

Milk Supply Agreement (Exclusive contract)

Between:

[insert] Pty Ltd **(you)**

ABN [insert]

B D Farm Paris Creek Pty Ltd **(Paris Creek)**

ABN 33 069 884 386

You have agreed to supply Paris Creek with appropriately certified milk in compliance with Paris Creek's quality requirements (**Milk**). The Milk must be supplied in accordance with the terms and conditions of this Agreement for the Term.

Heading	Clause
Term of the Agreement	This Agreement commences on 1 July 2020 and continues for 12 months unless otherwise terminated by the parties in accordance with the Agreement. The last date of supply is 30 June 2021.
Cooling Off	You may terminate this Agreement with immediate effect by issuing written notice to Paris Creek within 14 days after the day on which this agreement was entered into.
Certification	The Certification Requirements are set out in Schedule 1. You must hold and maintain the certifications as described in the Certification Requirements. If you fail to satisfy the Certification Requirements, the Milk will be deemed to be not Appropriately certified Milk.
Supplying Milk to Paris Creek	You must supply to Paris Creek all of the Milk produced by you. Paris Creek must collect and purchase all of the Milk produced by you except that Paris Creek is not obliged to purchase or collect any Milk that is: (a) not Appropriately Certified Milk; or (b) does not meet the Quality Requirements.
Exclusivity	You must sell all Milk produced by you exclusively to Paris Creek (unless otherwise agreed in writing by Paris Creek). If you breach this exclusivity arrangement, then in addition to any other rights Paris Creek may have for such breach, Paris Creek may terminate this Agreement with immediate effect by providing notice in writing to you. Paris Creek is entitled to purchase Milk from anyone and is not restricted in any way to purchasing Milk only from You on an exclusive basis.
Collection of Milk	Milk will be collected by Paris Creek at the designated location on your farm. You grant Paris Creek (and its representatives and agents), free of charge, a right to access and remain on your farm for the purpose of collecting the Milk and ensuring your compliance with your obligations under this Agreement. You must ensure that: (a) Paris Creek employees and its representatives have safe and unrestricted access to your Farm as is necessary to collect Milk at any time on each collection day; (b) you comply with any reasonable and lawful request from Paris Creek regarding access to your Farm; and (c) you immediately notify Paris Creek of any circumstances that may affect Paris Creek's ability to collect Milk at your Farm.
Timing of Collection	Paris Creek may determine how and when collections of Milk are to be made and will use reasonable endeavours to notify you in advance of its intended collection schedules and capacity. Milk may be collected at any time on each collection day, however Paris Creek will use its best endeavours (if possible) not to coincide the collection time with standard milking hours. Paris Creek will give you reasonable prior notice if it plans to adjust the collection schedule or capacity. You may request a change to the collection schedule by providing reasonable notice to Paris Creek, in which case Paris Creek will use its best endeavours to adjust the collection schedule and notify you of the changes.

