

Annexure A –Fair Go Dairy™ Scheme Rules

Definitions and interpretation

1. Definitions

In these Rules, unless the context clearly indicates otherwise, each term used in these Rules but not otherwise defined has the meaning given to that term in the Licence Agreement and Fair Go Dairy™ Scheme Rules:

- a. **Applicant** means the party to the Application who applies to use the Trade Marks pursuant to these Rules.
- b. **Dairy Code** means the Dairy Code of Conduct prescribed as a mandatory industry code under section 51AE of the *Competition and Consumer Act 2010* (Cth).
- c. **Expert** means the person appointed in accordance with the Expert Rules in relation to a dispute.
- d. **Expert Rules** means the Expert Determination Rules as published by the Institute of Arbitrators and Mediators Australia (see www.iama.org.au) as amended from time to time.
- e. **farmer** means a person that produces, or may produce milk.
- f. **financial year** means the period from 1 July to 30 June (inclusive).
- g. **FSANZ Code** means the Food Standards Australia New Zealand Food Standards Code.
- h. **Licence Agreement** means a licence agreement between Licensor and the Licensee in respect of the Trade Marks.
- i. **Licensee** means an Applicant authorised by the Licensor to use the Trade Marks.
- j. **Licensor** means Queensland Dairyfarmers' Organisation Limited (ACN 090 629 066).
- k. **milk** means milk (within the meaning of the *Dairy Produce Act 1986* (Cth)) that is unprocessed.
- l. **milk supply agreement** means a contract between a processor and a farmer for the supply of milk.
- m. **minimum price**, in respect of milk, including under a milk supply agreement, for a period, means the lowest price payable under the agreement for milk supplied during the period, disregarding:
 - i. loyalty payments; and
 - ii. any possibility of a temporary reduction in a price in accordance with section 28 of the Dairy Code of Conduct; and
 - iii. any fees payable by the farmer, including under such agreement.
- n. **processor** means a corporation that purchases, or that may purchase, milk from farmers, whether or not the corporation processes the milk.
- o. **Products** means milk or dairy produce (within the meaning of the *Dairy Produce Act 1986* (Cth)) which an Applicant submits for approval to participate in the Fair Go Dairy™ Scheme, in accordance with these Rules and the Licence Agreement, and includes (without limitation):

- i. dairy milk – fresh, UHT/long-life milk, powdered including infant formula and flavoured/enhanced milk (including A2, protein, high calcium);
 - ii. dairy cream – fresh, UHT/long-life milk and flavoured/enhanced milk (including A2, protein, high calcium);
 - iii. dairy desserts – mousses, ice-cream, custards, yoghurts; and
 - iv. cheese / cream cheese and variants.
- p. **Rules** means this document current as of [24 August 2020].
- q. **Scheme Requirements** means the requirements set out in item 6.a of these Rules.
- r. **Sustainable and Fair Farmgate Price (SFFP)** means a farmgate price for milk, as calculated in accordance with item 12 of these Rules.
- s. **Website** means the Licensor website accessible at www.fairgodairy.com.

2. Interpretation

Unless the contrary intention appears, these rules shall be interpreted in accordance with clause 1.2 (*Interpretation*) of the Licence Agreement provided that any references to “this agreement” shall be taken to be references to “this document”.

3. Application of Rules

These Rules apply to:

- a. all Applicants applying to use the Trade Marks after the date of approval of these Rules; and
- b. all Licensees whose Licence Agreements to use the Trade Marks are executed after the date of approval of these Rules.

4. Ownership

The Trade Mark is the sole property of Licensor and shall not be used by any person except with the authority of Licensor.

5. Use of Fair Go Dairy™ Trade Marks

- a. The use of the Trade Marks shall be governed by the Licence Agreement and these Scheme Rules.
- b. The Trade Marks may be used only on Products which satisfy the Scheme Requirements.
- c. Nothing in these Rules restricts the ability of Licensor and persons acting on its behalf to use the Trade Marks in the course of, or in relation to, managing, administering and/or promoting the Fair Go Dairy™ Scheme.

