arrangement that has a fixed minimum term.

(14) **Flat Milk Incentive** has the meaning given in the Incentive Section.

(15) **Flat Milk Incentive Election** means the election made by the Supplier to apply or not to apply Flat Milk Incentive in respect of a Farm, as set out in the Flat Milk Incentive Election Form (or a deemed election pursuant to clause 7.1).

(16) **Flat Milk Incentive Election Form** is the form of the same name which is attached to these Terms or as specified by MGC from time to time.

(17) **Growth Incentive** has the meaning given in the Incentive Section.

(18) **I&I Form** means, in relation to a Farm, the Supplier/shareholder's information and instruction form held

by MGC in respect of that Farm, as amended from time to time in accordance with clause 8.5.

(19) **Incentive Payments** means each of the incentives set out in the Incentive Section but excludes Backpay and Step-Ups.

(20) **Incentive Section** means clause 4.

(21) **Insolvency Event** means the happening of any of these events in relation to the Supplier/shareholder:

- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Supplier/shareholder's property and is not satisfied, set aside or withdrawn within 14 days of its issue;
- (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Supplier/shareholder which is not satisfied within 14 days;
- (c) the Supplier/shareholder suspends payment of its debts;
- (d) where the Supplier/shareholder is a body corporate:
 - (i) the Supplier/shareholder becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth);
 - (ii) steps are taken by any person towards making the Supplier/shareholder an externally-administered body corporate;
 - (iii) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed of any of the property of the Supplier/shareholder or any steps are taken for the appointment of a controller;
 - (iv) the Supplier/shareholder is taken to have failed to comply with a statutory

- 17 -

- demand within the meaning of section 459F of the Corporations Act 2001; or
- (e) where the Supplier/shareholder is a natural person:
- (i) the Supplier/shareholder authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the Supplier/shareholder enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the Supplier/shareholder commits an act of bankruptcy.
- (22) **Loss** means any costs, expenses (including legal costs on a party/party basis), losses, damages, compensation, amounts paid on advice of legal advisers to compromise or settle a claim, taxes, outgoings or other payments.
- (23) **Loyalty Payments** means the Incentive Payments, the Backpay and Step-Ups.
- (24) **MGC and Murray Goulburn** means Murray Goulburn Co-operative Co. Limited (ABN 23 004 277 089).
- (25) **Milk Payment System Explained** means the document entitled "Milk Payment System Explained" provided to the Supplier/shareholder from time to time, which summarises certain Incentive Payments and other pricing related information.
- (26) **Milk Supply Agreement Details** means, if applicable, the document entitled "Milk Supply Agreement Details", under cover of which MGC provides these Terms to the Supplier/shareholder.
- (27) **Opening Price** means, in respect of each calendar month in a Financial Year, the applicable Purchase Price for Farm Output that qualifies as "Premium 1" (in accordance with the Farm Milk Quality Standard) supplied by the Supplier/shareholder in that month, as set out in the Opening Price Circular in respect of that Financial Year and as adjusted in accordance with clause 8.2.
- (28) **Opening Price Circular** means the letter provided by MGC to the Supplier/shareholder on or about the commencement of each Financial Year, which sets out, amongst other things, the Opening Price in respect of that Financial Year.
- (29) **Owner** means the owner of a Farm, being the entity identified as such on the I&I Form in respect of that Farm.
- (30) **Productivity Incentive** has the meaning given in the Incentive Section.
- (31) **Purchase Price** means the purchase price of Farm Output, as determined in accordance with clause 9.2.
- (32) **Qualifying Milk Solids** means Farm Output that was supplied to MGC under a Milk Supply Agreement and which:
- (a) qualifies as Premium 1, Premium 2 or Base quality milk solids, as defined in Farm Milk Quality Standard; and
 - (b) is made available for collection by MGC in accordance with all Relevant Standards.
- (33) **Rectification Notice** has the meaning given in clause 17.2.
- (34) **Relevant Standards** means the standards or policies of MGC that are applicable to the supply of Farm Output, as specified by MGC from time to time, including the Farm Milk Quality Standard and the Transport Standard.
- (35) **Sharefarmer** means a sharefarmer of a Farm, being the entity identified as such on the I&I Form in respect of that Farm.

- 18 -

- (36) **Step-Ups** means step-ups (if any) to the Opening Price announced by MGC from time to time, at the discretion of MGC.
- (37) **Supplier/shareholder** means the supplier, as identified by the following:
- (a) if the person has signed and returned a Milk Supply Agreement Details document or the Flat Milk Incentive Election Form, the details as set out in that document; otherwise
 - (b) if the person supplied Farm Output to MGC prior to the Commencement Date and continues to do so on or after the Commencement Date, the details as set out in the applicable I&I Form.
- (38) **Supply Arrangement** means the binding agreement for the sale and purchase of Farm Output between MGC and a Supplier/shareholder in respect of a Farm, on the terms of:
- (a) these Terms;
 - (b) if applicable, a Milk Supply Agreement Details document;²
 - (c) the Flat Milk Incentive Election Form;
 - (d) the Relevant Standards;
 - (e) the I&I Form; and
 - (f) other additional terms (if any) as agreed in writing between MGC and the Supplier/shareholder from time to time, and which expressly refer to these Terms and the applicable Supply Arrangement,

as evidenced by one or more written documents signed by the Supplier/shareholder accepting the terms of the Supply Arrangement, or the continued supply of Farm Output to MGC on or after the Commencement Date.

² A Milk Supply Agreement Details only applies to Supplier/shareholders on Fixed Term Supply Commitments.