	<p>You must appropriately store all Milk until it can be collected as per Paris Creek's collection schedule. This will require you (among other things) to maintain storage facilities capable of holding at least 1.5 times your average daily peak production of Milk and to promptly notify Paris Creek if your storage capacity for Milk is likely to be exceeded.</p> <p>All your vats must be compliant with Australian Standard Farm Milking Cooling and Storage Systems (AS1187)</p> <p>Paris Creek will combine Milk collected from you with milk collected by Paris Creek from other suppliers. Therefore, the time and date of collection of Milk from you may vary.</p>																												
Title and Risk	Title in the Milk, and therefore all associated risk, passes to Paris Creek when Milk passes into Paris Creek's (or its contractor's) tankers. However, this does not apply where Milk is subsequently discovered to have not met the Quality Requirements.																												
Volume	Paris Creek will ensure that the tanker used to collect the Milk has accredited and calibrated milk meters to determine the volume of Milk supplied. Paris Creek will record the volume of Milk collected and will advise you in writing of the volume of Milk collected for each collection. These records will be used in determining volumes on which payment will be calculated. Paris Creek will make the calibration results available to you upon request.																												
Minimum Pricing	<p>Subject to the Milk complying with the Quality Requirement, the Minimum Prices for Milk supplied by You under this Agreement are:</p> <table border="1"> <thead> <tr> <th>Month of supply</th> <th>Price per kilogram of milk solids</th> <th>Month of supply</th> <th>Price per kilogram of milk solids</th> </tr> </thead> <tbody> <tr> <td>July</td> <td>\$8.90</td> <td>January</td> <td>\$8.90</td> </tr> <tr> <td>August</td> <td>\$8.90</td> <td>February</td> <td>\$8.90</td> </tr> <tr> <td>September</td> <td>\$8.20</td> <td>March</td> <td>\$8.90</td> </tr> <tr> <td>October</td> <td>\$8.20</td> <td>April</td> <td>\$8.90</td> </tr> <tr> <td>November</td> <td>\$8.20</td> <td>May</td> <td>\$8.90</td> </tr> <tr> <td>December</td> <td>\$8.90</td> <td>June</td> <td>\$8.90</td> </tr> </tbody> </table> <p>The prices paid pursuant to this Agreement are subject to any deductions as set out in this Agreement and any other agreement between you and Paris Creek.</p> <p>The above table outlines the Minimum Price for the supply of Biodynamic Organic Milk to Paris Creek in accordance with this Agreement.</p> <p>Under no circumstances, will Paris Creek retrospectively decrease the amount it pays for Organic Milk below the minimum price during the term of this agreement.</p>	Month of supply	Price per kilogram of milk solids	Month of supply	Price per kilogram of milk solids	July	\$8.90	January	\$8.90	August	\$8.90	February	\$8.90	September	\$8.20	March	\$8.90	October	\$8.20	April	\$8.90	November	\$8.20	May	\$8.90	December	\$8.90	June	\$8.90
Month of supply	Price per kilogram of milk solids	Month of supply	Price per kilogram of milk solids																										
July	\$8.90	January	\$8.90																										
August	\$8.90	February	\$8.90																										
September	\$8.20	March	\$8.90																										
October	\$8.20	April	\$8.90																										
November	\$8.20	May	\$8.90																										
December	\$8.90	June	\$8.90																										
Calculation of the price & pricing justification	<p>In calculating the minimum prices set out in this Agreement, Paris Creek has taken into account all factors set out in the Paris Creek Farms Statement of Circumstances document available on Paris Creek's website.</p> <p>The pricing set out in this Agreement reflect the exclusive nature of the Agreement and the certainty that it provides to Paris Creek in relation to Paris Creek's production requirements.</p>																												
Bulk Milk Cell Count (BMCC) Deduction	<p>Each day Paris Creek will calculate the average Bulk Milk Cell Count ("BMCC") for all Milk supplied by you for the preceding 10 deliveries, excluding the lowest and highest readings of BMCC in those 10 deliveries.</p> <p>If the average BMCC is above 250,000 cfu/ml and below 400,000cfu/ml, Paris Creek will deduct 2c per litre of Milk from the price paid to you for the Milk delivered on that particular day.</p>																												
Invoices	<p>On or around the last business day of each month, Paris Creek will provide you with an invoice specifying the volume of Milk supplied by you in that month and the total amount due and payable for that Milk.</p>																												
Payment Date	<p>Paris Creek will pay for the Milk supplied by you in any calendar month on or around the 15th day after the end of that calendar month.</p> <p>Payment will be made by electronic transfer into the bank account nominated by you in writing to Paris Creek (noting the funds may not clear until the subsequent business day).</p> <p>Paris Creek is authorised to deduct from any amount owing to you, the relevant amounts with respect to levies payable under State or Commonwealth legislation in connection with the supply of Milk.</p>																												

