

EXCLUSIVE DEALING: NOTIFICATION

27 FORM G
RECEIVED
29 MAR 1984
TRADE PRACTICES COMMISSION
ADELAIDE

TO THE TRADE PRACTICES COMMISSION:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct of proposed conduct of a kind referred to in subsection 47(2), (3), (4) or (5) or paragraph 47(8)(a) or (b) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice NATIONAL DAIRIES SA LIMITED ACN 007 869 347
.....
(see Direction 2 on the back of this form)

(b) Short description of business carried on by that person ...processor, manufacturere and wholesale
supplier of dairy products.....
.....

(c) Address in Australia for service of documents on that person
C/- Baker O'Loughlin, Solicitors, 15th Floor, AMP Building, 1 King William Street,
Adelaide, 5000. Tel: 233-5555 Facsimile: 212-7518

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
Distribution of dairy products, in particular fresh white and flavoured milk

(b) Description of the conduct or proposed conduct Wholesale Distributor
..... See attached details
.....
(see Direction 4 on the back of this form)

3. (a) Class or classes of persons to which the conduct relates
Persons engaged in or proposing to engage in the conduct referred to in para 2(a)
above

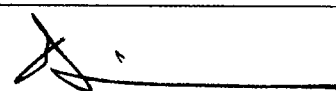
(b) Number of those persons —
(i) At present timeapproximately 50 persons.....
(ii) Estimated within the next yearapproximately 50 persons.....

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses
At this stage it is not known whether all of the persons referred to in para
3(b)(i) will sign the Wholesale Distribution Agreement referred to in para 2(b)
above. We will provide you with a list of persons who sign the Wholesale
Distribution Agreement in due course.

4. Name and address of person authorised by the person giving this notice to provide additional information in
relation to this notice
Mr. C. C. A. Binks, C/- Baker O'Loughlin, Solicitors, 15th Floor, AMP Building, 1 King
William Street, Adelaide, 5000. Tel: 233-5555. Fax: 212-7518

Dated 29 March, 1984

Signed by/on behalf of the person giving this notice


.....
(Signature)

Charles Christopher Agar Binks
(Full name)

Solicitor

.....
(Description)

EXCLUSIVE DEALING: NOTIFICATION

26 FORM G

TO THE TRADE PRACTICES COMMISSION:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4) or (5) or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice NATIONAL DAIRIES SA LIMITED ACN 007 869 347

(see Direction 2 on the back of this form)

(b) Short description of business carried on by that person processor, manufacturer and
wholesale supplier of dairy products

(c) Address in Australia for service of documents on that person C/- Baker O'Loughlin, Solicitors
15th Floor AMP Building, 1 King William Street Adelaide SA 5000
Tel: 233 5555 Facsimile: 212 7518

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

Distribution of dairy products, in particular fresh white and flavoured milk in
the Adelaide Metropolitan area from Sellicks Beach, following the Adelaide Hills
Face, North to Gawler & Willaston, thence West to St. Kilda.

(b) Description of the conduct or proposed conduct

Wholesale Distributor: see attached details

(see Direction 4 on the back of this form)

3. (a) Class or classes of persons to which the conduct relates Persons engaged in or proposing to
engage in the conduct referred to in para 2(a) above.

(b) Number of those persons —

(i) At present time approximately 50 persons

(ii) Estimated within the next year approximately 50 persons

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses At this stage
it is not known whether all of the persons referred to in para 3(b)(i) will sign
the Wholesale Distribution Agreement referred to in para 2(b) above. We will
provide you with a list of persons who sign the Wholesale Distribution Agreement
in due course.

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice


Mr. C.C.A. Binks, C/- Baker O'Loughlin, Solicitors,
15th Floor, AMP Building, 1 King William Street Adelaide SA 5000.
Tel: 233 5555 Fax: 212 7518.

Dated 29 March, 1994

Signed by/on behalf of the person giving this notice
THIS ANNEXURE PROVIDES ADDITIONAL
INFORMATION IN RESPECT TO PARAGRAPH
2(a).



9/1989 SIGNED BY SUSAN MARGARET COLLINS
FOR AND ON BEHALF OF CHARLES CHRISTOPHER
AGAR BINKS.


.....
(Signature)

Charles Christopher Agar Binks
.....
(Full name)

Solicitor
.....
(Description)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. Where particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4) or (5) or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to therein.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

Notification is not available in respect of conduct of a kind referred to in subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974*. With respect to such conduct, Form E (Exclusive Dealing: Application for Authorization) should be used.

NATIONAL DAIRIES SA LIMITED

WHOLESALE DISTRIBUTOR AGREEMENT

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WHOLESALE DISTRIBUTOR AGREEMENT

AGREEMENT dated

1994

BETWEEN NATIONAL DAIRIES SA LIMITED ACN 007 869 347 of 19-31 London Road Milc End South Australia ("**National Dairies**")

AND The party specified in **Item 1** of **Schedule A** ("**Distributor**")

RECITALS

- A. National Dairies carries on the business of processing, manufacturing and the wholesale supply of, dairy products.
- B. G N Distributors is a division of National Dairies and undertakes the distribution of National Dairies' products throughout the State.
- C. The Distributor wishes to purchase Products for wholesale distribution and for that purpose has requested National Dairies to appoint the Distributor as a wholesale distributor of the Products.
- D. National Dairies agrees to appoint the Distributor as a wholesale distributor of the Products and the Distributor agrees to accept that appointment and distribute the Products on the following terms and conditions.

