

Dated 10 June 2009

**DAIRY FARMERS OF BRITAIN LIMITED
(RECEIVERS AND MANAGERS APPOINTED)**

**TERMS AND CONDITIONS FOR THE
PURCHASE OF MILK**

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TERMS AND CONDITIONS FOR THE PURCHASE OF MILK

Whereas:

- (A) These terms and conditions of purchase supersede:
- 1) all previous agreements relating to the supply of Milk (the **Old Agreements**) which ceased to be operational following the appointment of Receivers and Managers of DFB at 3pm on 3 June 2009; and
 - 2) the terms of the Purchase Order dated 3 June 2009 which became effective following the appointment of Receivers and Managers of DFB at 3pm on 3 June 2009.
- (B) DFB is a co-operative engaged in the business of procuring, processing and onward selling of Milk and will enter into an agreement to purchase Milk from the Member in accordance with these terms and condition of purchase.
- (C) The Member is engaged in the business of dairy farming and will agree to supply Milk to DFB in accordance with these terms and conditions of purchase.

It is hereby agreed as follows:

1 Interpretation

- 1.1 In this Agreement unless the context otherwise requires the following words have the following definitions:

Agreement means a contract incorporating these terms and conditions for the purchase of Milk, the DFB Manual, the Rules and the Standards by acceptance of them by the Member

Apparatus means a flow meter or other apparatus used to determine volumes of Milk collected at the time and point of collection

Bulk Tank means a tank, vat or other storage facility for Milk with sufficient capacity to hold all the Milk produced in any Collection Period and compliant with all relevant DFB and industry standards

Claims means for the purposes of clause 9 any claim, action, proceeding, demand or allegation or any threatened claim, action, proceeding, demand or allegation of whatever nature, whether in contract, tort (including negligence) or otherwise

Collection means the Collection of Milk by DFB from the Member's Farm Premises during the Collection Period using a Collection Vehicle

Collection Period means a 24 hour window for every day collections and a 48 hour window for every other day collections, as agreed between the Member and DFB from time to time

Collection Vehicle means a farm collection vehicle and/or milk delivery vehicle with Apparatus and driver

Commencement Date means one second passed midnight (12.00.01am) on 17 June 2009

Day means a day which is not a Bank Holiday or Public Holiday, and **Working Day** means any Day other than Saturday or Sunday

Delayed Collection Procedure means as set out in the DFB Manual from time to time

DFB means Dairy Farmers of Britain Limited (Receivers and Managers appointed) of Alpha Building, London Road, Stapeley, Nantwich, Cheshire, CW5 7JW

DFB Manual means the latest version of the DFB Milk Quality Manual

DHI means Dairy Hygiene Inspectorate

Farm Premises means the property/properties from where the Member engages in the business of dairy farming and where Milk is collected by DFB

Farm Assured means the Assured Dairy Farms scheme to Assured Food Standards or any recognised body in succession responsible for the same

Force Majeure means any event or circumstance whether arising from natural causes, human agency or otherwise beyond the reasonable control of either party including (but without prejudice to the generality of the foregoing) severe weather conditions, disease, natural disaster, strikes, lockouts or other labour disputes, general shortage and unavailability of fuel or materials, riots, civil commotion, impact by aircraft or missiles, fire, flood, acts of terrorism or war, illegality, change of law, governmental restraint, directive, decision of any national or other regulatory authority that render production or transportation of Milk impossible

Losses means all losses, liabilities (including provision for contingent liabilities), fines, damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties

Member is a member of DFB

Milk Statement means a statement of payment for the Milk collected from the Member by DFB

Milk means raw cow's milk to be supplied by the Member to DFB under the terms of this Agreement, produced by any cow in the possession or control of the Member in accordance with the Standards, and shall comprise conventional Milk, Channel Islands Milk and organic Milk

Month means the period of a full calendar month from the Commencement Date

Parties means the parties to this Agreement

Payment Period means, during the Initial Period and each Subsequent Period, either the:

- (a) 17th of the month to the last day of that month (being the first payment period); or
- (b) the 1st to the 16th of the following month (being the second payment period)

