

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 RAP50 now produced and shown to Robert Arthur Poole at the time of signing his statement on 28 November 2013.

**Annexure RAP50
Sydney-NSW Milk Supply Terms**

Filed on behalf of Murray Goulburn Co-Operative Co Limited

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Standard milk payment terms 2013-14



New South Wales - Sydney Market Region



Devondale
MURRAY GOULBURN CO-OPERATIVE CO. LIMITED

Summary Information

Attached to this letter are the standard MGC Milk Payment Terms that have been developed by MGC for the New South Wales-Sydney Market Region.

The MGC Milk Payment Terms (NSW-Sydney Market Region) (**SMR Terms**) set out in detail the terms and conditions which apply to your supply of milk to MGC in respect of your SMR Farms. Definitions of some of the words and phrases used in this document can be found in clause 21 of the SMR Terms.

All Supplier/Shareholders who are eligible and wish to supply in the New South Wales Sydney Market Region to MGC will need to accept the SMR Terms by completing, signing and returning the SMR Supply Acceptance Form.

Please read the SMR Terms carefully before signing the SMR Supply Acceptance Form.

You should also refer to the Opening Price Circular (NSW-Sydney Market Region) for the monthly payment rates, and to the Milk System Explained 2013-14: New South Wales-Sydney Market Region document for further details on the payment system in respect of milk supplied from SMR Farms.

What to do

There are two attachments to this letter - the SMR Terms and the SMR Supply Acceptance Form. You must complete, sign and return the SMR Supply Acceptance Form to indicate your acceptance of the SMR Terms if you wish to accept MGC's offer and supply in the New South Wales Sydney Market Region.

If you produce milk on more than one SMR Farm which supplies or will supply MGC, you should ask for a separate SMR Supply Acceptance Form for each SMR Farm from MGC's Regional Field Services Manager. Please complete and return a separate SMR Supply Acceptance Form for each SMR Farm.

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

Please complete and sign the SMR Supply Acceptance Form(s), and return it to MGC using the reply paid envelope.

MGC Milk Payment Terms (NSW-Sydney Market Region) (SMR Terms)

1 Introduction and precedence

- 1.1 These are the “MGC Milk Payment Terms (NSW-Sydney Market Region)” (referred to as the “SMR Terms” in this document).
- 1.2 These SMR Terms only apply to a Supply Arrangements relating to a dairy farm in the “Sydney Market Region” (**SMR Farm**). MGC has the sole discretion in determining whether a dairy farm is an SMR Farm.
- 1.3 These SMR Terms are separate and different from the terms known as the “Murray Goulburn Standard Milk Payment Terms” (**Southern Region Terms**). The Southern Region Terms use and refer to terminologies and terms that are substantially similar to those used in these SMR Terms. However, unless expressly stated otherwise, terms used in the Southern Region Terms (including “Opening Price”, “Step-Up” and “Backpay”) do not share the same meaning as those terms under these SMR Terms, and announcements made by MGC in respect of the Southern Region Terms (and supply arrangements formed under the Southern Region Terms) do not apply to these SMR Terms and Supply Arrangements formed under these SMR Terms.
- 1.4 Despite clause 1.3, the “Farm Milk Quality Standard” and “Transport Standard” referred to in the Southern Region Terms are the same as the Farm Milk Quality Standard and Transport Standard under these SMR Terms.
- 1.5 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) these SMR Terms;
 - (3) the Relevant Standards; and
 - (4) the I&I Form.

2 Term

- 2.1 Each Supply Arrangement will commence on the date on which the Supplier/shareholder accepts in writing the terms of the Supply Arrangement, indicated by a SMR Supply Acceptance Form. Each Supply Arrangement will continue until terminated in accordance with clause 18 or by law.