AGREEMENT

1. APPOINTMENT OF DISTRIBUTOR

1.1 Grant of Rights

National Dairies appoints the Distributor as:

- 1.1.1 **Exclusive Rights** – the sole and exclusive distributor of the Products listed in **Item 1** of **Schedule B**; and
- 1.1.2 **Non-Exclusive rights** – a non-exclusive distributor of the Products listed in **Item 2** of **Schedule B**

to the Listed Customers during the term of this Agreement subject to the following terms and conditions.

1.2 Distributor Restrictions

The Distributor will not, during the term of this Agreement either directly or indirectly:

- 1.2.1 **Competing Products** – sell or distribute or be concerned or interested in the sale or distribution of, any product which is similar

to or which may compete with the Products;

1.2.2 **Involvement in Competing Business** –participate in or be engaged, concerned or interested in (whether as a sole proprietor, partner, joint venturer, adviser, consultant, manager, employee, independent contractor, agent, principal, director or officer of a body corporate, shareholder, unitholder, trustee, beneficiary, or in any other capacity) any business or enterprise which sells or distributes any products which are similar to or which may compete with the Products;

1.2.3 **Competing Wholesalers** – sell Products to any person who wholesales or distributes or is concerned or interested in the wholesale or distribution of, any product which is similar to or which may compete with the Products;

1.2.4 **Other Distributors' Customers** – sell Products to an existing customer of National Dairies or a National Dairies Distributor;

1.2.5 **Solicit Other Distributors' Customers** –solicit or entice, or endeavour to solicit or entice, an existing customer of National Dairies or a National Dairies Distributor to purchase Products either directly or indirectly from the Distributor; or

1.2.6 **Other Distributors & Wholesalers** – sell Products to any person whom the Distributor knows or ought reasonably to know, proposes to sell or is likely to sell those Products to an existing customer of National Dairies or a National Dairies Distributor.

1.3 **Exemption for Nominated Competing Products**

Notwithstanding clauses 1.2.1 and 1.2.2 the Distributor may sell the products set out in **Item 3 of Schedule B** during the period set out in **Item 3 of Schedule B**. This exemption will not, in any way, limit the other obligations of the Distributor under this Agreement.

1.4 **New Outlet Customers**

Nothing in clauses 1.2.4 or 1.2.5 will prevent the Distributor from soliciting or enticing, or endeavouring to solicit or entice, or selling Products to a person who is not an existing customer of National Dairies or of a National Dairies Distributor.

1.5 **Customer Nominating New Distributor**

Notwithstanding clauses 1.2.4 and 1.2.5 the Distributor may commence to sell Products to a person who was an existing customer of National Dairies or of a National Dairies Distributor if:

1.5.1 **Independent Request** – that person independently, and without being solicited or enticed by the Distributor, requests the Distributor to supply Products to it instead of National Dairies or the relevant National Dairies Distributor; and

1.5.2 **Notification** – the Distributor has (in accordance with **clause 2**) notified National Dairies before commencing supply to that person.

1.6 **Direct Supply or Tender**

Nothing in this Agreement will prevent National Dairies from:

1.6.1 **Non-Listed Customers** – soliciting or enticing, or endeavouring to solicit or entice, or selling Products to a person who is not a Listed Customer;

1.6.2 **Request for Tender** – submitting a tender to supply Products to a Listed Customer in response to an invitation to tender issued by that Listed Customer;

1.6.3 **Change in Customers' Operations** – submitting a proposal to supply Products to a Listed Customer where that Listed Customer has or intends to materially change its method of operations or accounting procedures (including without limitation the establishment of a central billing system); or

1.6.4 **Customer Nominating National Dairies** –commencing to sell Products direct to a Listed Customer if that Listed Customer requests National Dairies to supply Products to it instead of the Distributor for any reason (including without limitation acceptance of a tender or a proposal submitted by National Dairies in accordance with **clauses 1.6.2 and 1.6.3** respectively).

1.7 **Distributor Delivery Arrangements**

If National Dairies commences to sell Products to a Listed Customer, National Dairies will endeavour to engage the Distributor on a contract basis to deliver those Products and provide support services to that Listed Customer provided the Distributor is competitive with others prepared to provide a similar service and the Listed Customer approves that arrangement.

1.8 **Other Business**

The Distributor will not carry on, in addition to its business of distributing the Products to the Listed Customers, any other business (other than the business or businesses identified in **Schedule C** but only for as long as that business or businesses do not detract from or interfere with the performance by the Distributor of its obligations under this Agreement).

2. **LISTED CUSTOMERS – ADDITIONS AND DELETIONS**

2.1 **Additions**

Before commencing to sell Products to a person who is not a Listed Customer, the Distributor must notify National Dairies in writing that it wishes to sell Products to that person and request that National Dairies add that person to **Schedule D**.

2.2 **Deletions**

The Distributor must notify National Dairies in writing as soon as possible after it ceases to sell Products to a Listed Customer.