Quota shall mean wholesale quota as defined by The Dairy Produce Quotas Regulations 2005

Receivers and Managers has the meaning given to them in clause 2

Relevant Person has the meaning given to it in paragraph 21 of the Rules

Risks means Events of Force Majeure and any other commercial business risks against which a person carrying on a similar dairy business to the Member would normally insure against from time to time

Rules means the constitutional Rules of DFB from time to time and for the time being in force

RPA means The Rural Payments Agency, the statutory body administering the UK quota system for milk production or any other statutory body in succession responsible for the same

RPA Statement means a statement produced by the RPA and sent to DFB detailing litres and butterfat under the Quota including direct sales and wholesale quota

Standards means any and all standards governing the quality, production and hygiene of the Milk as operated by DFB from time to time and all such standards required by all applicable statutes and regulations (and any amendments thereto) including, without limitation, The Assured Dairy Farm standards, Quality Assurance Audit and Milk Quality Schedule as amended from time to time.

- 1.2 A reference to one gender includes a reference to the other gender.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to a particular law, statute, regulation or order is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Except where a contrary intention appears, a reference to a clause or schedule is a reference to a clause of, or schedule to, this Agreement.
- 1.6 Clause and schedule headings do not affect the interpretation of this Agreement.
- 1.7 Writing or written includes faxes and e-mail (but not any other form of electronic communication) except where expressly provided to the contrary.

2 Term and acknowledgement

- 2.1 The Parties expressly acknowledge and agree that Messrs Ian Green, David Kelly and Stephen Oldfield are all licensed to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales and were appointed as Receivers and Managers and in their capacity as agents of DFB at 3pm on 3 June 2009. Neither they nor their partners, firm, employees or agents shall incur any personal liability howsoever arising from their actions or under or in connection with any deed or other document or agreement entered into on behalf of DFB pursuant to or in connection with their appointment or the performance of their duties as Receivers and Managers. In particular (but without prejudice to the generality of the foregoing) no such personal liability shall arise by virtue of either Sections 37(1)(a) or 44(1)(b) Insolvency Act 1986 or otherwise. Accordingly the Old Agreements ceased to have any effect at 3pm on 3 June 2009.
- 2.2 This Agreement shall commence on the Commencement Date and shall continue for one Month (**Initial Term**) and unless terminated pursuant to clause 17 shall automatically renew for further Monthly periods (each extension a **Subsequent Term**).
- 2.3 By accepting Collection, the Member agrees to all the terms and conditions of this Agreement. For the avoidance of doubt, the terms and conditions of this Agreement shall prevail over any and all other terms issued or relied upon by the Member.

3 Obligations of DFB

3.1 DFB shall use reasonable endeavours to:

- (a) review the Standards from time to time and inform the Member of any changes to such Standards as soon as practically possible;
- (b) take a sample which incorporates Milk from each Bulk Tank at each Collection for payment and traceability purposes. The frequency and method of testing samples and the method of calculating test results shall be undertaken in compliance with the DFB Manual. Testing shall be carried out at an independent laboratory at DFB's own expense;
- (c) arrange for the Collection and the delivery of Milk (during the Collection Period) to DFB designated delivery points;
- (d) provide to the Member a printed receipt at Collection including the Collection date, the Collection Vehicle and the volume of Milk collected. Where there is:
 - (i) any failure of the Apparatus to accurately record the volume of Milk collected; or
 - (ii) where the Member disputes the volume of Milk recorded on the receipt,

DFB shall determine the average of the volumes of Milk collected from the two previous Collections and the two following Collections from that Member which shall be deemed to be the correct volume of Milk collected by DFB;

- (e) inform the Member if Collection is not possible. If Collection is not possible the Member must take all necessary steps to avoid undue loss of Milk and comply with the Delayed Collection Procedure.

4 Rights and Reservations

4.1 DFB shall be entitled to amend the Standards from time to time and shall notify the Member of the new Standards as soon as reasonably practicable.