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 SMR 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 Milk Allocation

- 4.1 On or about the commencement of each Financial Year, MGC will following discussions with Supplier/shareholder, specify a monthly allocation of Farm Output to be supplied by the Supplier/shareholder in respect of an SMR Farm (**Monthly Allocation**). MGC will act reasonably, but the Monthly Allocation is at MGC’s discretion. In particular, the Supplier/shareholder acknowledges that MGC may reduce Monthly Allocation if the Supplier/shareholder is unable to meet the Monthly Allocation in the previous Financial Year in any material respect.
- 4.2 The Supplier/shareholder will use reasonable endeavours to ensure that the volume of Farm Output that it supplies to MGC under the Supply Arrangement in each calendar month is equal to the Monthly Allocation.
- 4.3 If the Supplier/shareholder supplies a volume of Farm Output that exceeds 110% of the Monthly Allocation in respect of any particular calendar month, then MGC will have the right to (at its discretion), after discussing the issue with the Supplier/shareholder, calculate the Purchase Price of the excess volume (ie volume exceeding 110% of the Monthly Allocation) using the “Opening Price” that applies under the Southern Region Terms

(plus any applicable “Step-Ups” under the Southern Region Terms, but without any adjustment for Seasonal Incentive).

5 Productivity Incentive

5.1 (General qualifying criteria for Productivity Incentive)

The Supplier/shareholder is entitled to payment of the Productivity Incentive 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 Productivity Incentive 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 Productivity Incentive 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.

5.2 **(Milk produced at the end of a Financial Year)** If MGC collects any Farm Output from an SMR 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 Productivity Incentive, to the extent MGC considers (at its discretion) that such Farm Output was produced in the previous Financial Year.

5.3 Productivity Incentive

- (1) The Productivity Incentive applies to all Supplier/shareholders.
- (2) Upon request from the Supplier/shareholder, the Farm Output supplied from other SMR 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 SMR Farms in the calculation of the Productivity Incentive unless such SMR Farms have the same majority ownership and the ABN and payment instructions are the same in respect of each SMR Farm.

- (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 from SMR Farms 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).

5.4 (Productivity Incentive under a current Owner/Sharefarmer Supply Arrangement)

If an Owner and one or more Sharefarmers supplies Milk from the same SMR Farm in any one Financial Year, then the Productivity Incentive will be calculated on the total Farm Output supplied to MGC from the SMR Farm under the Owner and each Sharefarmer in that Financial Year. The amount of Productivity Incentive 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.

6 Collection

- 6.1 Subject to these SMR Terms, MGC will collect the Farm Output from the SMR Farm.
- 6.2 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 SMR 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

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accordance with the terms of the Farm Milk Quality Standard and/or the Milk Payment System Explained.

6.3 The Supplier/shareholder must:

- (1) ensure that MGC and its representatives have safe and unrestricted access to each SMR Farm as is necessary to collect the Farm Output at any time on each collection day;
- (2) ensure that each SMR Farm complies with the Relevant Standards; and
- (3) immediately notify MGC of any circumstances that may affect MGC's ability to collect Farm Output.

6.4 MGC may collect Farm Output from each SMR 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 SMR Farm.

6.5 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 SMR Farm or the Farm Output does not comply with any of the Relevant Standards;
- (2) collection from the SMR 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.

7 Testing and rejection

7.1 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.

7.2 MGC is not liable to the Supplier/shareholder for any Loss suffered by the Supplier/shareholder arising from any rejection under clause 7.1.

7.3 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.

7.4 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.

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

8 Collection Zones

8.1 The Collection and Volume Charge that MGC may deduct under clause 10.1 is dependent on the location of the SMR Farm.

8.2 MGC may from time to time classify the location into different zones (**Collection Zones**).

8.3 MGC will determine the Collection Zone of each SMR Farm at its discretion, and such decision will be final and binding. MGC may from time to time reclassify the Collection Zone of an SMR Farm to reflect any changes in relevant circumstances (including changes to the classification regime), but otherwise the Collection Zone of an SMR Farm will remain during the term of the Supply Arrangement.