2.3 **Commencement/Cessation as Listed Customer**

For the purposes of this Agreement, a person will not commence to be or cease to be a Listed Customer until such time as National Dairies has agreed to add or delete that person to or from Schedule D and has notified the Distributor in writing of that fact.

2.4 **Change in Particulars – Notification**

The Distributor must notify National Dairies as soon as possible after it becomes aware of any change in the particulars relating to a Listed Customer as set out in Schedule D.

3. **TERM OF AGREEMENT**

3.1 **Initial Term**

This Agreement will be for an initial term of 18 months commencing on the Commencement Date.

3.2 **Extension of Term**

The Distributor may extend the term of this Agreement for further terms of 18 months and 24 months respectively by serving a notice on National Dairies, not less than 1 month before the end of the relevant term requesting an extension. National Dairies will grant that extension if the Distributor is, at all material times, not in breach of its obligations under this Agreement.

3.3 **Failure to Extend**

If the Distributor does not extend this Agreement in accordance with clause 3.2, this Agreement will terminate upon expiration of the then current term.

3.4 **New Agreement Negotiations**

National Dairies will, if requested by the Distributor, commence negotiations in good faith 6 months prior to the expiry of the last renewed term with a view to entering into a new distributor agreement. National Dairies will not charge any establishment fee at that time as a condition of entering into a new distributor agreement.

4. **TERMS OF TRADE**

National Dairies will sell to the Distributor those Products ordered by the Distributor at National Dairies' current distributor price and in accordance with National Dairies' standard conditions of sale at that time.

5. DISTRIBUTORS' DUTIES

The Distributor will:

- 5.1 **Best Endeavours – Sell and Promote**
Use its best endeavours to actively assist, promote and extend sales of the Products to the Listed Customers.
- 5.2 **Time Commitment**
Devote its personal best efforts in the carrying on of its business of selling Products to the Listed Customers.
- 5.3 **Efficient Conduct of Business**
Conduct its business of selling Products to the Listed Customers in an efficient, ethical and businesslike manner with due regard to the standards set out in the Procedures Manual, the convenience of the Listed Customers and their requirements for regular, efficient and timely delivery of Products.
- 5.4 **Minimum Personal Involvement**
Ensure that the person identified in **Item 2 of Schedule A** is directly and personally involved in, and devotes his or her personal best efforts to, the carrying on of the Distributor's business of selling the Products to the Listed Customers (including without limitation attending at the premises of Listed Customers to deliver Products, obtain orders and actively promote and extend sales of the Products to that Listed Customer and ensuring that the obligations of the Distributor under this Agreement are complied with at all times).
- 5.5 **Not to Sell Faulty Products**
Not sell or distribute Products which are in any way faulty or defective or have expired use-by dates.
- 5.6 **Unauthorised Modifications**
Not make any unauthorised changes, modifications or packaging adaptations to the Products.
- 5.7 **Unauthorised Representation**
Not make any representations, statements or warranties about the Products other than those which are expressly authorised by National Dairies in writing.
- 5.8 **Security for Payment**
If requested by National Dairies, provide such security as National Dairies may require to secure the payment of National Dairies' accounts.
- 5.9 **Records & Access**
Keep accurate and detailed records of the amount of Product sold by the Distributor to each Listed Customer and make that information available to National Dairies upon request.

- 5.10 **Dress Code**
Comply with the dress code set out in the Procedures Manual;
- 5.11 **Distributor Advertising**
Submit all advertising and promotional material prepared by it in relation to the Products and all documents on which it is proposed that the Trademarks will appear to National Dairies for prior approval.
- 5.12 **Vehicle and Equipment Advertising**
Decorate (in accordance with National Dairies' directions) any vehicle or equipment used by the Distributor, in its business of selling the Products to the Listed Customers.
- 5.13 **Removal of Advertising**
Remove (at the Distributor's cost) from any vehicle or equipment decorated in accordance with clause 5.12 all National Dairies advertising prior to sale, disposal or cessation of use.
- 5.14 **Storage and Delivery**
Store and distribute the Products in accordance with the provisions of the Act and the Procedures Manual.
- 5.15 **Standard of Vehicle**
Keep the Distributor's vehicle in a clean and tidy condition, in good mechanical working order and in accordance with the requirements of the Act, the Procedures Manual and any other relevant code of practice or legislation.
- 5.16 **Licences**
Hold and renew all licences and authorities required by law for the purposes of carrying on the business of the sale and delivery of dairy products including without limitation all licences and registrations required in respect of the Distributor's vehicle.
- 5.17 **Public Liability Insurance**
Effect with a reputable insurer at the Distributor's cost public liability insurance.
- 5.18 **WorkCover Registration**
Ensure that all employees, agents and contractors of the Distributor are registered with WorkCover and provide proof when requested of that registration.
- 5.19 **Procedures Manual**
Comply with all procedures, requirements or stipulations contained in the Procedures Manual.
- 5.20 **Secrecy**
Not divulge any information in relation to National Dairies' affairs or business or method of carrying on business including without limitation all information

contained in the Procedures Manual.