4.2 If the Milk supplied does not comply with the Standards the Member shall immediately supply to DFB such further samples of Milk for analysis as DFB may require following a request (whether in writing or not) by DFB to the Member. The cost of such analysis shall be deducted from any sums due to the Member from DFB. If the result of any further analysis does not comply with the Standards DFB shall provide the Member with written notice as soon as reasonably practicable, and upon such notification the Member shall, at its own cost, undertake immediate remedial action to the satisfaction of DFB.

4.3 DFB shall be entitled to withhold payments to a Member if:

- (a) the Member exceeds its wholesale Quota;
- (b) DFB, in its absolute discretion, anticipates the Member shall exceed its wholesale Quota;
- (c) the Member owes any sum by way of unpaid or anticipated levy arising in respect of that Member exceeding its wholesale Quota; or

- (d) the Member owes any sum by way of anticipated levy if DFB, in its absolute discretion, anticipates the Member shall exceed its wholesale Quota,

provided always that any sums retained by DFB against an anticipated levy shall be held in an interest bearing account and any surplus less the payment of any such levy together with reasonable administrative costs shall be returned to the Member.

- 4.4 Notwithstanding clause 4.3, if the Member has a direct sales Quota which the Member agrees to set off against wholesale supplies, DFB may in its absolute discretion accept such set off if the Member undertakes to convert that Quota (permanently or temporarily).
- 4.5 DFB is committed to the provision of Milk in compliance with the Standards. If these are not complied with in any way by the Member DFB shall be entitled to refuse Collection immediately.

5 Obligations of Members

5.1 The Member shall:

- (a) supply all the Milk it produces to DFB;
- (b) notify DFB as soon as reasonably practicable and in any event within 5 Days if, for whatever reason, the Member anticipates a reduction in the volume of the supply of Milk to DFB (beyond any ordinary and expected day to day fluctuations in volume);
- (c) comply with all its obligations in the Rules;
- (d) ensure that all Milk produced complies with the Standards;
- (e) ensure that all Milk supplied satisfies all statutory requirements (as amended from time to time) relating to the production and sale of Milk as per the Assured Dairy Farms standards and including but not limited to the Food Safety Act 1990;
- (f) ensure that all Milk is produced in compliance with all applicable EU laws and regulations including Regulation (EC) No 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs and Regulation (EC) 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (as amended from time to time);
- (g) provide and maintain Bulk Tanks;
- (h) as soon as reasonably practicable transfer the Milk to the Bulk Tank and within 30 minutes of completion of every milking cool and maintain the Milk below 4.50°C (degrees centigrade);
- (i) (unless otherwise agreed in writing between the Parties) not supply any Milk to DFB that is:
 - (i) in excess of the Bulk Tank's maximum capacity;
 - (ii) stored in the Bulk Tank, where any of the Milk in the Bulk Tank has been produced outside of the Collection Period;
 - (iii) combined Milk from more than 4 milkings (or 6 milkings if the Member is milking 3 times per day);

- (iv) produced or stored in Bulk Tanks not having passed the Standards and the DHI;
- (j) not exceed its Quota for the supply of Milk to DFB;
- (k) provide and maintain (in the opinion of DFB, its personnel, agents or contractors) safe, suitable and unobstructed access to and way out from the Farm Premises;
- (l) give full co-operation to enable DFB to perform its obligations under this Agreement, including, but not limited to, co-operation with Collection Vehicles, testing personnel and Farm Assured personnel;
- (m) hold at all times any and all licences in full force and effect from DHI required by the Member to perform its obligations under this Agreement;
- (n) immediately inform DFB and the driver of the Collection Vehicle if the Member places or believes they have placed Milk not complying with the Standards in the Bulk Tank so as to prevent Collection;
- (o) immediately inform DFB and the driver of the Collection Vehicle (where reasonably practicable) if the Member places or believes they have placed Milk not complying with the Standards in the Bulk Tank and such Milk has already been collected so as to prevent contamination of other Milk that has been or will be collected;
- (p) notify DFB immediately in the event of any restriction, order notice (or otherwise) being placed on the Member's Farm Premises, animals or Milk;
- (q) insure and keep insured against the Risks and promptly provide a copy of the policy document to DFB on request from time to time.

