

**AMPI CONTRACT NUMBER 1
CONTRACT FOR BULK RAW MILK DELIVERED**

Date		
Seller	Name	
	ACN/ABN	
	Address	
	Email	
	Authorised Representative	
Buyer	Name	
	ACN/ABN	
	Address	
	Email	
	Authorised Representative	
SEE APPENDIX 1 FOR WORKED EXAMPLE OF PRICING CALCULATION		
Purchase price formula	Fat Price (FP)	AUD \$ [= $NP / (F\%MS + R * P\%MS)$] per kilogram of butter fat exclusive of GST
	Protein Price	AUD \$ [= $R * FP$] per kilogram of true protein exclusive of GST
Pricing inputs	Fat Percentage (F%)	4.00 % milk
	Protein Percentage (P%)	3.40 % milk
	Fat Percentage of Milk Solids (F%MS)	= $F\% / [F\% + P\%]$
	Protein Percentage of Milk Solids (P%MS)	= $P\% / [F\% + P\%]$
	Ratio of Protein Price to Fat Price per kilogram (R)	2.0000
Price ratio	Notional Price (NP)	AUD \$ [contract input] per kilogram of milk solids exclusive of GST
Terms	Notional Volume	[contract input] litres
	Delivery Month	
	Delivery Zone	
	Delivery Point	

On this Date, the Buyer has agreed to purchase, and the Seller has agreed to supply, the Product at the Purchase Price in accordance with the terms of this Agreement including the Table above and the following terms and conditions.

1. Definitions and Interpretations

(a) Definitions

Acceptable Tolerance means a tolerance of plus or minus 5% of the applicable volume specified.

ACICA means the Australian Centre for International Commercial Arbitration.

Bankruptcy means in relation to a party, that the party (i) is dissolved (other than pursuant to an amalgamation or a merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgement of insolvency or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors rights or a petition is presented for its winding up or liquidation and results in a judgement of insolvency or bankruptcy or for the entry of an order for relief or the making of an order for its winding up or liquidation, or is not dismissed, discharged or stayed in each case within 15 days of the institution or presentation thereof; (v) has a resolution passed for its winding up or liquidation; (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidation or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, sequestration or other legal process levied on all or substantially all of its assets; or (viii) is subject to any event with respect to it which has an analogous effect to any of the events specified in (i) to (vii) above.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Melbourne Victoria Australia.

Calendar Day Means every day on the calendar, including weekends and public holidays.

Deliver or Delivery or Delivered means when the Product has been transferred from the Seller's Milk Transport Vehicle and is loaded safely into the Buyer's Milk Storage Facility.

Delivery Month means the calendar month in which the Product will be Delivered by the Seller to the Buyer in accordance with this Agreement.

Delivery Point is one of the list of approved Milk Storage Facilities Appendix 2 within each Delivery Zone. The Delivery Point is defined by the Buyer.

Delivery Zone is the regional zone in which the seller must deliver Product to the Delivery Point

Documentation has the meaning given to that term in clause 5.

Encumbrance means any claim, charge, mortgage, security interest, lien, option, equitable right, retention of title, right of pre-emption or other third party right of any kind or an agreement, arrangement or obligation to create any of the foregoing.

GST has the same meaning as in the GST Law.

GST Law means A New System (Goods and Services) Tax Act 1999 (Cth).

Milk Transport Vehicle means any vehicle in which the Product is transported by the Seller for Delivery to the Buyer in accordance with clause 4.

Milk Solids is a reference to the combined volume of Fat and Protein in Product.

Milk Storage Facility means any equipment designated by the Buyer at the Delivery Point into which Delivery of the Product is made by the Seller from the Milk Transport Vehicle in accordance with clause 4

Product means raw milk as specified in the [Australian Milk Price Initiative Standardised Ingredient Specification Raw Milk] attached as Appendix A.

Purchase Price means the price calculated in accordance with the formula specified in the Table above.

Specifications means Fat Quantity and Protein Quantity as specified in the Table above.

Volume means the volume of the product measured in metric litres.

Waiting Period is a period of 5 Business Days.

(b) Interpretation

- (i) A reference to legislation or a legislative instrument includes any amendment, re-enactment or replacement of that legislation or instrument, and includes any instrument made under the legislation or instrument;
- (ii) The singular includes the plural and vice versa, and a gender includes other genders;
- (iii) A reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (iv) The word "person" includes a natural person and any body or entity whether incorporated or not;

- (v) The words "in writing" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (vi) A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (vii) Headings are for convenience and do not affect interpretation;
- (viii) A reference to a party, clause, paragraph, Schedule or annexure is a reference to a party, clause, paragraph, Schedule or annexure to or of this Agreement; and
- (ix) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.