9 Administration and changes

- 9.1 **(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.
- 9.2 **(Other pricing changes)** In addition to clause 9.1, MGC may, at its discretion, but acting reasonably, vary (including reduce) the Opening Base Price or Seasonal Incentive at any time provided that MGC must give the Supplier/shareholder at least 10 Business Days prior notice of any reduction in the Opening Base Price or Seasonal Incentive. The Opening Base Price and Seasonal Incentive will be adjusted with effect from the expiry of the notice period. If MGC notifies the Supplier/shareholder of a reduction to the Opening Base Price or Seasonal Incentive under this clause 9.2, then the Supplier/shareholder may, at its discretion, terminate the Supply Arrangement by notice to MGC at any time within 90 days after receiving the notice of reduction.
- 9.3 **(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 in respect of SMR Farms, 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.
- 9.4 **(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 clause 5, provided that:
- (1) such amendments do not apply to any Supply Arrangement until the following Financial Year; and
 - (2) such amendments will not automatically place the Supplier/shareholder into any fixed term commitment.
- 9.5 **(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.
- 9.6 **(Other changes to these SMR Terms)** Without limiting other provisions of this clause 9, MGC may, to the extent permitted by law, from time to time amend any part of these SMR 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.
- 9.7 **(Notification)** MGC will notify the Supplier/shareholder of any amendments made under this clause 9. All such amendments will take effect on and from the date of notification, or such other date as MGC may specify in the notification.
- 9.8 **(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 9.

10 Price and payment

- 10.1 **(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.
- 10.2 **(Determination of Purchase Price)** The Purchase Price of Farm Output is determined by:

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- (1) the then current Opening Base Price as adjusted by the applicable Seasonal Incentive (subject to adjustment under clause 4.3);
 - (2) plus any applicable SMR Step-Up (subject to clause 4.3). The Supplier/shareholder acknowledges that there may be no SMR Step-Up in any particular Financial Year; 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.
- 10.3 (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.
- 10.4 (Productivity Incentive)** MGC will calculate the Productivity Incentive to which the Supplier/shareholder is entitled, in accordance with the terms of clause 5. Subject to clause 18.2(4) and the Supplier/shareholder meeting the relevant criteria for payment, MGC will pay the Supplier/shareholder the Productivity Incentive in accordance with the terms of clause 5.
- 10.5 (SMR Backpay)** Subject to clause 10.6, MGC will calculate the amount of SMR Backpay to which the Supplier/shareholder is entitled, in accordance with the terms announced by MGC in respect of the SMR Backpay, and pay the Supplier/shareholder in accordance with those announced terms. The Supplier/shareholder acknowledges that there may be no SMR Backpay in any particular Financial Year.
- 10.6 (General qualifying criteria for SMR Backpay)** The Supplier/shareholder is entitled to SMR 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 SMR 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 SMR 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.
- 10.7 (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.
- 11 Risk and title**
- 11.1** 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.
- 11.2** Risk in the Farm Output collected by MGC will pass to MGC when the Farm Output is loaded into the tanker at the SMR 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.
- 12 Insurance**
- 12.1** The Supplier/shareholder must, at its own cost, effect and maintain adequate public liability insurance with a reputable insurer in respect of the SMR Farm and the delivery and collection of Farm Output. The cover must be for a minimum of \$10 million per occurrence.
- 12.2** On request, the Supplier/shareholder must provide MGC satisfactory evidence that the Supplier/shareholder has complied, and continues to comply, with its obligations under this clause 12.
- 13 Compliance**
- 13.1** 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 NSW Food Authority).

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13.2 The Supplier/shareholder must ensure that all Farm Output complies with all Applicable Laws and Relevant Standards.

amendments to the plan, which the Supplier/shareholder must carry out and

13.3 If there is any conflict between the requirements of Applicable Laws and the Relevant Standards, the higher standard must be complied with.

(3) upon approval of the improvement plan by MGC, the Supplier/shareholder must implement and carry out the plan in accordance with its terms.

13.4 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.

16 GST

14 Inspection

14.1 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 SMR Farm that MGC reasonably considers necessary; and
- (3) enter the Supplier/shareholder's property and the SMR Farm for the purposes of assessing the Supplier/shareholder's compliance with the Supply Arrangement.

16.1 Words or expressions used in this clause 16 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.

16.2 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.

16.3 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 Quality and system improvement program

15.1 If the Farm Output does not comply with the Applicable Laws or the Relevant Standards or the Supplier or an SMR Farm otherwise does not comply with the terms of the Supply Arrangement, then without limiting the rights and remedies of MGC, including under clause 18:

- (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

16.4 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.

16.5 If the I&I Form in respect of the SMR 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

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supplied to it under the Supply Arrangement; and

- (4) MGC may issue an adjustment note in relation to GST adjustment events, where applicable.