6 Title

Title to the Milk shall pass from the Member to DFB when it is collected into the Collection Vehicle whether or not payment has been made by DFB to the Member in respect of such Milk.

7 Price

- 7.1 DFB shall pay the Member the charges for each Payment Period as calculated pursuant to schedule 1 (**Milk Price**). For the avoidance of doubt, the RECEIVERS' AND MANAGERS' FEES WILL BE EXCLUDED FROM THE CALCULATION OF THE MILK PRICE.
- 7.2 Within 7 Working Days of the end of each Payment Period DFB shall pay the Member the Milk Price due in respect of the Payment Period just ended in pounds sterling to the Member's nominated account or by cheque (as the case may be).
- 7.3 DFB shall issue the Member with a Milk Statement at the time of payment in accordance with clause 7.2 or as soon as reasonably practicable thereafter.
- 7.4 Both Parties agree that the Base Prices (as defined in schedule 1) and/or charges set out in schedule 1 are subject to change. DFB shall notify the Member in writing of any changes to the Base Prices and/or charges within 5 Working Days of the start of any Payment Period in which the new Base Prices and/or charges shall apply.

7.5 Where DFB decides (at its sole discretion) it would be unreasonable (for commercial or any other reasons) to notify the Member of changes to the Base Prices and/or charges pursuant to clause 7.4, DFB shall be entitled to make retrospective changes to the Base Prices and/or charges and shall give the Member written notice as soon as reasonably practicable and in any case within 4 weeks of the date on which the new Base Prices and/or charges applied.

8 Risk

Save in the event of the negligence of DFB, its personnel, its agents or its contractors, risk in the Milk remains with the Member until DFB, its personnel, agents or contractors are satisfied the Milk does not fail to meet the required standard of Milk as set out pursuant to this Agreement prior to its collection by a Collection Vehicle or delivery by such Collection Vehicle irrespective of whether or not title has passed to DFB pursuant to clause 6 above.

9 Indemnities

9.1 The Member shall indemnify, defend and hold harmless DFB, its personnel, its contractors, its agents (including the Receivers and Managers and their personnel, contractors and agents) and anyone acting on its behalf (and their respective successors and assigns) in respect of any and all Losses incurred or suffered by or made against any of them and whether, wholly or in part, resulting directly or indirectly from, or connected in any way with any of the matters listed below, whether or not such Losses were foreseeable at the date of entering this Agreement:

- (a) any breach by the Member of its obligations under this Agreement;
- (b) the wilful abandonment by the Member of any or all of its obligations under this Agreement;
- (c) the wilful misconduct or wilful default of the Member and/or the wilful misconduct or wilful default of any its personnel, its contractors or its agents;
- (d) any fraudulent or dishonest act or omission by the Member, its personnel, its contractors or its agents;
- (e) any Claim relating to death or personal injury arising from the act or omission of any Member, its personnel, its contractors or its agents;
- (f) any Claim brought by a third party to the extent that such claim is, or is alleged to be, caused by or contributed to or based on any act or omission of a Member, its personnel, its contractors or its agents;
- (g) any fines levied on DFB by a third party including any relevant regulator arising from the acts or omissions of any Member, its personnel, its contractors or its agents;
- (h) the breach by any Member of:
 - (i) any relevant law; or
 - (ii) any obligations of the Member under this Agreement which cause or contribute to any breach of any relevant laws by DFB;
- (i) any damage to the access route to and the way out from the Farm Premises and any damage to Collection Vehicles or injury to DFB personnel, its contractors, its agents or anyone acting on its behalf whilst on the Farm Premises (save in the event of

negligence by DFB or anyone acting on its behalf) arising from the normal operation of a Collection in respect of; and

- (j) any failure of Milk to comply with the Standards or the failure of the Milk to be marketable due to a breach by the Member of any term or terms of this Agreement.

10 Liability

10.1 The limitations and exclusions set out in this clause 10 shall not apply (and no limitation or exclusion of liability shall apply) with respect to the liability of either party:

- (a) for death or personal injury caused by the negligence of a party or its personnel, agents or contractors;
- (b) for any breach of obligations under clause 12;
- (c) for any Losses for which the Member provides an indemnity in accordance with clause 9;
- (d) for any fraud or fraudulent misrepresentation;
- (e) to the extent such limitation or exclusion is not permitted by applicable law;
- (f) in the case of the Member, loss of or damage to physical property.