- (39) **Supply Commitment Period** means the period of the Fixed Term Supply Commitment, as specified in a Milk Supply Agreement Details (if applicable) or the Flat Milk Incentive Election Form.
- (40) **Terms** means these Murray Goulburn Standard Milk Payment Terms.
- (41) **Transport Standard** means the document entitled "Safe Farm Access and Turning Areas for Tankers" as published and updated by MGC from time to time, or any replacement document designated as the Transport Standard by MGC from time to time.

20.2 Reference to:

- (1) the singular includes the plural and the plural includes the singular;
- (2) a person includes a body corporate;
- (3) a party includes the party's executors, administrators, successors and permitted assigns;
- (4) a thing includes the whole and each part of it separately;
- (5) dollars means Australian dollars unless otherwise stated.

20.3 "Including" and similar expressions are not words of limitation.

20.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

20.5 Headings and any table of contents or index are for convenience only and do not form part of these Terms or affect its interpretation.

20.6 A provision of must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the terms or the inclusion of the provision in the Supply Arrangement.

20.7 If an act, matter or thing under this Agreement is said to be at MGC's discretion, then it will be at the absolute and unfettered discretion of MGC.

- 19 -

20.8 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

Flat Milk Incentive Election Form (FMI Election Form)

1 IDENTIFICATION OF THE FARM AND THE SUPPLIER/SHAREHOLDER

This Flat Milk Incentive Election Form (**FMI Election Form**) is returned by the following Supplier/shareholder:

Name:

("Supplier/shareholder")

Farm Trading Name:

MG Supplier/Farm No. (4 or 5 digits)

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("Farm")

In respect of the Farm, I am (tick the appropriate box below):

the Owner

a Sharefarmer

2 FLAT MILK INCENTIVE ELECTION FOR SEASON 2013/14

Please read the Murray Goulburn Standard Milk Payment Terms (**Terms**) provided with this FMI Election Form very carefully before nominating whether or not you wish to apply the Flat Milk Incentive to the Farm on and after 1 July 2013, by ticking the appropriate box below.

Defined terms used in this FMI Election Form have the same meaning as set out in the Terms which were provided with this FMI Election Form.

Elect to **apply** the Flat Milk Incentive

Elect to **not apply** the Flat Milk Incentive

Only one Flat Milk Incentive Election should apply to each Farm. If you are a Sharefarmer or an Owner of a share-farming Farm, then you should discuss and agree with the other participants on whether to apply the Flat Milk Incentive in respect of the Farm, and make the same Flat Milk Incentive Election in respect of that Farm. If different elections are made in respect of the same Farm, then please see clause 7.4 of the Terms for an explanation of how the differences will be resolved.

3 DECLARATION

The Supplier/shareholder who signs this FMI Election Form acknowledges and declares that:

- (1) I/we have read and understood this FMI Election Form and the Terms.
- (2) I/we may be under an existing Fixed Term Supply Commitment, or may be required to enter into a Fixed Term Supply Commitment. I/we understand that if a Fixed Term Supply Commitment applies, then:
 - (a) subject to the Terms, I/we will be required to supply all of my/our Farm Output to Murray Goulburn for the full period of the Fixed Term Supply Commitment; and

- (b) if I/we do not at all times comply with the Fixed Term Supply Commitment obligations, I/we may not be eligible to receive the Flat Milk Incentive, the Growth Incentive or the Productivity Incentive, and I/we will be liable to pay to Murray Goulburn, upon demand, the Early Termination Payment.
- (3) If I/we are under an existing Fixed Term Supply Commitment, then that Fixed Term Supply Commitment will continue with the same Supply Commitment Period (both in respect of the start date and the remaining duration).
- (4) I/we agree to supply all my/our Farm Output to Murray Goulburn in accordance with the Terms.
- (5) The Flat Milk Incentive Election has been made freely by me/us after considering all relevant information and after having had the opportunity to seek and obtain independent advice. In particular, I/we acknowledge that by applying the Flat Milk Incentive, I/we may become liable to a deduction from my/our milk payments and MGC may recover any balance owing to it under the Flat Milk Incentive by any other means.
- (6) If no Flat Milk Incentive Election is validly nominated by me/us, or if this FMI Election Form is not duly completed, signed and returned to Murray Goulburn by 31 August 2013, then I/we are deemed to have elected **not to apply** the Flat Milk Incentive for the 2013/2014 Financial Year.
- (7) This FMI Election Form will only be binding on Murray Goulburn if it is properly completed and signed by me/us, and has been accepted by Murray Goulburn (which is at Murray Goulburn's absolute discretion).
- (8) The persons signing this FMI Election Form on behalf of the Supplier/shareholder are duly authorized to execute it on behalf of the Supplier/shareholder, and no other person is required to sign on behalf of the Supplier/shareholder.
- (9) To the extent that I/we were supplying milk to Murray Goulburn in the 2012/13 Financial Year, I/we acknowledge and agree that the Terms will replace and supersede all existing terms that govern the supply of milk to Murray Goulburn, and I agree to be bound by the new Terms.

4 EXECUTION

Supplier/shareholder Execution:

Signature Printed Name (in full)

Signature* Printed Name (in full)

Witness Printed Name (in full)

Date2013

Capacity in which this declaration is made (Please Circle):

- Individual /Sole Trader
- Partnership
- Company
- Trust

Please attach additional signing authority if required.

Notes: A second director's, or a secretary's, signature is required if the Supplier/shareholder is a company with 2 or more directors. A second partner may sign here if required to do so.