2. Quantity

- (a) The Seller agrees to Deliver to the Buyer the Notional Volume of the Product in the Delivery Month with an Acceptable Tolerance in the Delivery Month.
- (b) The final Delivered Volume will be the actual Product Delivered by the Seller to the Buyer as specified in the Documentation.
- (c) The Fat Quantity, measured in kilograms of butterfat and used to calculate the Fat Payment, will be the final Delivered Volume multiplied by the Fat Percentage of the Product, as specified in the Documentation.
- (d) The Protein Quantity, measured in kilograms of true protein, used to calculate the Protein Payment, will be the Final Delivered Volume multiplied by the Protein Percentage of the Product, as specified in the Documentation.

3. Price

The Buyer must pay the Seller the Purchase Price which includes a Fat Payment and a Protein Payment calculated in accordance with the Purchase Price Formula.

- (a) The Fat Price is derived from the Notional price using a standard formula and is the price paid for each kilogram of Butter Fat. The Fat Payment is calculated by multiplying the Fat Price by total kilogram of Fat.
- (b) The Protein Price is derived from the Notional price using a standard formula and is the price paid for each kilogram of Protein. The Protein Payment is calculated by multiplying the Protein Price by the total kilogram of Protein.

- (c) Given the Product is unprocessed, it is subject to GST pursuant to paragraph 38-4(1)(ga) of GST Law. The Buyer must pay the applicable GST on the supply evidenced under this Contract, to the Seller, upon the Seller issuing a valid tax invoice.
- (d) Any industry, statutory or government levies which are not included in the Price but which are payable by the Seller under applicable law shall be deducted by the Purchaser from the Purchase Price and paid to the applicable government agency or authority.

4. Delivery

- (a) Risk and title of the Product will transfer from the Seller to the Buyer when the Product has exited the Seller's Milk Transport Vehicle and is loaded safely into the Buyer's Milk Storage Facility at the Delivery Point. Delivery into the Buyer's Milk Storage Facility at the Delivery Point constitutes valid Delivery to the Buyer for the purposes of this Agreement.
- (b) Delivery is to be made in minimum deliveries of 25,000 metric litres of Notional Volume of Product (with an acceptable volume tolerance of 20% over or under on any single delivery).
- (c) Scheduling of Deliveries during the Delivery Month will be by mutual agreement between Seller and Buyer, in accordance with the following requirements unless otherwise mutually agreed:
 - (i) Delivery will be between 12.00pm Sunday and 12.00pm Friday at the Delivery Point
 - (ii) The Delivery is to be made in consistent daily and weekly amounts throughout the Delivery Month, subject to Delivery being made in full tanker loads as required under clause 4.b.
 - (iii) Delivery will be to one Delivery Point only
- (d) Where mutual agreement on the scheduling of Deliveries cannot be reached, the Buyer must nominate a required Delivery Point and schedule of Delivery Time(s) and Date(s), which must be communicated to the Seller a minimum of 15 Business Days prior to the first day of the Delivery Month.
- (e) The Buyer must notify to the Seller in writing of any reasonable Delivery requirements such as but not limited to acceptable truck format and Delivery process a minimum of 15 Business Days prior to any scheduled Delivery.
- (f) The Seller must ensure that Delivery:
 - (i) Pursuant to Section 26(3) of the Dairy Act 2000 (Vic), is made by a dairy carrier which holds a dairy carrier license issued by Dairy Food Safety Victoria (DFSV) or the equivalent in their state
 - (ii) Complies with all relevant provisions of the Food Act 1984 (Vic) and the Australia New Zealand Food Standards Code in the conduct of the dairy business and the processing,

handling, packaging storage or transportation of dairy food or the equivalent in their state

- (g) The Seller must comply, and ensure that its employees, agents and contractors (“Personnel”) comply, with the Delivery requirements. Without limitation, the Seller must ensure that any of its Personnel who are present on the Buyer’s site comply with all reasonable directions given on behalf of the Buyer and the Delivery requirements that the Buyer has notified to the Seller in writing.
- (h) Where the Product is Delivered in more than one consignment, the Agreement shall be deemed to be a separate Agreement in respect of each consignment under the terms of this Agreement such that a breach in relation to that particular consignment shall be a breach under the deemed separate Agreement and shall not impact other consignments under this Agreement.