10.2 Subject to clause 10.1 the entire aggregate liability of DFB to the Member arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited to direct losses and for the avoidance of doubt, shall exclude, without limitation, any of the following losses:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of anticipated savings;
- (d) loss of business opportunity;
- (e) loss of goodwill;
- (f) loss of or corruption of data;
- (g) loss or damage resulting from third party claims; or
- (h) indirect or consequential losses.

10.3 Subject to clauses 10.1 and 10.2, the entire aggregate liability of DFB to the Member arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited to and shall not exceed in each year 100% of the Milk Price paid to the Member under this Agreement in that year.

11 Assignment

11.1 The Member may not assign, subcontract, transfer, mortgage or make any other disposition of this Agreement or any part of it without the previous written consent of DFB, such consent

not to be unreasonably withheld or delayed on the basis that the proposed assignee is to be a Relevant Person.

11.2 DFB may assign or otherwise transfer its rights under this Agreement or any part of it to any person, firm, body corporate or undertaking which is or is intended to succeed to all or part of the operation or activities of DFB (a "**DFB successor**").

11.3 The Member consents that DFB may disclose all information relating to the Member, including membership details and other contractual details to any DFB successor so as to allow that DFB successor to perform its obligations and enforce its rights under this Agreement. This consent shall constitute consent to disclosure of personal data for the purposes of the Data Protection Acts 1984 and 1998.

12 Confidentiality

12.1 Subject to clauses 12.2 at all times during this Agreement and thereafter each party shall keep secret and confidential all business, trade secrets, methods of doing business, customer lists and other confidential information disclosed by or obtained from the other in connection with this Agreement. Each party undertakes not to disclose any such information to any third party other than:

(a) its responsible personnel, agents or contractors who require such disclosure where necessary for the proper performance of that party's duties under this Agreement; and/or

(b) any customers who require the information for quality control or health and safety reasons

and provided that such personnel, agents or contractors, and/or customers will individually comply with all obligations of confidentiality imposed upon that party by the provisions of this clause 12. Each party undertakes to take all reasonable steps to minimise the risk of disclosure of such confidential information by personnel, agents or contractors, and/or customers.

12.2 The obligations of confidentiality imposed by clause 12.1 shall not apply to any information which the recipient party can prove:

(a) was already known to it prior to its receipt from the disclosing party; or

(b) was subsequently disclosed to it lawfully by a third party who lawfully obtained the information and who was not bound by any obligation of confidence in respect of the information to the disclosing party; or

(c) was in the public domain at the time of receipt by it or has subsequently entered into the public domain other than by reason of a breach of the provisions of this clause or a breach of any obligation of confidence owed by it to the disclosing party.

13 Communications

13.1 All notices and other forms of communication between the Parties to be given under this Agreement must be in writing and delivered:

(a) by hand or mailed by first class prepaid post; or

(b) sent by facsimile transmission; or

(c) sent by email,

to the relevant address, number or email address as notified by the Parties to the other from time to time.

13.2 DFB may give due and valid notice of any matter relating to this Agreement to the Member by publishing the relevant detail in any journal, newsletter or other publication or other direct mail produced by DFB which is generally available to the Member, or by posting the relevant detail on the DFB website.

13.3 All such notices and other forms of communication shall be deemed to have been received:

(a) if sent by pre-paid 1st Class Post on the second Day after posting excluding the day of posting;

(b) if delivered by hand or sent by facsimile transmission or email on a working day prior to 4.00 pm at the time of delivery or transmission and otherwise on the next Day;

(c) if published or posted in accordance with clause 13.2, on the fifth Day after posting, excluding the day of posting;

13.4 If more than one method of communication is adopted by DFB, then the communication shall be deemed to have been received on the earliest date of receipt specified in accordance with clause 13.3.

14 Dispute Resolution

14.1 The Parties to this Agreement shall use reasonable endeavours to resolve any dispute arising under it including complying with the dispute procedure provided for in the Rules.

14.2 Subject to clause 14.1 neither party shall commence proceedings against the other until the dispute procedure provided for in the Rules has been exhausted.

15 Force Majeure

15.1 This Agreement may be suspended in whole or part at any time during the period of this Agreement following an occurrence of Force Majeure.

15.2 The Parties agree to use its respective reasonable endeavours to minimise the impact of the event(s) causing the Force Majeure.

16 Variations to Agreement

16.1 Unless otherwise provided for in this Agreement, if at any time DFB considers that the current terms of this Agreement would not in future operate in the best interests of DFB or its Members as a whole, DFB may vary the terms of this Agreement in accordance with any of the following procedures as DFB may at its discretion decide:

(a) by written agreement between DFB and the Member; or

(b) by giving the Member notice specifying any proposed additions or amendments to this Agreement, their date of implementation and the Member's rights under this sub-clause. The Member shall be bound by such additions and amendments from the date of implementation. If the Member objects to such additions and amendments, the Member may, within 7 Days of receiving notice from DFB, give 2 weeks written

notice to terminate this Agreement, such notice to expire on the last day of the Initial Term or any Subsequent Term. For the avoidance of doubt, any notice of termination shall be effective and calculated from the date of implementation of the variations to this Agreement.

16.2 If there is any inconsistency between this Agreement and the Rules, the Rules shall prevail.

17 Termination

17.1 The Member may terminate this Agreement for convenience at any time on at least four weeks prior written notice to DFB.

17.2 Either party may terminate this Agreement with immediate effect by written notice to the other party:

- (a) if the other party has committed a material breach of any term of this Agreement which is remediable but is not remedied within fourteen days of the breach being notified to the other party. (A material breach includes but is not limited to failure to comply with any term of this Agreement in respect of Quota or any persistent breach of any term or terms of this Agreement); or
- (b) if the other party commits any breach of the terms of this Agreement which is not remediable; or
- (c) if after sixty days from the date the relevant party informs the other of an event of Force Majeure the Force Majeure is still continuing and is affecting a material obligation under the Contract.

17.3 DFB may terminate this Agreement with immediate effect by a written notice to the Member in the following circumstances:

- (a) if the Member ceases to be a member of DFB;
- (b) if the Member becomes unable to pay its debts as they fall due or has a receiver, administrative receiver or administrator appointed over the whole or part of its undertaking or assets, goes into liquidation or has a bankruptcy order made against it or any distress execution or other process is levied upon any of its assets;
- (c) if, in DFB's opinion, the Milk supplied by the Member to DFB on any occasion during the preceding 90 days was of poor quality, or did not comply with the provisions of this Agreement (or any other warranty or condition subject to which it was sold);
- (d) if the volume of supply of Milk per Collection from the Member to DFB in respect of 3 consecutive Collections has fallen by more than 25% of the previous 6 months' average volume of supply of Milk from that Member and the Member has not complied with its ongoing obligations in clause 5.1(b);
- (e) if the Member agrees to or threatens to cease to engage in its business.

17.4 DFB may terminate this Agreement for convenience at any time on at least four weeks written notice to the Member.

17.5 In the event of the Member's death this Agreement shall continue unless DFB or the Member's personal representative(s) give notice to terminate this Agreement.

18 Entire Agreement

This Agreement, the Rules, the DFB Manual and the Standards constitute the entire Agreement between the Parties and supersede all previous agreements made between the Parties. If there is any inconsistency between this Agreement and the Rules, the Rules will prevail.