6. DUTIES OF NATIONAL DAIRIES

National Dairies will:

- 6.1 **Supply of Products**
Supply Products ordered by the Distributor in accordance with National Dairies' then current standard conditions of sale.
- 6.2 **Variation in Product Range**
Notify the Distributor of any proposed addition to or deletion from the range of Products and maintain a range of products which optimise returns to both National Dairies and the Distributor.
- 6.3 **Variation of Prices**
Notify the Distributor of any change in the prices for the Products and issue as soon as possible new price lists reflecting those changes.
- 6.4 **Restrictions on Sale by National Dairies**
Not sell Products directly to a Listed Customer unless that sale arises under clauses 1.6, 10.3, or 12.2.
- 6.5 **Marketing Advertising and Promotion**
Undertake such marketing, advertising and promotion of the Products as National Dairies believes is necessary including without limitation direct marketing, advertising and promotion of the Products to Listed Customers.
- 6.6 **Promotional Material**
Make available for use by the Distributor such brochures, point of sale advertising material and samples as National Dairies believes is necessary to assist the sale of Products to Listed Customers.
- 6.7 **Vehicle Advertising**
Pay the cost of applying all National Dairies' advertisements to all vehicles used by the Distributor in its business of selling the Products to the Listed Customers provided the cost of and the person applying those advertisements has first been approved by National Dairies.
- 6.8 **Procedures Manual – Notification of Requirements**
Give to the Distributor a copy of the current version of the Procedures Manual and notify the Distributor promptly of any updates or modifications to the Procedures Manual.
- 6.9 **Training**
Hold training programs for the Distributor concerning the distribution of the Products and the conduct of a business of distributing the Products.

6.10 **Representatives**

On a regular basis, send a representative to visit the Distributor and the Listed Customers for the purpose of promoting sales of the Products.

6.11 **Safeguard Distributor's Exclusive Rights**

Use its reasonable endeavours to safeguard the sole and exclusive rights granted under this Agreement to the Distributor from the actions of any other National Dairies' Distributor.

6.12 **Product Quality**

Ensure that products are processed, supplied, stored, packaged, labelled, date coded and delivered in accordance with the Act and are of merchantable quality at the time of supply.

7. **REVIEW**

7.1 **Half-Yearly Performance Reviews**

At least twice a year during the term of this Agreement, the parties will conduct a performance review.

7.2 **Notice of Unsatisfactory Performance**

If, as a result of any performance review National Dairies is not satisfied with the performance of the Distributor, National Dairies may serve upon the Distributor a notice in writing setting out reasonable performance standards and (if applicable) sales targets fixed with reference to prevailing industry and economic conditions, to be achieved by the Distributor within the period set out in that notice.

7.3 **Termination for Unsatisfactory Performance**

If, after the expiration of the period set out in that notice, National Dairies determines, upon reasonable grounds, that there has not been sufficient improvement in the performance of the Distributor when measured against the performance standards and (if applicable) sales targets set out in that notice, National Dairies may immediately terminate this Agreement by notice in writing to the Distributor.

8. **TRADEMARKS**

8.1 **Licence**

National Dairies grants to the Distributor a non-exclusive licence to use the Trademarks in the manner permitted by this Agreement solely in connection with the distribution of Products to the Listed Customers in accordance with this Agreement.

8.2 **Ownership**

The Distributor acknowledges that it has no right or interest, and National Dairies is the exclusive owner of all right and interest, in the Trademarks, the Distributor Manual and all records, advertising copy and other articles or things supplied by National Dairies to the Distributor.

8.3 Improper Use by Distributor

The Distributor will not do anything which is calculated to or may derogate from or infringe the rights of National Dairies in relation to the Trademarks or any other industrial property right or entitlement of National Dairies.

8.4 Improper Use by Third Parties

The Distributor will immediately notify National Dairies of any improper or wrongful use of the Trademarks or other industrial property rights or entitlements of National Dairies and assist National Dairies in taking all steps to prevent that improper or wrongful use.

9. PRODUCT QUALITY AND PROCEDURES

9.1 Notification

The Distributor must immediately notify National Dairies of:

9.1.1 **Non-Complying Products** – any Products which, to the Distributor's knowledge, do not comply with the standards set out in the Act or the Procedures Manual; or

9.1.2 **Quality Complaints** – any complaint received by the Distributor concerning the quality of the Products.

9.2 Product Recall Procedure

If National Dairies recalls any Products for health, safety or quality reasons, the Distributor will co-operate with National Dairies in relation to such recall and will comply with the "product recall procedure" set out in the Distributor Manual.

10. CUSTOMER/DISTRIBUTOR DISPUTES

10.1 Notification

The Distributor will immediately notify National Dairies of any complaint made against the Distributor by a Listed Customer or any dispute between a Listed Customer and the Distributor.

10.2 Distributor to Resolve

The Distributor will wherever possible promptly rectify or resolve the complaint or dispute in such a manner as to maintain good relations with, and continuity of supply of the Product to, the Listed Customer.

10.3 National Dairies' Intervention

National Dairies may take any action necessary to ensure continuity of supply of the Products to a Listed Customer in the event a complaint or dispute cannot be resolved including without limitation arranging for the direct supply of Products to that Listed Customer by National Dairies or a National Dairies Distributor.

11. **DISTRIBUTOR INDEMNITY**

The Distributor will be liable for all acts and omissions of the Distributor, employees, agents or contractors and will indemnify National Dairies for any loss, damage or costs sustained by National Dairies as a result of such acts or omissions.