Quality Requirements	The Quality Requirements for Milk Supplied by you are set out in Schedule 2. You must supply Milk that meets the Quality Requirements. The Quality Requirements can only be changed by mutual agreement between Paris Creek and you.
Testing	Paris Creek will conduct tests to ensure the Milk meets the Quality Requirements and to determine other qualities of the Milk supplied by you. Paris Creek will provide you with written notice of the results of any tests conducted by Paris Creek as soon as reasonably practicable after Paris Creek tests the Milk, such written notice to include volume, fat%, protein%, Total Bacteria Count and BMCC.
Milk that is Unacceptable Quality	Milk that fails to satisfy the Quality Requirements will be deemed to be of Unacceptable Quality. Paris Creek can decline to collect and/or pay for any Milk that is of Unacceptable Quality. After an instance of Milk being of Unacceptable Quality, you must (at your own cost): <ul style="list-style-type: none"> (a) conduct a reasonable investigation as to the source of the quality issue; (b) tip out all affected Milk from the vats; (c) clean out the affected vats; (d) pay for Paris Creek to clean out the affected tankers; (e) prepare and provide Paris Creek with a plan on how you propose to resolve the issue (which Paris Creek must review and may request alterations to), then follow this plan once it has been approved by Paris Creek; and (f) do anything else required in order to promptly resolve the issue (including by doing anything reasonably required by Paris Creek). Paris Creek may also stop purchasing and collecting Milk from you (in its sole and absolute discretion) until you provide Paris Creek with satisfactory evidence that the issue has been rectified. If Paris Creek rejects Milk pursuant to this Agreement, Paris Creek will, as soon as practicable after rejecting the Milk, provide you with written notice of the rejection, including: <ul style="list-style-type: none"> (a) the reasons for the rejection; and (b) the consequences for you of the rejection.
Your liability to Paris Creek	If Milk is found to be of Unacceptable Quality or is recalled for any reason caused or contributed to by you, you will incur the following liabilities: <i>General liability:</i> the Supplier must refund all amounts that Paris Creek has paid you for that Milk. <i>Contamination liability:</i> if the Milk has contaminated Paris Creek's tanker or raw Milk storage silo or other milk also collected by that tanker or stored in that silo, you must pay Paris Creek for the cost of all other milk in the tanker and the silo.
Paris Creek's liability	Paris Creek is not liable to you for any loss You suffer as a result of Paris Creek refusing a collection of Milk or ceasing collection of Milk for a period of time in accordance with the terms of this Agreement.
Termination	You can terminate this Agreement by informing Paris Creek (in writing) if Paris Creek: <ul style="list-style-type: none"> (a) suffers an Insolvency Event; (b) fails to pay you for the supply of Milk within 60 days of the due date for payment; (c) materially breaches this Agreement and does not remedy the breach within 30 days of receiving written notice from you of the breach; (d) fail to perform their duties under this Agreement with due care and skill, or act negligently or with reckless indifference in performing their duties under this Agreement. Paris Creek can terminate this Agreement by informing you (in writing) if you: <ul style="list-style-type: none"> (e) suffers an Insolvency Event; (f) materially breaches this Agreement and does not remedy the breach within 30 days of receiving notice written notice from Paris Creek of the breach; (g) breaches this Agreement and the breach is not capable of remedy; (h) engages in conduct that adversely affects, or could adversely affect, Paris Creek's reputation (in its sole and absolute discretion).

	<p>The written notice of termination by either Paris Creek or you must include:</p> <ul style="list-style-type: none"> (i) the reason for the termination; and (j) the day the termination takes effect. <p>Insolvency Event: means the occurrence of any of the following events in relation to any person or entity:</p> <ul style="list-style-type: none"> (a) it becomes insolvent (including insolvent under administration), states it is insolvent or is presumed to be insolvent; (b) it is wound up, dissolved or declared bankrupt; (c) a liquidator, provisional liquidator, controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of its assets or undertaking; (d) it enters into or becomes subject to any arrangement or composition with any of its creditors or any assignment for the benefit of any of its creditors or any reorganisation, moratorium, deed of company arrangement or other administration involving any of its creditors; (e) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c) or (d) above; (f) the person is taken to have failed to comply with a certain kinds of statutory demand under law; or (g) the person suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due.
Amendments to this Agreement	<p>This Agreement can only be amended or varied in writing signed by all parties except if there is a change in a Commonwealth, State or Territory law, in which case Paris Creek may vary this Agreement:</p> <ul style="list-style-type: none"> (a) to the extent necessary to comply with the changed law; but (b) without reducing a minimum price under this Agreement.
Complaint Handling and Dispute Resolution	<p>If you have a complaint, or there is a dispute or difference between the parties' interpretation or application of this Agreement (or part of it) (Dispute), the following steps must be taken (in this order) before a party can start arbitration or court proceedings:</p> <ol style="list-style-type: none"> 1. The party initiating the dispute process must write to the other party, including details of the Dispute and its proposed resolution. 2. Within 5 working days of receipt of a notice of Dispute, Paris Creek will: <ul style="list-style-type: none"> (a) give a written acknowledgement of the notice; (b) nominate a dispute resolution officer to be the key contact person with respect to the Dispute, and will provide you with the relevant contact details of the dispute resolution officer; and (c) provide details of the steps to be taken to deal with the complaint or Dispute. 3. After a party is informed under step 1, there is a 14 day period in which both parties must use all reasonable endeavours to resolve the Dispute. Within the first 7 days of this period, the senior representatives of both parties exercising good faith, must meet with this aim. 4. If the Dispute is not resolved within 60 days, either party must refer the matter to mediation in South Australia. The procedure set out in clause 48 of the Dairy Industry Code will apply.

Execution	
Signed for and on behalf of: [insert]	
	Name: Date:
Signed for an on behalf of:	

B D Farm Paris Creek Pty Ltd	
	Name:
	Date:

SCHEDULE 1 - CERTIFICATION REQUIREMENTS

1.1. Biodynamic Certification

You must hold Biodynamic Certification for each farm from which you supply Milk to Paris Creek (**Farm**), unless the Farm is undergoing conversion (see clause 1.2).