17 Confidentiality

17.1 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**).

17.2 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.

17.3 Clause 17.2 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.

17.4 The Supplier/shareholder is not in breach of clause 17.2 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.

17.5 The Supplier/shareholder acknowledges that a breach of this clause 17 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 17 and to compel specific performance of it.

18 Default and termination

18.1 (Termination for convenience)

- (1) Without limiting clause 9.2, the Supplier/shareholder may terminate the Supply Arrangement:
 - (a) at the end of each Financial Year by giving MGC at least 90 days prior written notice; and
 - (b) at any time in the period of 90 days after the commencement of each Financial Year by giving MGC written notice.
- (2) MGC may terminate the Supply Arrangement by giving the Supplier/shareholder at least 90 days prior written notice.

18.2 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.
- (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

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(including Loyalty Payments that have accrued but not been paid).

18.3 (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.

18.4 (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.

18.5 Consequences of termination

- (1) Clauses 21, 7.2, 7.3, 10, 11, 14, 16, 17, 18, 19 and 20 of these SMR 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 18.1, the Supplier/shareholder 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.

19 Notices

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

19.2 A Notice must be:

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

19.3 If the Notice is sent or delivered in a manner provided by clause 19.2, 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, upon delivery, and otherwise on the next Business Day at the place of delivery.

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

19.5 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.

20 General

20.1 (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.

20.2 (Relationship of parties) Nothing in these SMR 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.

20.3 (Variation) Subject to clause 9, an amendment or variation to any part of the Supply Arrangement is not effective

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- unless it is in writing and signed by the parties.
- 20.4 **(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).
- 20.5 **(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.
- 20.6 **(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.
- 20.7 **(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.
- 20.8 **(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.
- 20.9 **(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.
- 20.10 **(Supplier/shareholders having multiple SMR Farms)** Except as expressly set out otherwise, each Supply Arrangement relates to the supply of Farm Output at one SMR 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).
- 20.11 **(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.
- 21 Definitions and interpretation**
- 21.1 In these SMR 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) **Business Day** means: (a) in respect of any payment obligation, a day that is not a Saturday, Sunday or any

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other day which is a public holiday or a bank holiday in Victoria, Australia, and (b) otherwise, a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in New South Wales, Australia.

- (3) **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, based on the Collection Zone of the SMR Farm.
- (4) **Collection Zone** has the meaning given in clause 8.2.
- (5) **Commencement Date** means the commencement date of a Supply Arrangement, as determined by clause 2.1.
- (6) **Default Event** has the meaning given in clause 18.2.
- (7) **Farm Milk Quality Standard** means the document of that name or titled Farm Milk Quality Policy, as published and updated by MGC from time to time.
- (8) **Farm Output** means, in respect of an SMR Farm and the Supplier/shareholder, all cow's milk produced at or in respect of that SMR Farm, and includes:
- (a) all milk produced from dairy herds which are located on any part of the SMR Farm from time to time (whether or not such herds are milked on that SMR Farm); and
 - (b) all milk produced from the milking of dairy herds at the SMR Farm from time to time (whether or not the dairy herds from which such milk is produced are located on that SMR 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.
- (9) **Financial Year** means each period of 12 months commencing on 1 July and ending on the following 30 June.
- (10) **I&I Form** means, in relation to an SMR Farm, the Supplier/shareholder's information and instruction form held by MGC in respect of that SMR Farm, as amended from time to time in accordance with clause 9.5.
- (11) **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