5. Required Documentation and Testing

- (a) The Seller must provide the following Documentation to the Buyer within 5 Business Days after the Delivery Month:
 - (i) Sales Invoice containing, at a minimum, the Specifications, Fat Price Protein Price, Fat Payment and Protein Payment, and applicable GST. This Sales Invoice must meet the requirements of a Tax Invoice for GST purposes.
 - (ii) Evidence supporting the calculation of Fat Quantity and Protein Quantity, including but not limited to tanker dockets and flow meter readings from well calibrated measurement equipment; and compositional testing results, as verified by an independent testing facility accredited by the National Association of Testing Authorities (unless otherwise mutually agreed by the Buyer and Seller).

6. Payment

- (a) Upon receipt of the Documentation, the Buyer must pay the Fat Payment and the Protein Payment to the Seller on the Business Day on or prior to the 14th day of the Calendar Month following the Calendar Month in which the Product was Delivered.
- (b) If any payment is not made on or before the due date for payment, interest shall be payable at the rate of 1.5% per month, calculated daily.
- (c) The Buyer must make payment in cleared funds and free of any deduction, to the Seller by bank transfer to the Seller’s nominated bank, free of any deduction or set-off.

7. Compliance with laws and regulations

- (a) The Seller shall ensure that the Product Delivered to the Buyer is stored and transported in accordance with all appropriate laws, regulations, and standards governing the storage and transportation of the Product prior to its Delivery to the Buyer.

- (b) Upon request, the Seller shall provide relevant information to the Buyer regarding storage and transportation details so as to allow the Buyer to satisfy itself and any regulatory authorities that all applicable laws, regulations and standards have been complied with.

8. Representations and Warranties

- (a) The Seller represents and warrants to the Buyer that (i) it has good title to and the right to possession of the Product; (ii) it has a full unencumbered right to sell, and Deliver the Product; (iii) there exists no Encumbrance over the Product; and (iv) the Product complies with the specifications set out in the Documentation.
- (b) The Buyer represents and warrants to the Seller that it has the right to take delivery of the Product at the Delivery Point.
- (c) Each party represents and warrants to the other party that (i) it is established and validly existing under the laws of the jurisdiction of its incorporation; (ii) it has the power and authority to execute this Agreement and to perform its obligations under this Agreement; (iii) all governmental and other consents and licences that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect; (iv) no Default with respect to it has occurred or is continuing; and (v) it is entering into this Agreement as principal and not as agent for any person.

9. Default

- (a) The occurrence at any time of any of the following shall constitute a “Default” with respect to the relevant party.
 - (i) A failure by a party to make when due any payment or Delivery due by it under this Agreement if such failure is not remedied within one Business Day after written notice of such failure is given to the party by the other party;
 - (ii) A failure by the party to perform any other obligation (other than an obligation to make payment or delivery) under this Agreement if such failure is not remedied within 5 Business Days after notice of such failure is given to the party;
 - (iii) A representation or warranty under this Agreement proves to have been incorrect or misleading in any material respect; or
 - (iv) The party is Bankrupt.
- (b) If a Default occurs with respect to a party, the other party may immediately terminate this Agreement by notice in writing and claim under the indemnity in clause 12.

10. Force Majeure

- (a) A Force Majeure Event occurs if on any day a party (“Affected Party”) is prevented from performing any obligation to make a payment or Delivery under this Agreement or from complying with any other material provision of this Agreement (or would be so prevented if such payment, Delivery or compliance were required on that day) or if it becomes impossible for that party to so perform (or would be impossible to perform if such payment, Delivery or compliance were required on that day) in each case as a result of the occurrence of the following events or circumstances which are beyond the reasonable control of the Affected Party and could not have been prevented by the exercise of reasonable care by the Affected Party:

