

# MILK SALE AGREEMENT

between

**The Milk Producer**

(whose name appears in paragraph 1 of annexure A attached hereto)

and

**The Milk Buyer**

(whose name appears in paragraph 2 of annexure A attached hereto)

**WHEREAS:**

The Milk Producer has milk available which it would like to sell

and

The Milk Buyer needs milk for its business activities,

**NOW THEREFORE:**

The parties agree as follows:

**1 INTERPRETATION**

In this contract –

- 1.1 the various clauses have been given titles for convenience sake only and it should not be taken into consideration in their interpretation;
- 1.2 unless otherwise stated,—
  - 1.2.1 a word that refers to the male gender includes the female or neutral genders;
  - 1.2.2 a word which refers to a natural person includes a legal entity and vice versa; and
  - 1.2.3 the singular includes the plural and vice versa.

## 2 DEFINITIONS AND IDENTIFICATIONS

Unless the contrary appears from the context, the following words have the corresponding meaning and grammatical derivations of these words carry corresponding meanings:

- 2.1 “**MPO**” means the Milk Producers’ Organisation, a non-profit company, with its head office at 86 Watermeyer Street, Val de Grace, Pretoria;
- 2.2 “**commencement date**” is the date specified in paragraph 6 of annexure “A”;
- 2.3 “**physical address**” and “**fax number**” is the physical address and fax number of each party as indicated in paragraph 4 of annexure A;
- 2.4 “**collection point**” is the place(s) where the Milk buyer collects milk from the Milk Producer as stipulated in this contract and indicated in paragraph 7 of annexure A
- 2.5 “**dairy farm**” is any piece of land on which the Milk Producer has his dairy farm and on which there is a separate collection point as identified in paragraph 7 of annexure A;
- 2.6 “**estimated milk production**” is the expected milk production of the dairy farm or dairy farms collectively as indicated by the Milk Producer in paragraph 8 of annexure A;
- 2.7 “**agreed delivery times**” are the times reasonably agreed upon by the parties from time to time and confirmed in writing, when milk tankers can collect milk from collection points on behalf of the milk buyer;
- 2.8 “**force majeure**” includes *vis major* and *casus fortuitus*;
- 2.9 “**contract**” means the contract as set out in this document and annexures thereto;

- 2.10 “**parties**” are the Milk Producer and the Milk Buyer and “**party**” means any one of these as is apparent in the context;

### **3 DELIVERY OF FRESH MILK**

- 3.1 From the commencement date the Milk Producer will, subject to the terms of this contract, deliver fresh milk which he produces on the dairy farm or farms, to the Milk Buyer by making it available on the agreed delivery times and collection point or points to be collected by the Milk Buyer.
- 3.2 The Milk Buyer may refuse to accept milk from the Milk Producer:
- 3.2.1 If the milk or milking parlour deviates from the standards and directions stipulated in annexures C and D to such an extent that the Milk buyer cannot reasonably be expected to accept the offered milk as fulfilment of the Milk Producer’s obligations in terms of this contract; or
- 3.2.2 Under the circumstances stipulated in annexure “E”
- 3.3 For the purposes of clause 3.2.1 above, previous deviations from the stipulated standards and directions will be taken into consideration when the seriousness of later deviations is considered.
- 3.4 The Milk Producer delivers his milk to the Milk Buyer at the agreed delivery times and the Milk Buyer takes delivery of the milk in accordance with the terms of annexure E.
- 3.5 As soon as the milk is transferred into the milk tanker, the property rights and risks of the milk rest in the Milk Buyer.

### **4 THE PURCHASE PRICE OF MILK**

The Milk Buyer pays for the milk according to the pricing structure set out in annexure B, which makes provision for the following:

- 4.1 a basic price in cents per litre;
- 4.2 levies or premiums, as the case may be, in respect of the milk’s:
- 4.2.1 Butterfat content;
- 4.2.2 Protein content;
- 4.2.3 Bacterial count; and
- 4.2.4 Somatic cell count

## 5 PAYMENT

- 5.1 On or before the 10<sup>th</sup> day of a month the Milk Buyer shall pay the amount due to the Milk Producer for the milk delivered during the preceding month by means of an electronic transfer of funds directly into the bank account of the Milk Producer. At the same time, the Milk Buyer shall provide a statement to the Milk Producer, indicating how the amount due was calculated and compiled.

## 6 DURATION OF CONTRACT \*

This contract takes effect on the commencement date and remains valid for a period of ..... months. / This contract applies to the transaction for the supply of milk on .....  
 (\* Delete what is not applicable)

## 7 BREACH OF CONTRACT AND WITHDRAWAL

7.1 Should the Milk Buyer:

- 7.1.1 Fail to collect the Milk Producer's milk from the dairy farm or dairy farms for 4 (four) consecutive days without making prior arrangements with the Milk Producer regarding the interruption in milk collection; or

- 7.1.2 Be in arrears with the payment which he must make to the milk producer in terms of clause 6 above for 20 (twenty) days or more; then

the Milk Producer, without prejudice to any other remedies he may have at common law, shall be entitled, but not obliged, to withdraw from the contract with immediate effect and to hold the Milk Buyer liable for damages.