12. **CONTINUANCE OF SUPPLY TO LISTED CUSTOMERS**

12.1 **Inability to Perform Duties**

If the Distributor is unable to carry out its duties under this Agreement for any reason (excluding Force Majeure), the Distributor must immediately inform National Dairies of that fact and the reason why and arrange at the Distributor's cost for a person and/or a vehicle approved by National Dairies to carry out the Distributor's duties under this Agreement.

12.2 **Direct Intervention by National Dairies**

If the Distributor has not arranged for a person and/or a vehicle approved by National Dairies to carry out the Distributor's duties under this Agreement, National Dairies may take any action necessary to ensure the continued and timely supply of Products to the Listed Customers including without limitation arranging for the direct supply of Products to the Listed Customers by National Dairies or a National Dairies Distributor.

13. **EMPLOYEES, AGENTS AND CONTRACTORS**

The Distributor will ensure that all its employees, agents and contractors comply with the obligations imposed upon the Distributor under this Agreement.

14. **DEFAULT AND TERMINATION**

14.1 **Right of Termination**

National Dairies may terminate this Agreement immediately by notice in writing to the Distributor if:

14.1.1 **Default in Payment** – any money due by the Distributor to National Dairies remains unpaid for a period of 2 Business Days after demand for payment has been made by National Dairies;

14.1.2 **Failure to Remedy Breach** – the Distributor is in breach of this Agreement and that breach is not remedied within 5 Business Days of notice to the Distributor to remedy the same;

14.1.3 **Repeated Breach** – the Distributor has breached this Agreement 3 or more times during any 6 month period;

14.1.4 **Insolvency of Distributor** – the Distributor becomes or resolves to become or is under threat of becoming subject to any form of insolvency administration;

- 14.1.5 **Distributor Ceases Business** – the Distributor ceases or is unable to carry on its business of distributing the Products to the Listed Customers;
- 14.1.6 **Unauthorised Transfer** – the Distributor attempts to transfer or assign lease or subcontract any right or obligation under this Agreement without the consent of National Dairies; or
- 14.1.7 **Distributor Convicted of Offence** – the Distributor is convicted of an offence which may adversely affect the interests of National Dairies.

14.2 **Consequences of Termination**

Upon termination of this Agreement for any reason the Distributor must immediately:

- 14.2.1 **Pay All Outstanding Accounts** – pay to National Dairies all money due and owing to National Dairies;
- 14.2.2 **Return National Dairies Property** – return to National Dairies all equipment, manuals, advertising material and other property belonging to National Dairies;
- 14.2.3 **Cease Use of Trademarks** – cease to use and display the Trademarks and any other industrial property right or entitlement of National Dairies;
- 14.2.4 **Remove Trademarks** – deliver to National Dairies the Distributor's vehicle and any other property on which the Trademarks and National Dairies' advertising material appear for removal of the Trademarks and advertising material at National Dairies' expense; and
- 14.2.5 **Terminate Registration** – terminate any registration, record or public entry indicative of any association of the Distributor with National Dairies.

14.3 **Introduction Prior to Termination**

If the Distributor does not extend the term of this Agreement by serving the required notice under clause 3.2, the Distributor will:

- 14.3.1 **Introduction of New Distributor** – do all things necessary to assist the person nominated by National Dairies to secure the continuing goodwill and custom of the Listed Customers (including without limitation introducing that person, and allowing that person to accompany the Distributor when distributing the Products to the Listed Customers);

14.3.2 **Information** – provide to National Dairies all requested information concerning the Listed Customers; and

14.3.3 **National Dairies Visits** – allow a representative of National Dairies (together with the new distributor) to visit the Listed Customers and do all things necessary to secure the continuing goodwill and custom of the Listed Customers prior to termination.

14.4 **Right to Enforce Compliance**

National Dairies may, after giving prior written notice to the Distributor, enter any premises occupied by the Distributor for the purpose of recovering possession of any property belonging to National Dairies or removing from any property the Trademarks or National Dairies' advertising material.

14.5 **Termination – National Dairies Franchise**

National Dairies may terminate this Agreement by giving 3 months' prior notice in writing to the Distributor if National Dairies Limited determines to introduce a franchise system of delivery for dairy products.

14.6 **Offer – National Dairies Franchise**

At the same time as the notice referred to in clause 14.5 is served, National Dairies will offer to grant to the Distributor a franchise (in the standard form offered to other National Dairies Distributors in South Australia) for delivery of the Products to the Listed Customers for a term expiring no earlier than the last date upon which this Agreement would expire under clause 3.2.

14.7 **Remedies at Law**

Termination of this Agreement will not affect the rights of either party in respect of any prior breach of this Agreement.

15. **DISTRIBUTOR AS INDEPENDENT CONTRACTOR**

15.1 **Distributor as Independent Contractor**

The Distributor is an independent contractor and nothing in this Agreement will constitute, or be construed as constituting, the Distributor as the partner, agent, joint venturer, employee or legal representative of National Dairies.

15.2 **To Indicate Capacity in which Acting**

The Distributor will in all correspondence and other dealings relating directly or indirectly to the sale of Products clearly indicate that the Distributor is acting as a principal.