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- 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 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.
- (12) **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.
- (13) **Loyalty Payments** means the Productivity Incentive, the SMR Backpay and SMR Step-Ups.
- (14) **MGC and Murray Goulburn** means Murray Goulburn Co-operative Co. Limited (ABN 23 004 277 089).
- (15) **Milk Payment System Explained** means the document entitled "Milk Payment System Explained: New South Wales- Sydney Market Region" provided to the Supplier/shareholder from time to time, which summarises the Productivity Incentive and other pricing related information in respect of supply of Farm Output to MGC from an SMR Farm.
- (16) **Monthly Allocation** has the meaning given in clause 4.1.
- (17) **Opening Base Price** means, in respect of each calendar month in a Financial Year, the applicable base Purchase Price for Farm Output that qualifies as "Premium 1" (in accordance with the Farm Milk Quality Standard) supplied by the Supplier/shareholder from an SMR Farm in that month, as set out in the Opening Price Circular in respect of that Financial Year and as adjusted in accordance with clause 9.2.
- (18) **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 Base Price and Seasonable Incentive in respect of that Financial Year for supply of Farm Output from an SMR Farm.
- (19) **Owner** means the owner of an SMR Farm, being the entity identified as such on the I&I Form in respect of that SMR Farm.
- (20) **Productivity Incentive** means the incentive payment of that name, as announced by MGC from time to time and as further described in clause 5.
- (21) **Purchase Price** means the purchase price of Farm Output, as determined in accordance with clause 10.2.
- (22) **Qualifying Milk Solids** means Farm Output that was supplied to MGC under a Supply Arrangement 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.
- (23) **Rectification Notice** has the meaning given in clause 18.2.

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- (24) **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.
- (25) **Seasonal Incentive** means, in respect of each calendar month in a Financial Year, the applicable adjustment to the Opening Base Price for Farm Output supplied by the Supplier/shareholder from an SMR Farm in that month, as set out in the Opening Price Circular in respect of that Financial Year and as adjusted in accordance with clause 9.2.
- (26) **Sharefarmer** means a sharefarmer of an SMR Farm, being the entity identified as such on the I&I Form in respect of that SMR Farm.
- (27) **SMR Backpay** means any backpay or retrospective payment announced by MGC from time to time in respect of Farm Output supplied from an SMR Farm, the frequency and amount of which may vary from time to time, at the discretion of MGC.
- (28) **SMR Farm** has the meaning given in clause 1.2, and is identified in the I&I Form in respect of each Supply Arrangement.
- (29) **SMR Step-Ups** means step-ups (if any) to the Opening Base Price announced by MGC from time to time in respect of Farm Output supplied from an SMR Farm, at the discretion of MGC.
- (30) **SMR Terms** means these MGC Milk Payment Terms (NSW-Sydney Market Region).
- (31) **Supplier/shareholder** means the supplier, as identified by the the details as set out in the applicable I&I Form.
- (32) **Supply Arrangement** means the binding agreement for the sale and purchase of Farm Output between MGC and a Supplier/shareholder in respect of an SMR Farm, on the terms of:
- (a) these SMR Terms;
- (b) the Relevant Standards;
- (c) the I&I Form; and
- (d) 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 SMR 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.
- (33) **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.
- 21.2 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.
- 21.3 "Including" and similar expressions are not words of limitation.
- 21.4 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.
- 21.5 Headings and any table of contents or index are for convenience only and do not form part of these SMR Terms or affect its interpretation.
- 21.6 A provision of must not be construed to the disadvantage of a party merely

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because that party was responsible for the preparation of the terms or the inclusion of the provision in the Supply Arrangement.

21.7 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.

21.8 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.

SMR Supply Acceptance Form

IDENTIFICATION OF THE SMR FARM AND THE SUPPLIER/SHAREHOLDER

This SMR Supply Acceptance Form (**SMR Supply Acceptance Form**) is returned by the following Supplier/shareholder:

Name:

(**“Supplier/shareholder”**)

Farm Trading Name:

(**“SMR Farm”**)

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

the Owner

a Sharefarmer

PREFERRED COMMENCEMENT DATE

I would prefer the Supply Arrangement and collections of Farm Output to commence on:

/

Please nominate a date dd/mm/yy format, such date being no earlier than 1 October 2013.

Murray Goulburn will notify you in writing of the date on which the Supply Arrangement and collections of Farm Output will commence and will take your preference into account when making its determination.

DECLARATION

The Supplier/shareholder who signs this SMR Supply Acceptance Form acknowledges and declares that:

I/we have read and understood this SMR Supply Acceptance Form and the SMR Terms.

I/we agree that the Supply Arrangement will commence on the date determined by Murray Goulburn in its discretion and notified to me/us in writing (“Commencement Date”).

I/we agree to supply all my/our Farm Output from the Commencement Date to Murray Goulburn in accordance with the SMR Terms.

The persons signing this SMR Supply Acceptance 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.

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.