- 7.2 Should a party be guilty of breach of contract, and fail to remedy such breach within 14 (fourteen) days of receiving a notice from the other party to do so, then the latter shall, subject to the stipulations of clause 7.1 above and 7.3 below, be entitled to:

7.2.1 either enforce the contract according to the terms thereof; or

7.2.2 to withdraw from the contract; and

7.2.3 in either event to recover damages from the other party for any loss he may have suffered as a result of the breach of contract.

- 7.3 The remedies available to the innocent party in terms of clauses 7.1 and 7.2 above do not prejudice any other legal remedy which he may have at his disposal on the grounds of the other party's breach of contract.
- 7.4 Without limiting the general scope of clauses 7.1 and 7.2 above, the provisional or final liquidation of a party, or his placement under judicial management will be regarded as breach of contract.

## **8 FORCE MAJEURE**

- 8.1 Obligations which a party cannot fulfil owing to circumstances beyond his control are suspended for as long as the circumstances prevail. Once these circumstances have come to an end, all such obligations will come into force forthwith and must resume at once.
- 8.2 Should the suspension of an obligation as referred to in clause 8.1 above, continue for more than 30 (thirty) days, any party may terminate the contract by giving written notification to this effect to the other party.

## **9 DOMICILIUM AND NOTICES**

- 9.1 Each party chooses his physical address as his *domicilium citandi et executandi* (his domicile) for all purposes in connection with this contract.
- 9.2 Any notice addressed to a party must be delivered by hand to his physical address or sent by fax to his fax number.
- 9.3 Any notice shall be deemed to have been given :-
- 9.3.1 If it is delivered during business hours on a business day, on that day;
- 9.3.2 If it is sent by fax during working hours, on that day; or
- 9.3.3 If it is sent at any time other than during business hours on a business day, on the first business day after such delivery.

## **10 GENERAL**

- 10.1 Failure or delay by any party to enforce any right in terms of this contract does not constitute a surrender of such right or any partial exercise of a right does not prohibit the full enforcement of this right at a later stage.
- 10.2 This contract together with the annexures affixed hereto, contains the whole of the consensual part of the agreement between the parties.
- 10.3 The parties are not bound by any express or implied stipulation, representation, guarantee or promise which is not stated in this contract.

Signed by each party or its representative, who by such signature warrants its authority to do so, on the day and place indicated hereunder.

\_\_\_\_\_

The **Milk producer**

Date: \_\_\_\_\_

\_\_\_\_\_

Witness

Place : \_\_\_\_\_

\_\_\_\_\_

The **Milk buyer**

Date: \_\_\_\_\_

\_\_\_\_\_

Witness

Place : \_\_\_\_\_

**Annexure A**

**1 THE MILK PRODUCER**

1.1 The Milk Producer is:

.....

1.2 The registration number of the Milk Producer is:

.....

1.3 VAT Registration number: .....

**2 THE MILK BUYER**

2.1 The Milk Buyer is:

.....

2.2 The registration number of the Milk Buyer is:

.....

2.3 VAT Registration number: .....

**3 ADDRESSES AND OTHER CONTACT DETAILS**

3.1 The addresses and other contact details of the Milk Producer are as follows:

Physical address

Postal address

.....

.....

.....

.....

.....

.....

.....

.....

Telephone: Fixed line: ..... Cell: .....

Fax: .....

E-mail: .....

Or such amended address(es) or details of which the Milk Producer has notified the Milk Buyer in writing.

3.2 The addresses and other contact details of the Milk Buyer are as follows:

Physical address

Postal address

.....	.....
.....	.....
.....	.....
.....	.....

Telephone: Fixed line: ..... Cell: .....  
 Fax: .....  
 E-mail: .....

or such address(es) or details of which the Milk Buyer has notified the Milk Producer in writing.

**4 BANKING DETAILS**

4.1 The banking details of the Milk Producer are as follows:

- 4.1.1 Name of account holder: .....
- 4.1.2 Name of bank: .....
- 4.1.3 Branch name: .....
- 4.1.4 Branch code: .....; and
- 4.1.5 Account number: .....

Or such amended banking details of which the Milk Producer has notified the Milk Buyer in writing.

**5 THE COMMENCEMENT DATE**

The commencement date is .....

**6 THE COLLECTION ADDRESS**

The collection address(es) for this agreement will be:

.....;  
 .....;  
 .....

**7 THE ESTIMATED DAILY MILK PRODUCTION**

At the commencement date and subject to normal acceptable variances in the industry, the estimated daily milk production is \_\_\_\_\_

The Milk Buyer pays the Milk Producer according to the following pricing structure, referred to in clause 5 of the contract:

- 1 A basic price of ..... cents per litre to be paid for milk with a butterfat content of 3,5% and a protein content of 3,1%;
- 2 The following levies or premiums, for the respective components, will be deducted from or added to the basic price:
  - 2.1 For butterfat:
    - 2.1.1 A levy of ..... cents per litre for each 0,1 percentage point where the butterfat content is less than 3,5%; or
    - 2.1.2 A premium of .... cents per litre for every 0,1 percentage point where the butterfat content is more than 3,5%;
  - 2.2 For protein content:
    - 2.2.1 A levy of .... cents per litre for every 0,1 percentage point of protein content that is less than 3,1%; or
    - 2.2.2 A premium of .... cents per litre for every 0,1 percentage point of protein content more than 3,1%;
  - 2.3 For bacterial count (total plate count):
    - 2.3.1 A levy of 1 (one) cent per litre for every 10 000 above 200 000 to a maximum of 20 (twenty) cents a liter; or
    - 2.3.2 A premium of 1 (one) cent per litre for every 10 000 below 200 000 to a maximum of 2 (two) cents a liter;
  - 2.4 For somatic cell count :
    - 2.4.1 A levy of 1 (one) cent per litre for every 50 000 that the count exceeds 500 000 to a maximum of 10 (ten) cents a liter;
    - 2.4.2 A premium of 0,5 (half) cents per litre for every 50 000 that the count is below 500 000 to a maximum of 4 (four) cents a liter;

For the purposes of calculating the value of the milk delivered by the Milk Producer and purchased by the Milk Buyer, the following factors are taken into account:

- (i) Milk volume: The volume determined as prescribed in paragraph 3 of Annexure E;
- (ii) Butterfat and protein content and bacterial and somatic cell counts: The values are those determined by an accredited laboratory or any other laboratory agreed to by the Milk Producer and Milk Buyer, in accordance with nationally accepted methods through the analysis of milk samples taken as per paragraph 8 of Annexure E; and
- (iii) Milk purchased on the basis of kilograms butterfat and protein: Volume milk in litres converted to kilograms milk by using a Specific Gravity of milk of 1.03.

**Annexure C**

Standards set for milk
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The milk that the Milk Producer delivers to the Milk Buyer must comply with the following standards:

**1 Nature of the milk**

The milk must be genuine cow's milk, delivered by cows that have been certified as free from TB and CA.

**2 Freshness**

The milk must be less than three days old at time of delivery.

**3 Temperature**

The milk must be stored on the dairy farm at a temperature not exceeding 7°C.

**4 Butterfat**

The average butterfat content of the milk must not be less than 3,3% in any given month. (If milk with an average of less than 3,3% butterfat content is delivered for a second consecutive month a quality deviation levy, calculated at 5,0 cents per litre on all milk delivered during that month, will be deducted.)

**5 Protein**

The average protein content of milk in any given month must not be less than 3,0%. (If milk with an average of less than 3,0% protein content is delivered for a second consecutive month a quality deviation levy, calculated at 5,0 cents per litre on all milk delivered during that month, will be deducted.)

**6 Lactose (Milk sugar)**

The lactose content of milk must be between 4,5% and 5,0%. If milk is delivered with a lactose content that falls outside these parameters, the Producer will receive a warning)

**7 Non-fatty solid substances**

Non-fatty solid substances must comprise at least 8,3 % of the content of the milk. (If milk is delivered which contains less than 8,3% of non-fatty solid substances , the producer will receive a warning.)

**8 Bacterial count (plate count)**

The average bacterial count must be less than 200 000 per month. (If milk is delivered with an average count of more than 200 000, a levy, calculated at 1 cent per litre on all milk delivered during the month, will be imposed. If milk with an average count of more than 200 000 is delivered for a second consecutive month, the milk will be refused.)

**9 Somatic cell count**

The average somatic cell count per month must not exceed 500 000. (If milk with an average count of over 500 000 is delivered, a levy, calculated at 1 cents per litre of all milk delivered during the month, will be imposed. If milk with an average count of over 500 000 is delivered for a second consecutive month, the milk will be refused).

**10 Inhibitory substances**

Inhibitory substances that may affect the further processing of milk, such as antibiotics and cleansing or disinfectant agents, may not be present in the milk at all. (The Milk Producer guarantees that his milk is free of any inhibitory substances. If milk containing such substances is delivered, the Milk Buyer will not pay for the milk and will dispose of the milk. The Milk Producer expressly authorises the Milk Buyer to dispose of such milk on condition that the Milk Buyer provides the Milk Producer with evidence that such milk has indeed been disposed of. Furthermore, the Milk Producer is liable to the Milk Buyer for the value of any other milk that has been contaminated by his milk and consequently becomes unfit for use.)

**11 Added water**

No water may be added to milk. (If milk is delivered which contains added water, a levy calculated at 50% of the value of the relevant delivery, will be imposed.)

**12 Sediment**

No sediment may be physically visible in the milk. (If such sediment is observed, the milk will not be loaded.)

**13 Foreign substances**

No foreign substances, including powdered milk, pasteurised milk or other milk-based substances may be present in the milk. (If such foreign substances are present in the milk, it will amount to breach of contract.)

**14 Pest control substances, heavy metals and aflatoxins**

The pest control substances, heavy metals and aflatoxins in the milk must not exceed the legal, maximum levels. (If there is such a violation, the producer will receive a warning.)

**Annexure D****Prescribed rules for the milking parlour and access to the parlour****1 The milking parlour**

- 1.1 The milking parlour at each collection point must be approved by the local authority and a copy of the certificate of approval must be provided to the Milk Buyer.
- 1.2 The Milk Producer must have a valid milk tank assizing certificate in respect of each cooling tank on the dairy farm or farms.
- 1.3 The milk must be stored and cooled in cooling tanks with adequate cooling equipment. Each cooling tank must be provided with an agitator which is connected to a timer so that the milk is stirred at least once every 30 minutes.
- 1.4 The Milk Buyer may have the accuracy of the volume meters tested at any time. If it is found that the tank gives incorrect readings, the Milk Producer will carry the cost of the tests, otherwise the cost will be borne by the Milk Buyer.
- 1.5 The milk must be stored at a temperature of 7°C or less, but must not be frozen.
- 1.6 Adequate storage capacity must be available so that ONE additional milking's milk can be stored in the cooling tank in case the milk cannot be collected at the agreed time due to unforeseen circumstances.

**2 Access for the tanker**

- 2.1 The Milk Producer must ensure that the access road to the collection point is always in good repair. Each tanker driver is responsible for his tanker, and must use his discretion and good judgement as to whether there is a risk of damage to his tanker. If he is of the opinion that there is a risk of damage to his tanker, he may refuse to collect milk from the relevant collection point.
- 2.2 The Milk Producer must ensure that there is enough space at each collection point for the tanker to be able to turn around or that the tanker can park beside the milking parlour on a route that passes alongside the milking parlour.

The delivery and reception process
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The tanker driver follows the following procedure when he takes receipt of the milk:

- 1 He must wash his hands with soap and water and dry them on a disposable paper towel, provided by the Milk Producer.
- 2 He must ensure that the cooling tank is level and, should this not be the case, he must report this to the Milk Buyer's transport supervisor by making a suitable entry on the receipt slip.
- 3 He must ensure that the agitator is switched off and that the milk has come to a complete stop before he determines the volume. The volume is measured by means of a dipstick reading which is converted into litres against the litre chart for the specific cooling tank. The volume is entered on the receipt. The minimum volume of milk that will be collected is 400 litres. Should the level of the milk in the tank be so low that the measuring dipstick and/or the agitator can't reach it, the milk will not be accepted.
- 4 He must observe the general appearance of the milk. Should there be any foreign substance in the milk, such as insects, dung, feed or dust, he may not collect the milk. In such a case he must enter the reason for refusing the milk on the receipt slip.
- 5 He must switch on the agitator and the milk must be stirred thoroughly for five minutes before switching the agitator off.
- 6 He must then smell the milk and identify any unusual odours. If there is an unacceptable odour, the milk may not be accepted and the situation must be reported to the Milk Buyer's transport supervisor and the incident must be entered on the receipt slip.
- 7 He must take the temperature of the milk with a hand thermometer and enter it on the receipt slip. If the temperature measures more than 7°C the driver must wait until the milk has cooled down to 7°C or less. If the relevant collection occur at an agreed delivery time and the milk has not cooled down to 7°C or less within 20 minutes, it may not be collected. The reason for the rejection of the milk must be entered on the receipt slip.
- 8 As soon as the milk has stopped moving, he must take a sample with a dipping spoon while making sure that his hand does not touch the milk. Thereafter he decants the sample into the applicable sample bottles and seals the lid tightly.

- 9 The driver now does the Alizarol test to determine whether sour milk is present in the tank. Should the test be positive, a second test must be done. If the result is still positive, the milk may not be collected and the reason for not doing so must be entered on the receipt slip.
- 10 If all the tests and measurements confirm that the milk is acceptable, the tanker driver may have the milk pumped into the tanker.
- 11 Finally, the driver must complete the receipt slip and have it signed by the Milk Producer or his representative (if either one is available) in order to confirm that the driver followed the correct procedure. The top copy is left in the milking parlour.