- (i) any national strike, lock-out or any other industrial action or labour dispute not involving the Affected Party or its agents or sub-contractors in connection with this Agreement;
 - (ii) any act of war (whether declared or undeclared), armed conflict, terrorism, riot, insurrection, civil commotion or blockade;
 - (iii) any act of state or other exercise of sovereign, judicial or executive prerogative including expropriation, or acts claimed to be justified by executive necessity;
 - (iv) any epidemic, explosion, chemical or radioactive contamination, earthquake, tempest, flooding, fire, cyclone, storm, volcanic eruption or other extreme weather event or environmental conditions or action of the elements;
 - (v) any act of God; or
 - (vi) any event or circumstance of a nature analogous to any of the above.
- (b) The loss of a Product due to production risks or a failure of the product to comply with the Specifications or the Documentation does not constitute a Force Majeure Event.
- (c) The Affected Party must give written notice to the other party within 2 Business Days of the occurrence of a Force Majeure Event.
- (d) If a Force Majeure Event has occurred and is continuing and the Affected Party has given written notice as required under clause 10d, each affected payment or Delivery required to be made under this Agreement ("Affected Consignment") will be deferred until the earlier of the first Business Day following the end of the Waiting Period or the date on which the Force Majeure Event ceases (or if not a Business Day, the first following day that is a Business Day).
- (e) Neither party shall have claim against the other for delays or non-performance of their obligations under this Agreement with respect to an Affected Consignment where a Force Majeure Event occurs, provided that the Affected Party shall have supplied to the other party satisfactory evidence supporting the Force Majeure Event.
- (f) If a Force Majeure Event shall have occurred and the Waiting Period has expired, either party may by notice in writing to the other party, terminate this Agreement in relation to the Affected Consignment(s), whereupon a termination amount shall be calculated as follows:
- (i) if there is one Affected Party, the other party shall calculate the amount of the losses or costs of the other party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the other party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the other party the economic equivalent of the material terms of that Affected Consignment(s). If the termination amount is a positive number then the Affected Party shall pay that amount to the other party and if the

termination amount is a negative number then the other party shall pay the absolute value of that number to the Affected Party;

- (ii) if both parties are Affected Parties, the parties shall agree and use mid-market values without regard to the creditworthiness of each party to calculate which party has incurred losses (expressed as a positive number) or gains (expressed as a negative number) that are or would be incurred or realised under the then prevailing circumstances in replacing or providing the economic equivalent of the material terms of the Affected Consignment(s), and the party that has incurred a loss shall pay termination amount to the other party.

11. Choice of Law

- (a) This Agreement is governed by the laws of the State of Victoria. The Buyer and Seller submit to the non-exclusive jurisdiction of the courts of the State of Victoria to support the arbitration process pursuant to clause 16 below.

12. Indemnity

- (a) Each party must indemnify the other party against any loss, damage, claim (including, without limitation, for personal injury), action or expense (including, without limitation, legal costs) which the other party suffers as a direct result of any of the following:
 - (i) a Default under this Agreement by the other party, including, without limitation, any failure to Deliver or delay in Delivery of the Product or a failure to pay the Price for the Product, that meets the specifications and meets the Notional Volume requirements for the relevant Delivery;
 - (ii) a failure to accept the Product that meets the specifications and is within the tolerances for Notional Volume for the relevant Delivery;
 - (iii) any representation or warranty given by the party under this Agreement being incorrect or misleading in any way
- (b) For the avoidance of doubt, neither party shall be liable to the other party in contract or under the indemnity in this clause 11 for any indirect, consequential, or special loss or damage including for loss of profits, reputational loss or other intangible loss.

13. Assignment

- (a) Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

14. Confidentiality

- (a) This Agreement together with all information and data arising out of or related to the terms of this Agreement are confidential. However this clause shall not be interpreted so as to prevent the parties from disclosing the mere existence of the Agreement.

- (b) No party may disclose any such information and data (except where such information or data has come into the public domain other than by an unauthorised disclosure by a party or where required by law or regulation or under the rules of any stock exchange) to any third party without first obtaining the prior written consent of the other party.

15. Entire Agreement

- (a) This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement to the exclusion of any terms implied by law which may be excluded by contract. Each party agrees and acknowledges that in entering into this Agreement, it is not relying on any representation, warranty or undertaking not expressly incorporated into it.
- (b) No variation of this Agreement shall be effective unless in writing and signed by both parties.

16. Disputes and Arbitration

- (a) Where a dispute arises out of or in connection with performance of this Agreement both parties, acting in good faith, will use all reasonable endeavours to notify the other party in writing in a timely fashion and in any event not more than 10 days after the event occurs which leads to the dispute.
- (b) Where a notification of a dispute is made to the other party to this Agreement both parties will act, in good faith, to resolve the dispute. If after attempting to resolve the dispute, and in any instance not before the elapse of 30 days after notification, the parties are not reconciled, both parties agree to refer the dispute to arbitration in accordance with clause 16c below.
- (c) Subject to clause 16a, any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.