Biodynamic Certification: means accreditation as a certified biodynamic milk production farm from an Accredited Organisation.

Accredited Organisation: means a recognised biodynamic accreditation organisation such as ACO or NASAA.

1.2. Obtaining Biodynamic Certification

If you do not already hold a Biodynamic Certification in relation to the Farm, you must:

- do everything Paris Creek or the Accredited Organisation reasonably requires you to do to enable the Farm to obtain the Biodynamic Certification (and pay all costs of doing so); and
- tell Paris Creek (within 30 days after entering this Agreement) the date by which you reasonably believe you will be able to complete each Accreditation Stage (**Target Date**).

Accreditation Stage: means each stage in the process for certification pursuant to the Australian Organic and Biodynamic Standard. Available on the Australian Certified Organic website <http://austorganic.com.australian-certified-organicstandard1/>, or in hard copy from Paris Creek upon request.

1.3. Inability to obtain Biodynamic Certification

If you are unable to obtain Biodynamic Certification by the Target Date, Paris Creek may terminate this Agreement.

If Paris Creek suffers any loss, liability, damage, cost, charge or expense from you failing to complete any Accreditation Stage or reach Biodynamic Certification by the Target Date, you must indemnify Paris Creek for this loss.

1.4. Maintaining Biodynamic Certification

During the Term, you must (at your own cost):

- maintain the Biodynamic Certification obtained in relation to your Milk and Farm and upon request provide Paris Creek with such evidence it reasonably requires which demonstrates that Biodynamic Certification is maintained by you;
- do everything the Accredited Organisation reasonably requires you to do to enable the Farm to maintain its Biodynamic Certification;
- use your best endeavours to ensure that all milk produced on the Farm meets the Accredited Organisation's requirements for Biodynamic Certification;
- establish and maintain an approved third party audited quality system with the primary purpose of maintaining the Biodynamic Certification and adherence to the "Biodynamic Standards Guidelines and Quality Requirements" (or other similar documents issued by the Accredited Organisation at any time); and
- use reasonable endeavours to adhere to the Accreditation Stages.

If you fail to meet any of these requirements, Paris Creek may terminate this Agreement.

1.5. Chinese Organic Certification

You must hold Chinese Organic Certification for each Farm, unless the Farm is undergoing conversion (see clause 1.6).

Chinese Organic Certification: means accreditation as a certified Chinese organic milk production farm from an Accredited Organisation.

Accredited Organisation: means a recognised Chinese organic accreditation organisation as specified by the Chinese organic importation requirements.

1.6. Obtaining Chinese Organic Certification

If you do not already hold a Chinese Organic Certification in relation to the Farm, you must:

- do everything Paris Creek or the Accredited Organisation reasonably requires you to do to enable the Farm to obtain the Biodynamic Certification; and
- tell Paris Creek (within 30 days after entering this Agreement) the date by which you reasonably believe you will be able to complete each Accreditation Stage (**Target Date**).

1.7. Costs of Obtaining Chinese Organic Certification

Paris Creek Farms will pay the costs of the Chinese Organic Certification to the Certification body.

If you do not already have Chinese Organic Certification and obtain the certification on or about the Target Date, Paris Creek Farms will pay you \$5,000.00 as a one off payment for completion.

1.8. Inability to obtain Chinese Organic Certification

If you are unable to obtain Chinese Organic Certification by the Target Date, Paris Creek may terminate this Agreement.

If you fail to meet any of these requirements set out in Schedule 1, Paris Creek may terminate this Agreement.

SCHEDULE 2 - QUALITY REQUIREMENTS

The Quality Requirements for all Milk supplied to Paris Creek are:

QUALITY REQUIREMENT	
BMCC (cells/mL)	< 400 000
Total Bacteria Count (cfu/ml)	< 50 000
Temperature	Milk must be cooled to below 5°C within 3.5 hours from start of milking Thereafter, < 5°C at all times
Pesticides (including but not limited Herbicides/Fungicides/Insecticides/Molluscicide/Rodenticides)	< not detected
Organoleptic (including discolouration, odour, visible foreign particles (and others), sediment and other extraneous matter)	No issues present
Inhibitory substances / residues (e.g. colostrum, antibiotics, sanitisers and chemical residues (and others))	None present
Organic paperwork	Completed organic milk statement
Freezing Point	Between -0.5C and -0.62C (inclusive)