15.3 **Not to incur Liability on behalf of National Dairies**

The Distributor will not incur any liability on behalf of National Dairies or in any way pledge or purport to pledge the credit of National Dairies or accept any order or make any contract binding upon National Dairies.

16. FORCE MAJEURE

16.1 Inability to Perform

Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out an obligation under this Agreement and that party:

16.1.1 **Prompt Notice** – gives to the other party prompt notice of that Force Majeure with reasonably full particulars thereof and, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and

16.1.2 **Diligence** – uses all possible diligence to remove that Force Majeure,

that party will not, subject to clause 16.2, be liable to the other party for failure to perform that obligation.

16.2 Payments

An obligation to pay money is never excused by Force Majeure.

16.3 Labour Disputes

The requirement that any Force Majeure be removed with all possible diligence will not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

16.4 Sale of Alternate Products

If National Dairies is unable by reason of Force Majeure to supply any of the Products to the Distributor then notwithstanding clause 1.2.1 the Distributor may, during the period of that Force Majeure, obtain and sell any products which are similar to or may compete with the Products that National Dairies is unable to supply.

17. ASSIGNMENT AND CHANGE IN PARTICULARS

17.1 First Right of Refusal

If the Distributor wishes to sell its business as a National Dairies Distributor it must first offer in writing to sell that business to National Dairies or a person nominated by National Dairies on terms no less favourable than those offered to any other party. If National Dairies or the person nominated by National Dairies does not accept that offer within 14 days of its receipt, the Distributor may, subject to clause 17.2, sell its business to any other party, provided that the terms and conditions of sale are the same as or no more favourable than those originally offered to National Dairies or the person nominated by National Dairies.

17.2 Assignment by Distributor

The rights and obligations of the Distributor under this Agreement are personal to the Distributor and are created on the faith which National Dairies has in the Distributor personally. The Distributor will not:

17.2.1 **Transfer** – transfer or assign its rights under this Agreement or attempt to do so except with the written consent of National Dairies which consent will not be unreasonably withheld if the requirements set out in clauses 17.3, 17.4 and 17.5 are satisfied; or

17.2.2 **Subcontract** – lease, subcontract, encumber or otherwise deal with its rights under this Agreement or attempt to do so except with the written consent of National Dairies, which consent may be withheld for any reason.

17.3 Qualities of Incoming Distributor

The person to whom the Distributor wishes to transfer or assign its rights under this Agreement (in this clause 17 called the "Incoming Distributor") must:

17.3.1 **Business Standards** – prove to the satisfaction of National Dairies that it is a responsible and reputable person, of good financial standing with sufficient business and managerial capacity to conduct a business similar to that carried on by the Distributor;

17.3.2 **Personal Service** – prove to the satisfaction of National Dairies that it is able to provide an efficient, ethical, businesslike and personal service to the Listed Customers as a result of that transfer or assignment;

17.3.3 **Transfer Fee** – pay to National Dairies a transfer fee equal to 0.5% of the relevant Distributor's total purchases (in dollars) of white and flavoured milk from National Dairies during the 12 months preceding the date upon which National Dairies receives a request for consent under clause 17.2.1; and

17.3.4 **Agreement** – execute a transfer or assignment in a form approved by National Dairies.

17.4 No Default

All moneys owed by the Distributor under this Agreement must be paid in full, all obligations complied with and all defaults remedied as at the date of that transfer or assignment.

17.5 Costs

The Distributor will pay all National Dairies' reasonable costs of and incidental to determining the suitability of all persons wishing to become the Incoming Distributor and the preparation of all necessary documentation.

17.6 Change in Control

For the purposes of clause 17.2, the Distributor will be deemed to have transferred or attempted to transfer its rights under this Agreement if:

17.6.1 where the Distributor is a company, there is any change in the directors or shareholders of the Distributor;

17.6.2 where the Distributor is a partnership or a joint venture, there is a change in the members of the partnership or joint venture; or

17.6.3 in all cases there is any material change (whether direct or indirect, formal or informal) in the underlying right or rights to control the operations of the Distributor or share in the proceeds of the Distributor's business (including without limitation the declaration of a trust, the grant of a licence or franchise or the entering into of any arrangement which affects in any way the control or ownership of the Distributor).

17.7 Incoming Distributor – New Agreement

National Dairies will, if an Incoming Distributor has less than 3 years to run under this Agreement when it was assigned or transferred to that person, grant to that Incoming Distributor (at the end of the last renewed term under this Agreement) a new distribution agreement for a term of 5 years and otherwise on such other terms as apply to other National Dairies Distributors at that time.

17.8 Assignment by National Dairies

National Dairies may at any time assign its rights under this Agreement by notice in writing to the Distributor. The Distributor will do all acts and things reasonably required to effect that assignment.

17.9 Minimum Personal Involvement

If the person specified in Item 2 of Schedule A ceases to be a partner, director, joint venturer, shareholder or employee (whichever is applicable) of the Distributor, the Distributor must immediately notify National Dairies and seek its consent to a replacement for that person which consent may be withheld if National Dairies is not satisfied that the proposed replacement is capable of complying with clause 5.4 and this Agreement in general.

18. NOTICES

All notices under this Agreement must be in writing and may be given by personal delivery or by mail addressed to the Distributor or to National Dairies at their respective addresses set out in this Agreement or at such other address as either party may designate in a notice to the other party and, in the case of service by post, service will be deemed to be effected on the next day following the day of postage.