6. Licence to use the Fair Go Dairy™ Trade Marks

- a. Licensor shall grant a licence to use the Trade Marks on Products to Applicants who apply for such a licence in accordance with these Rules and where:
 - i. Licensor determines (acting reasonably) that Applicant (including via its processors) meets the requirements of these Scheme Rules;

- ii. Licensor is satisfied (acting reasonably) that the use of the Trade Marks on the Applicant's Product must not:
 - 1. constitute misleading and deceptive conduct within the meaning of the *Competition and Consumer Act 2010* (Cth); or
 - 2. in Licensor's opinion, be likely to bring the Trade Marks, the Fair Go Dairy™ Scheme or Licensor into disrepute,
 - iii. Applicant signs and returns Licence Agreement to Licensor;
 - iv. Applicant is at all times in compliance with the Licence Agreement (together the **Scheme Requirements**).
- b. The licence shall be in the form of the Licence Agreement.
- c. Any licences which Licensor grants in accordance with these Rules shall be for a period of one year commencing on 1 July each year.

7. Application process

- a. Applicants seeking to obtain a licence to use the Trade Marks on one or more Products must obtain an application form from the Licensor, including via its Website.
- b. Applicants must complete and submit the Application Form to the Licensor in such manner as the Licensor directs (including on such Website).
- c. The Application Form must be supported by information that verifies that the minimum price payable by the Applicant (including by its processors) to farmers in respect of milk is greater than the SFFP including all information reasonably required by the Licensor to verify same, including (without limitation) by provision of the following documents and information to Licensor:
 - i. the most recent standard form of milk supply agreement of the Licensor published in accordance with section 12 of the Dairy Code;
 - ii. any milk supply agreements with the farmer (including any variations or amendments thereof);
 - iii. monthly invoices to farmers which verify payments to suppliers;
 - iv. information that shows total payments and litres for all farmers;
 - v. a split of proceeds from various sources including processor brands, retail brands and other income; and
 - vi. any other relevant information to verify the Applicant's compliance with the Scheme Requirements,

and as may be reasonably required by the Licensor from time to time (including as soon as reasonably practicable after publication of its updated standard milk supply agreements under the Dairy Code each year), the Applicant must supply updated copies of the above documents and information to enable the Licensor to verify same.

- d. If an Applicant is not compliant with the Scheme Requirements as of the date of submission of their Application, but the Applicant intends on being compliant on and from the Effective Date, the Applicant must provide to Licensor at the time of

application and from time to time (as reasonably required by the Licensor) with their Application together with all required supporting documents and information, including, without limitation, historic data of the minimum price paid to their respective farmers and any executed milk supply agreements, other supplier contracts or other information which provides evidence that the farmers will be paid the SFFP on and from the Effective Date.

- e. The Applicant must, as set out in the Licence Agreement, agree to:
 - i. audits by Licensor (or its representative or agent) at any time as the Licensor may reasonably require during the Term, and without notice to the Applicant; and
 - ii. comply with the terms and conditions of the Licence Agreement during the Term.
- f. If Licensor requests supplementary information regarding the Product or Application Form in order to assess the application, the Applicant must provide such information.
- g. If Licensor is satisfied that the Product satisfies the Scheme Requirements, Licensor will enter into a Licence Agreement with the Applicant. The effective date of the licence will be as set out in the Licence Agreement.
- h. If Licensor is not satisfied that the Product satisfies (or will continue to satisfy) the Scheme Requirements, Licensor refuse to enter into a Licence Agreement with the Applicant.
- i. Upon the expiry of the Licence Agreement, the Applicant may apply to enter into a further Licence Agreement in respect of the Product. The Applicant will be required to complete a new Application Form, and the process outlined in Rules 6a to c shall apply.

8. Review of compliance with Scheme Rules

Licensor shall be entitled at all times, acting reasonably, to:

- a. assess whether a person has met the Scheme Requirements; and
- b. grant a licence to use the Trade Marks to an Applicant in accordance with these Rules.

9. Dispute resolution

- a. If a dispute arises from a refusal by Licensor to certify an Applicant's Products or allow an Applicant to use the Trade Marks, or in relation to any other matter relating to the Trade Marks (including any amendment to the Rules), the following process shall apply:
- b. As soon as practicable after the dispute arises, a party to the dispute must give to the other party to the dispute, a notice specifying the details of the dispute and requiring its resolution under this Rule 9 (Dispute Notice).
- c. The principal executive officers of each party must confer within seven days of the date of the Dispute Notice to attempt to resolve the dispute.
- d. If the dispute is not resolved within 28 days of the date of the Dispute Notice (**First Period**), the dispute will be submitted to determination by an Expert. Such determination must be conducted in Queensland. The provisions of the

Expert Rules shall apply to the determination of the dispute, except to the extent of any inconsistency between those rules and these Rules, in which case these Rules shall prevail.