17. Notices

- (a) Any notice under or in connection with this Agreement shall be given in writing and delivered by hand, by mail, or email to the address specified on page one of this Agreement.
- (b) Any notice given orally must be confirmed in writing and is not valid until given in writing.
- (c) A notice shall be effective upon receipt and is deemed to have been received (i) at 9.00am on the fourth Business Day following posting if sent by mail; and (ii) at the time of delivery on the Business Day if delivered by hand or sent by email during business hours of 9.00am to 5.00pm (Victorian time), otherwise at 9.00am on the next following Business Day.

APPENDIX 1

WORKED EXAMPLE			
Pricing inputs		% milk	% milk solids
	Fat	= F% [4.00%]	= F%MS [F%/Total%] [54.05%]
	Protein	= P% [3.40%]	= P%MS [P%/Total%] [45.95%]
	Total	= Total%	= 100%
Price ratio	Ratio of Protein Price to Fat Price (R)	R [2.00]	
Terms	Notional Price (NP)	AUD \$NP [\$x.xx] per kilogram of milk solids exclusive of GST	
	Fat Price (FP)	AUD \$ [= NP / (F%MS + R * P%MS)] [\$x.xxxx] per kilogram of butter fat exclusive of GST	
	Protein Price	AUD \$ [R*FP] [\$x.xxxx] per kilogram of true protein exclusive of GST	

APPENDIX 2

Delivery Zones

Western Zone, Victoria
Northern Zone, Victoria
Eastern Zone, Victoria

Delivery Points

1. Western Zone

Bega Koroit – 23 Commercial Road Koroit VIC 3282
Provico Dennington – 50 Drummond Street Dennington VIC 3280
McColl's Dennington – 50 Drummond Street Dennington VIC 3280
Saputo Allansford - 5331 Great Ocean Road Allansford VIC 3277
Fonterra Cobden – 129 Curdie Street Cobden VIC 3266
McColl's Timboon – 77 Barrett Street Timboon VIC 3268
Bulla Colac – 91 Forest Street South Colac VIC 3250
McColl's Colac – Rossmoyne Road Colac VIC 3250

For Delivery to the following Delivery Point(s), the Seller can add a premium of \$0.2400 to the Fat Price and \$0.4800 to the Protein Price

UDC Penola – 16789 Riddoch Highway Penola SA 5277

2. Northern Zone

Fonterra Stanhope – 20 Midland Highway Stanhope VIC 3623
Bega Tatura – 236 Hogan Street Tatura VIC 3616
Kyvalley Dairy Kyabram – 7 Slattery Road Kyabram VIC 3620
McColl's Tongala – 1 Eddie Hann Street Tongala VIC 3621
Freedom Foods Shepparton – 102 Old Dookie Road Shepparton VIC 3630
McColl's Shepparton – 316 Midland Highway Shepparton VIC 3632

For Delivery to the following Delivery Point(s), the Seller can add a premium of \$0.1200 to the Fat Price and \$0.2400 to the Protein Price

Saputo Cobram – 7 Schubert Street Cobram VIC 2714
Booths Strathmerton – 1818 Numurkah Road Strathmerton VIC 3241

3. Eastern Zone

McColl's Pakenham – 7 Drovers Place Pakenham VIC 3810

Burra Foods Korumburra – 47 Station Street Korumburra VIC 3950

McColls Longwarry – 71 Longwarry-Drouin Road Longwarry VIC 3816

Lactalis Longwarry – 31-41 Mackay Street Longwarry VIC 3816

McColl's Drouin – 12 Gould Street Drouin VIC 3953

Fonterra Darnum – Darnum Park Road Darnum VIC 3822

Saputo Leongatha – 18 Yarragon Road Leongatha VIC 3953

Bega Morwell – Princes Drive Morwell VIC 3840

For Delivery to the following Delivery Point(s), the Seller can add a premium of \$0.1200 to the Fat Price and \$0.2400 to the Protein Price

Saputo Maffra – 15 Bundalaguah Road Maffra VIC 3860

For Delivery to the following Delivery Point(s), the Seller can add a premium of \$0.2400 to the Fat Price and \$0.4800 to the Protein Price

Bega Chelsea – 150 Wells Road Chelsea Heights VIC 3196

Lactalis Rowville – 842 Wellington Road Rowville VIC 3178