19 General Terms of this Agreement




- 19.1 Each right or remedy of either party under this Agreement is without prejudice to any other right or remedy of that party whether under this Agreement or not.
- 19.2 If any term of this Agreement is found by any court tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable such term shall be deemed severed and the remaining terms of the Agreement and the remainder of that term (if any) will continue in full force and effect.
- 19.3 Time is not of the essence in relation to this Agreement. Failure or delay by either party in enforcing or partially enforcing any term of the Agreement shall not be construed as a waiver of any of its rights or remedies under this Agreement.
- 19.4 Any waiver by DFB of any breach of or default under any term of this Agreement by the Member shall not be deemed as a waiver of any antecedent or subsequent breach or default and shall not affect the other terms of this Agreement.
- 19.5 Copies of the Rules, Standards and any other policy or document referred to in this Agreement are available for inspection at DFB's registered office.
- 19.6 A person who is not a Party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 19.7 Each Party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of any other party before the commencement of this Agreement.
- 19.8 Each Party waives all rights and remedies which, but for clause 19.7, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause shall limit or exclude any liability for fraud.
- 19.9 For the avoidance of doubt this Agreement confers no right to be a member of, and no membership rights in DFB.
- 19.10 This Agreement is governed by English law.
- 19.11 Save where this Agreement provides otherwise, each party submits to the exclusive jurisdiction of the English courts for all purposes relating to this Agreement.

Schedule 1

The Milk Price

1.1 DFB shall calculate the Milk Price at the end of each Payment Period as follows:

(a) Subject to paragraph 1.1(b), the Member shall be entitled to the following:

- (i)  pence per litre for conventional Milk; and/or
- (ii) * pence per litre for Channel Islands Milk; and/or
- (iii) * pence per litre for organic Milk,

together the **Base Prices**.

(b) The Base Prices shall be adjusted for each individual Member in accordance with the following deductions (**Hygiene Deductions**):

BACTOSCAN '000/ml (2 month geometric mean)	Charges adjustment
150 or less	None
151 - 250	deduct 5 pence per litre
251 and over	deduct 10 pence per litre

SCC '000/ml (3 month geometric mean)	Charges adjustment
300 or less	None
301 - 400	deduct 2.5 pence per litre
401 and over	deduct 5 pence per litre

(c) DFB shall determine the following sums:

- (i) the invoiced price on the sale of the Liquid Dairy Products by DFB and/or an Associated Company to any Customer less the Costs (**Net Sales Price**);
- (ii) a genuine pre-estimate of the equivalent milk per litre price of each tonne of the Long Life Dairy Product (sold in pounds per tonne) as determined in good faith by the Receivers and Managers for the sale of such Long Life Dairy Product by DFB and/or an Associated Company to any Customer less the Costs (**Net Long Life Price**); and
- (iii) the total of all Members' Base Prices less all Hygiene Deductions (if any) (**Total Adjusted Base Price**).

(d) DFB shall make the following calculation (**Margin**):

(Net Sales Price + Net Long Life Price) – (Total Adjusted Base Price) = Margin.

(e) The Milk Price DFB shall pay each individual Member pursuant to clause 7 shall be the sum of:

- (i) the Base Prices (less Hygiene Deductions (if any) applicable to that individual Member); and
- (ii) the Margin as apportioned between the Members based on the volume of Milk supplied by each such Member.

* Bases Prices shall be notified to the Members from time to time

1.2 In this schedule the following terms shall have the following meanings:

Associated Company means in relation to DFB, a company which is a subsidiary or holding company of it, or any company which is a subsidiary of any such holding company, "**subsidiary**" and "**holding company**" having the meanings ascribed to them under the Companies Act 2006 (as amended)

Costs means all and any costs incurred by DFB and/or an Associated Company including, without limitation, the following:

- (a) value added tax or other sales taxes payable thereon;
- (b) bona fide packing, transport, distribution, storage and insurance costs;
- (c) research and development, marketing and sales costs;
- (d) overheads of DFB and administrative costs (including, without limitation, rent and accounts departments),

but excluding the fees of the Receivers and Managers

Customer means any purchaser of the Products from DFB including, without limitation, third party dairies and supermarkets

Liquid Dairy Products means the Milk as purchased by a Customer (for example in the form of Milk to a third party dairy, or fresh milk, yoghurt and ice-cream to the supermarkets)

Long Life Dairy Products means products manufactured from the Milk (including, without limitation, butter, cheese, long life milk powder and skimmed milk) and purchased by a Customer

Products means any products which are manufactured from the Milk and includes Liquid Dairy Products and Long Life Dairy Products