- e. If the parties have not agreed upon the Expert and the Expert's remuneration within seven days after the First Period:
 - 1. the Expert will be appointed by the President of the Law Institute of Victoria (**President**) or the President's nominee acting on the request of any party to the dispute; and
 - 2. the remuneration of the Expert is the amount or rate determined by the President.
- f. After considering such evidence as the parties may submit, including any evidence requested by the Expert, and after each party has had an opportunity to be heard, the Expert shall decide the matter.
- g. The parties must pay the Expert's remuneration in equal shares. Each party must pay its own costs of the Hearing.
- h. Nothing in these Rules prevents any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

10. Inconsistency

If there is any inconsistency between these Rules and the Licence Agreement, the Licence Agreement shall prevail to the extent of that inconsistency.

11. Amendment

- a. The Licensor may amend these Rules at any time.
- b. Licensor may give notice in writing to all affected Licensees and Applicants of any such amendment to these Rules, including by written notice in accordance with the terms of the Licence Agreement or by updating any copy of them on the Website

12. Determination of Sustainable and Fair Farmgate Price (SFFP)

- a. In this item 12 and the Reference Schedule:
 - i. **COP** means the cost of production (or equivalent) for milk as published by:
 - 1. QDAS;
 - 2. DFMPN;
 - 3. DFMPV;
 - 4. DFMPSA;
 - 5. DFMPWA; and
 - 6. DFMPPT;

in respect of the immediately preceding financial year to such date.

Provided at all times that a reference to any such body or authority which ceases to exist is a reference to either a body or authority that the Licensor determines (acting reasonably) is a substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

ii. **CPI Index** means:

1. the all groups consumer price index for Australia published by the Australian Bureau of Statistics; or
2. if the all groups consumer price index is suspended or discontinued and another index is substituted by the Australian Bureau of Statistics, the substituted index; or
3. if there is no index under paragraph vii(2), the general inflation rate in Australia as used by the Commonwealth Treasury Department for the relevant period or another index that the Licensor reasonably believes is a substitute for the all groups consumer price index;

iii. **CPI Rate** means the percentage change in the CPI Index (All Groups) for the immediately preceding calendar year;

iv. **DFMPN** means the New South Wales Dairy Farm Monitor Project;

v. **DFMPSA** means the South Australia Dairy Farm Monitor Project;

vi. **DFMPT** means the Tasmania Dairy Farm Monitor Project;

vii. **DFMPV** means the Victoria Dairy Farm Monitor Project;

viii. **DFMPWA** means the Western Australia Dairy Farm Monitor Project;

ix. **Maximum SFFP** means the maximum (but not mandatory) SFFP as calculated using the formula set out in the Reference Schedule;

x. **QDAS** means The Queensland Dairy Accounting Scheme.

b. On or before 28 February each year, the Licensor shall determine the SFFP for the immediately following financial year, such determination to apply equally to all Applicants during that immediately following financial year.

c. In deciding the SFFP in respect of a financial year, the Licensor shall conduct the determination by:

- i. using the formula for the Maximum SFFP; and
- ii. having regard to any reduction to such Maximum SFFP having regard to the methodology and considerations listed in the Reference Schedule.

For the avoidance of doubt, the Licensor may decide the SFFP in respect of a financial year, to be an amount that is less than the Maximum SFFP having regard to the methodology and considerations listed in the Reference Schedule.

d. The determination conducted by the Licensor is conclusive and binding on Licensees and Applicants in the absence of manifest error.

- e. The Licensor shall use reasonable commercial endeavours to publish the SFFP for a financial year within a reasonable period (of not more than 10 business days (Brisbane time) prior to 28 February.