19. **ENTIRE AGREEMENT**

19.1 **Entire Agreement**

This Agreement and all documents referred to in this Agreement represent the entire agreement between the Distributor and National Dairies and supersedes all prior representations and agreements in connection with its subject matter.

19.2 **Inconsistency**

If there is any inconsistency between this Agreement and the documents referred to in this Agreement, the provisions of this Agreement will, to the extent of that inconsistency, take precedence.

20. **SEVERANCE**

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement are and continue to be valid and enforceable in accordance with their terms.

21. **GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of South Australia.

22. **TRADE PRACTICES ACT**

Notwithstanding anything else contained in this Agreement, if the Trade Practices Commission or a court is of the opinion that this Agreement or any part of this Agreement does not comply with the Trade Practices Act, National Dairies and the Distributor will enter into negotiations to amend this Agreement to ensure that it does comply with the Trade Practices Act. If the parties cannot reach an agreement concerning those amendments within 30 days of the commencement of negotiations either party may immediately terminate this Agreement by notice in writing to the other.

23. **INTERPRETATION**

In this Agreement unless the context otherwise requires:

23.1 "Act" means all acts, regulations and industry codes of conduct governing the manufacture, sale and delivery of dairy products in South Australia;

"Business Day" means a day upon which banks are open for business in South Australia (other than a Saturday);

"Commencement Date" means 1 July 1994;

"Force Majeure" means an act, omission or circumstance (over which a party could not reasonably exercise control) affecting the ability of National Dairies or a significant proportion of National Dairies Distributors, to perform their obligations under this Agreement;

"Listed Customers" means the businesses carried on under the trading names by the persons from the locations listed in **Schedule D** (as amended from time to time in accordance with clause 2) and **"Listed Customer"** means any one of those people;

"National Dairies Distributor" means a person appointed by National Dairies to distribute the Products under a "Wholesale Distributor Agreement" or a "Retail Vendor Agreement";

"Procedures Manual" means the procedures and standards manual prepared by National Dairies and includes all updates of and modifications to that manual;

"Products" means the products listed in **Schedule B** as varied by National Dairies;

"Trademarks" means all trademarks, logos, insignia and product descriptions of National Dairies irrespective of whether they are, or are not, registered pursuant to the Trademarks Act 1955 (Cth) or the Designs Act 1906 (Cth) or protected by the Copyright Act 1968 (Cth) or at common law;

- 23.2 a reference to a person includes a corporation and the legal personal representatives, successors and assigns of that person;
- 23.3 paragraph headings are for convenience reference only and will not affect the interpretation of this Agreement;
- 23.4 a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements;
- 23.5 the Schedules and Recitals form part of this Agreement; and
- 23.6 where any party comprises more than one person then the liability of those persons under this Agreement is a joint liability of all of those persons and a liability of each of those persons severally.

24. STANDARDS OF CONDUCT

24.1 Unconscionable Conduct

National Dairies and the Distributor will not participate in unconscionable conduct which is unlawful, in relation to these distribution arrangements.

24.2 **Act Reasonably**

National Dairies and the Distributor will at all times act in an ethical, honest and lawful manner, endeavour to pursue best business practices of the time and place and act reasonably in all dealings with each other under this Agreement.

EXECUTED as an Agreement.

SIGNED for and on behalf of
NATIONAL DAIRIES SA LIMITED
by an authorised officer:

)
)
)

.....
Signature

.....
Witness

.....
Name

.....
Office Held

SIGNED for and on behalf of
the **Distributor** by an authorised
officer:

)
)
)

.....
.....

.....
Witness

.....
.....

WHERE THE DISTRIBUTOR IS A PARTNERSHIP ALL PARTNERS MUST SIGN

SCHEDULE A

Item 1 – Distributor

Name:

Address:

..... **Postcode**

Ph:(W)..... **(H)**..... **Fax**

Name:

Address:

..... **Postcode**

Ph:(W)..... **(H)**..... **Fax**

Name:

Address:

..... **Postcode**

Ph:(W)..... **(H)**..... **Fax**

Item 2 – Nominated Person (Clauses 5.4 and 17.9)

Name:

Address:

..... **Postcode**

Ph:(W)..... **(H)**..... **Fax**

SCHEDULE B

Products (Clause 23.1)

Item 1 – Exclusive Products (Clause 1.1.1)

1. Current Products

See Page 20-A

2. New Products

Any new product developed by National Dairies similar to or in substitution for any of the current Products, listed above.

Item 2 – Non-Exclusive Products (Clause 1.1.2)

1. Current Products

See Page 20-B

See Page 20-C

2. New Products

Any new product developed by National Dairies similar to or in substitution for any of the current Products, listed above.

SCHEDULE B

Products (Clause 23.1)

Item 1 - Exclusive Products (Clause 1.1.1)

1. Current Products

FARMERS UNION/PURA

WHITE MILK

Bag/Box	
Bulk Whole Milk	10 Litres
Bulk Skimmer	10 Litres
Lots-O-Froth	10 Litres

Cartons

Family Choice (H & P)	2 Litres
Family Choice	1 Litre
Family Choice	600 ml.
Family Choice	300 ml.
Light Start	1 Litre
Skimmer (Reduced Fat)	1 Litre
Skimmer	600 ml.
Calcium Choice	1 Litre
Skim Choice	1 Litre

Plastic Bottles

Family Choice	2 Litres
Skimmer	2 Litres
Light Start	2 Litres
Lots-O-Froth	2 Litres

FLAVOURED MILK

Iced Coffee (Plastic Bottle)	2 Litres
Iced Coffee	1 Litre
Iced Coffee	600 ml.
Iced Coffee	300 ml.
Classic Chocolate (Plastic Bottle)	2 Litres
Classic Chocolate	1 Litre
Classic Chocolate, Strawberry, Coffee Egg Flip and Banana	600 ml.
Classic Chocolate, Strawberry, Coffee Egg Flip and Banana	300 ml.
Mocha	600 ml.
Feel Good Coffee and Chocolate	500 ml.
Milo	500 ml.
Milo	300 ml.
Crows Milk	2 Litres
Crows Milk	600 ml.
Crows Milk	300 ml.

SCHEDULE B

Products (Clause 23.1)

Item 2 - Non Exclusive Products (Clause 1.1.2)

1. Current Products

MILK

Buttermilk 600 ml.

CREAM

Thickened Bulk 10 Ltrs.
F/Union Thickened 1 Ltr.
F/Union Thickened 500 ml.
F/Union Thickened 300 ml.
F/U Thickened Light 300 ml.
F/Union Rich 1 Ltr.
F/Union Pure 300 ml.
F/U Double Thick 300 ml.
F/Union Sour Light 5 Ltrs.
F/Union Sour Light 500 ml.
F/Union Sour Light 300 ml.
Meadowvale Thickened 600 ml.
Meadowvale Thickened 300 ml.

CLASSIC U.H.T. FLAVOURED MILK
Case 24

(Chocolate, Coffee,
Strawberry) 250 ml.

KILLER SHAKE U.H.T. FLAVOURED
MILK Case 24

(Chocolate, Strawberry,
Banana, Honeycomb) 250 ml.

FRUIT JUICE

Australian Fresh

Pure O/Juice Ctn. 2 Ltrs.
Pure O/Juice PVC 300 ml.

Quelch

Orange Juice PVC 2 Ltrs.
Orange Juice NAS PVC 2 Ltrs.
Apple Juice PVC 2 Ltrs.
Orange Juice PVC 1 Ltr.
Orange Juice PVC 500 ml.

Sunburst

O/Drink (25%) Ctn. 2 Ltrs.
Orange/Mango PVC 2 Ltrs.

FRUIT JUICE (cont'd)

Just Juice
(Apple, U/S Orange,
Apple/B.Currant) Carton 24

MR. WOBBLY JELLY
(Red, Yellow, Green)

SET YOGURT

Natural 1 Kg.
Natural 500 gm.
Natural 200 gm.
Greek Style Natural 1 Kg.

PETERS FARM FRUIT YOGURT

Carton 6
(Fruit of Paradise,
B/Cherry, Peach/Mango,
Raspberry, Strawberry)
Twin Pack 2 x 200 gm.

FRUCHE

(Strawberry,
Apricot Nougat,
French Vanilla,
Mixed Berries) 200 gm.

FRUCHE

(Strawberry,
Mixed Berries,
French Vanilla) 110 gm.

CLASSIC DESSERTS

Creme Caramel 2 x 150 gm.

U.H.T. WHITE MILK Carton 12

Skim
Homo

1. Current Products (cont'd)

CHEESE

Matured	2.5 Kg.
Matured	250 gm.
Mild	2.5 Kg.
Mild	250 gm.
Ol' Bitey	250 gm.
Ol' Smoothy	250 gm.
Semi-Matured	2.5 Kg.
Shredded	2 Kg.
Sliced/Processed	1.5 Kg.

BUTTER

Mini Pats	200 x 7 gm.
Butter	500 gm.
Butter	250 gm.
Salt Reduced	500 gm.

YOGO 2 DAIRY DESSERT

(Choc/Cherry,
Tropical/Banana,
Vanilla/Raspb., Twin Pack
Choc/Caramel) 2 x 150 gm.

PETERS FARM CUSTARD

Vanilla
Twin Pack 2 x 200 gm.

PETERS FARM YO-WHIP Carton 6

(Strawberry, Apricot,
Mixed Berries,
Peach & Mango) 2 x 175 ml.

PETERS FARM YO-SPLIT

Carton 12
(Strawberry, B/Cherry,
Apricot, Fruit/Paradise,
Mixed Berries,
Muesli'N Fruit) 200 gm.

ZOOPER DOOPERS

Mixed Flavours Carton 144

SPRING WATER

Bottle	350 ml.
Bottle	500 ml.
Bottle	1.5 Ltr.
Bottle	5 Ltrs.
Cask	4 Ltrs.
Bag (Box)	10 Ltrs.
Dispenser	10 Ltrs.
Cask	10 Ltrs.

Item 3 – Exemption – Competing Products (Clause 1.3)

1. Description of Exempted Products:

2. Duration of Exemption:

From the Commencement Date to

SCHEDULE C

Permitted Businesses (Clause 1.8)

SCHEDULE D

Listed Customers (Clause 23.1)

Trading Name

Proprietor(s)

Address