13. Scheme Requirements

- a. All milk used in the manufacturing of products licensed under the Fair Go Dairy™ Trade Marks must be produced in Australia.
- b. An Applicant can sell its milk at any price (in its own discretion) during the financial year to which these Rules apply, but such price cannot be less than the SFFP in order for the Applicant to be afforded the right to use the Trade Marks in accordance with these Rules and the Licence Agreement.
- c. Those Applicants wanting to use the Trade Mark must agree to be subject to an audit by Licensor officers/contractors and provide information that validates a minimum price being not less than the SFFP (as determined or agreed from time to time) is being paid including:
 - i. Contracts with farmer;
 - ii. Contract variations with farmers;
 - iii. Monthly invoices to farmers which verify payments to suppliers;
 - iv. Information that shows total payments and litres for all farmers;
 - v. A split of proceeds from various sources including processor brands, retail brands and other income;
 - vi. Any other relevant information to show that the SFFP is being paid.
- d. Applicants who apply to use the Trade Marks without historic proof of SFFP – i.e. intend to increase supplier payments to meet the SFFP, must provide historic data of minimum price paid as well as executed milk supply agreements or supplier contracts with farmers which clearly set out the agreed payment price from the Effective Date of the Licence Agreement between the Licensor and the Applicant.
- e. Applicants must also agree to:
 - i. at least one random audit check throughout the year; and
 - ii. agree to abide by professional conduct standards as outlined within the Licence Agreement and these Rules.

14. Definition of allowable products under the Fair Go Dairy™ Scheme

- a. Only Products manufactured by the Applicant and which have been approved by the Licensor for participation in the Fair Go Dairy™ Scheme, can use the Trade Marks on marketing, packaging or promotional materials.
- b. Licences to use the Trade Marks are given to a Licensee for use on specified and prescribed Products, production of which is conforming with the requirements of these Rules. For the avoidance of doubt, use of the Trade Marks is not for all products sold by a Licensee.

Reference Schedule

Item 1: Formula

As at the date of the determination, the Maximum SFFP (but not mandatory) shall be calculated as follows:

- a. For Queensland:

COP multiplied by the **CPI Rate**

QDO will use a 2-year average price. 1 year CPI will be used which would be 2019/20 and the 2020 calendar year when calculating the SFFP for 2021/22. In addition, use the costs from Appendix 10.3 of the QDAS report as defined above. Below shows how the price would be calculated for 2021/22.

Worked example:

Year 1 price:

$$= 2018/19 \text{ QDAS} * (1 + 2019/20 \text{ CPI}) * ((2020 \text{ CPI} * 2) + 1)$$

$$= 70.6 * (1 - 0.0035) * ((0.0086 * 2) + 1)$$

$$= 71.5$$

Year 2 price:

$$= 2019/20 \text{ QDAS} * ((2020 \text{ CPI} * 2) + 1)$$

$$= 74.9 * ((0.0086 * 2) + 1)$$

$$= 76.2$$

SFFP 2021/22:

$$= (\text{Year 1 price} + \text{year 2 price}) / 2$$

$$= (71.5 + 76.2) / 2$$

$$= 73.8\text{c/L}$$

Item 2: Methodology and Considerations

The Licensor shall consider or assume the following when conducting a determination to decide the SFFP:

Matter	Description
1 Generally accepted accounting principles	The accounting practices and principles generally accepted in the relevant State or Territory in Australia (as the case requires)
2 Profitability and prospects	In respect, generally, of farmers in the relevant State or Territory in Australia (as the case requires) <ul style="list-style-type: none"> (a) profit; (b) financial viability; (c) future prospects; and (d) sustainability
3 Arm's length transaction	Milk supply agreements are on arm's length terms between informed and willing parties.

- 4 Scheme Objectives The following scheme objectives:
- (a) consistency with the Fair Go Dairy™ program objects, purpose, strategic objectives;
 - (b) prices should be fair, equitable and include flexibility to allow for changed circumstances;
 - (c) prices must take into account direct and indirect costs of production; and
 - (d) appropriate procurement and pricing relativities
- 5 Methodologies The following methodologies:
- (a) cost-based pricing methodology.
- 6 Any other matters Subject to the above, any other matters it considers appropriate, acting reasonably.

Item 3: Initial SFFP

Having regard to the above matters, the initial SFFP for 2021/22 will be:

- a. Queensland: **73.8c/litre**
- b. New South Wales:
- c. Victoria:
- d. South Australia:
- e. Western Australia:
- f. Tasmania: