

Milk Supply Agreement Northern Victoria Conventional Milk Supply 2025 / 2026



STATEMENT OF CIRCUMSTANCES

Below is the Statement of Circumstances in which Kyvalley Dairy Group would enter into a Milk Supply Agreement. This is a requirement of the Dairy Industry Code clause 12(2).

Kyvalley Dairy Group proudly supplies fresh dairy products to customers all over Australia and into Asia. We are an Australian owned family business, and our suppliers, existing and new, are part of our family. As always, we remain loyal to our current suppliers, and they will be given preference in meeting our target milk requirement for Northern Victoria for the 2025/26 season.

In respect to our desired volumes for the 2025/26 supply year, we are looking to match supplier's volumes closely with customer demand. We are seeking 20 million litres of conventional milk in Northern Victoria.

Kyvalley Dairy Group require the supplier to:

- hold a current dairy licence.
- comply with a Dairy Food Safety Program.
- meet our minimum milk collection of 1500L at any one time (less than 48 hours old).
- have sufficient vat capacity to be logistically efficient.
- have B-Double tanker access.
- be located in our collection zone (refer to Schedule 1 in Milk Supply Agreement).

Kyvalley Dairy Group may, at any time, decline to enter into any new milk supply agreements once we have secured sufficient milk supply to service our customers.

Details of our milk price model and terms are set out in the Kyvalley Milk Supply Agreement Northern Victoria and Supplier Handbook.

For all enquiries regarding milk supply contact Nicole Wells, Milk Supply Manager, nicole.wells@kvdg.com.au or Mike Leijen, General Manager of Milk Supply, mike.leijen@kvdg.com.au. Alternatively, phone our office on 03 5853 2666, select 1 for farm milk supply.



Brenton Howie
CEO

Milk Supply Agreement – Northern Victoria

This Milk Supply Agreement is made this day of 2025 between:

Kyvalley Dairy Group Pty Ltd of 7 Slattery Road, Kyabram in the state of Victoria 3620
and

Name:

Physical Address:

(Supplier)

Postal Address:

Email: Phone:

ABN: Alt Phone:

We welcome you as a milk supplier to the Kyvalley Dairy Group Pty Ltd.

Recitals

This Milk Supply Agreement (MSA) consists of this document along with the Kyvalley Northern Victoria Supplier Handbook Annexure A . The Northern Victoria Supplier Handbook can also be found at www.kyvalleydairy.com.au

Definitions and Interpretation

The definitions and interpretations applying to this MSA are to be found on Page 20.

Operative Part

MSA Nomination:

As provided for under the mandatory Competition and Consumer (Industry Codes—Dairy) Regulations 2019 (Cth) Dairy Industry Code (the Code), this MSA is a:

1. a non-exclusive supply agreement for the supply of Milk to Kyvalley Dairy Group, ☐ or
2. an exclusive supply agreement for the supply of Milk to Kyvalley Dairy Group, ☐ or

(Supplier to nominate and tick the box whichever is applicable)

The Supplier may immediately terminate this Agreement without incurring any liability to Kyvalley Dairy Group by providing written notice to Kyvalley Dairy Group within 14 days from the day this MSA is entered into (Cooling Off Period). This provision does not allow the Supplier to terminate this MSA in response to any variation of this MSA.

Subject to the Cooling Off Period, for the Term of this MSA, the Supplier agrees to supply Milk to Kyvalley Dairy Group and Kyvalley Dairy Group agrees to purchase Milk from the Supplier on the terms and conditions contained herein.

The Good Faith obligation (as defined) in the Code apply to this MSA. Kyvalley Dairy Group and the Supplier agree to act at all times in Good Faith in respect to their dealings under this MSA and hereby acknowledge that this is a requirement of the Code.

1. Exclusivity

This MSA may be non-exclusive or exclusive depending upon the nomination of the Supplier above. The differential pricing between the exclusive and non-exclusive supply arrangements nominated by the Supplier above are set out in the Kyvalley Dairy Group Minimum Milk Price schedule provided in clause 3 below.

If the Supplier nomination above deems that this MSA is to be an exclusive supply agreement, then as provided for under the Code:

- a. there will be no maximum amount of Milk that the Supplier must supply to the Kyvalley Dairy Group under this MSA; and
- b. no Tier Pricing shall apply.

2. Term

This MSA is applicable for 12 months, season commencing 1 July 2025 and ending 30 June 2026.

This MSA begins on the signing date and remains in force for the period of the contract. This MSA automatically terminates at the end of the Term unless terminated earlier as provided herein.

3. Minimum Pricing

The price to be paid to the Supplier for milk supplied to Kyvalley Dairy Group will be as provided for in line with Kyvalley Dairy Group's milk pricing and payment policies as amended from time-to-time, and may include step-ups, back-pays, bonuses, or otherwise, and, save that it will not be less than the Minimum Milk Price described herein, those amounts and terms shall otherwise be at Kyvalley Dairy Group's sole discretion.

Kyvalley Dairy Group's milk pricing is applicable for 12-months for the period of this contract.

Kyvalley Dairy Group Minimum Milk Price for the 2025-2026 Supply Year – Northern Victoria Conventional (refer to Schedule 1 for eligible locations)

KYVALLEY DAIRY GROUP MINIMUM PRICING TABLE	A1 Exclusive Agreement	Non Exclusive Agreement
BASE MILK PRICE		
Base Price (all months)	55 c/litre	55 c/litre
SEASONAL PAYMENTS		
Seasonal Impact Payment		
January	3.1 c/litre	
February - April	7.0 c/litre	
May	3.1 c/litre	
Flat Supply Bonus (all months based on Flat supply ratio) Refer to supplier handbook for detailed calculation	up to 8 c/litre	
BRANDS, FAT & PROTEIN		
Branded Milk Premium		
Milk Fat Bonus >4.0% (all months)	\$5.00/kg fat	\$5.00/kg fat
Milk Fat Penalty <3.6% (all months)	-\$10.00/kg fat	-\$10.00/kg fat
Milk Protein Penalty <3.15% (all months)	-\$15.00/kg pro	-\$15.00/kg pro
BMCC		
Excellent BMCC ≤150,000 cells/ml	1.0 c/litre	1.0 c/litre
Base BMCC 150,001 - 300,000 cells/ml	0.0 c/litre	0.0 c/litre
Poor BMCC >300,000 cells/ml	-2.5 c/litre	-2.5 c/litre
BACTOSCAN		
Base Bactoscan ≤100,000	0.0 c/litre	0.0 c/litre
Poor Bactoscan >100,000	-2.5 c/litre	-2.5 c/litre
THERMODURIC		
Excellent Thermoduric ≤500 cfu/ml	1.0 c/litre	1.0 c/litre
Base Thermoduric 501 - 2,000 cfu/ml	0.0 c/litre	0.0 c/litre
Poor Thermoduric >2,000 cfu/ml	-2.5 c/litre	-2.5 c/litre
STATUTORY LEVIES		
Dairy Australia Levy	\$0.071299/kg fat & \$0.029263/kg pro	\$0.071299/kg fat & \$0.029263/kg pro
Dairy Food Safety Victoria	0.00017c/L	0.00017c/L

For full description and worked examples of each of the components of the Kyvalley milk payment model please refer to the Kyvalley Dairy Group Supplier Handbook.

3.1 General re Minimum Milk Price Policy

- 3.1.1 The amount you receive for your milk from the Minimum Milk Price will vary month to month throughout the Supply Year depending upon your particular milk supply curve, milk quality and butterfat/protein percentage, your volume and your vat storage capacity. Please refer to the Kyvalley Supplier Handbook for further explanation and worked examples.
- 3.1.2 Kyvalley Dairy Group will provide an income estimate to all suppliers prior to the start of the payment year or prior to the commencement of supply. Further income estimates will be provided to suppliers upon request.
- 3.1.3 Your Forecast Supply will also be used for the purposes of estimating your likely Total Flat Supply and any Flat Supply Bonus monthly pre-payments that will apply under Kyvalley Dairy Group's Minimum Milk Price.
- 3.1.4 Milk Pricing is made up of a Base Milk price (cents/litre) plus adjustments up and down for volume, seasonality, components and quality.

3.2 Milk Price Justification

In setting milk prices for 2025/26 milk year, Kyvalley Dairy Group does its own assessment using the available market intelligence and customer feedback along with global trends for dairy ingredients and fresh milk.

Other considerations that play a part in price setting is our ability to recover cost increases in the domestic market and the impact that these have on our business. Our business is continually researching options for export and additional markets which it can then use to add value and pay a competitive milk price.

Kyvalley has a flat base price and has a seasonal impact payment for 5 months of the year which will vary from month to month. On top of this we pay additional value for flatter milk.

Exclusive contracts allow Kyvalley Dairy Group increased certainty around milk supply and this is what drives the additional value over a Non-Exclusive contract. This allows Kyvalley to give more certainty to its customers year-round.

3.3 Flat Supply Bonus

- 3.3.1 As a fresh market milk processor, customer demand for milk is relatively flat and unseasonal. Kyvalley Dairy Group encourages the Supplier to move towards flat all year round Milk supply and:
- 3.3.2 Suppliers who are able to supply milk with a supply ratio of lower than 1:1 (Highest monthly daily average volume August-December divided by lowest monthly daily average volume) will receive a bonus of 8 c/litre.

3.3.3 Suppliers who are able to supply milk with a volume ratio between 1.8:1 and 1:1 will receive a graduated bonus added to the base price for the season.

3.3.4 Suppliers with a volume ratio greater than 1.8:1 will not be entitled to a Flat Supply Bonus.

Refer to the Kyvalley Dairy Group Supplier Handbook for a detailed description (including a worked example) of how the Flat Supply Bonus is calculated.

3.4 Volume Accuracy

3.4.1 Suppliers will be required to forecast a monthly milk supply at the beginning and the midpoint of each 12-month period (Season). For each 12-month period the supplier is required to provide a forecast of monthly supply volumes for the July to June supply period. The forecast volume will be used to calculate the monthly payment of the Flat Supply Bonus.

- a. In December of each year each supplier has the option to modify this forecast for the back half period January – June and this revised forecast will be used to calculate monthly Flat Supply Bonus payments for the remainder of the year.
- b. It is important that suppliers discuss with us any changes to their business which may impact on their Flat Supply Bonus.

4. Statutory Levies

Dairy Australia and Dairy Food Safety Victoria or NSW Food Authority – Dairy levies shall be deducted from the Minimum Milk Price described in clause 3 and forwarded to the relevant authorities.

5. Milk Payment Basis

Kyvalley Dairy Group's Minimum Milk Price is based on a farm gate price and is GST exclusive (i.e.: GST is added to the price if applicable).

6. Payment

6.1 All Milk collected by Kyvalley Dairy Group will be paid for in line with Kyvalley Dairy Group's Minimum Milk Price by electronic transfer into an account nominated by the Supplier each month throughout the Supply Year.

6.2 Kyvalley Dairy Group will issue the Supplier with a Recipient Created Tax Invoice (RCTI) for the milk purchased during the period and pay the supplier the amount of the RCTI on the 15th of the month following each period, or where the 15th of the month is a public holiday or weekend milk payments will be made on the last business day prior to the 15th of the month.

6.3 Payments will be made into the following nominated bank account:

Bank: _____

Account Name: _____

BSB No: _____

Account No: _____

7. Quality and Raw Milk standards

7.1 The parties acknowledge that it is critical to the proper performance of this Agreement that the quality of Milk supplied hereunder be fit for human consumption and suitable for Kyvalley Dairy Group's purposes and as further described in the Supplier Handbook – Milk Quality Standards, in recognition of Kyvalley Dairy Group's Quality Requirements;

- a. The Supplier acknowledges that the price paid by Kyvalley Dairy Group for milk shall be reduced as a consequence of the Supplier's supply of milk failing to meet the Quality Requirements as determined by Kyvalley Dairy Group from time to time; and
- b. Kyvalley Dairy Group undertakes to advise the Supplier in writing of any changes to Quality Requirements at least one month prior to implementing such changes and that its Quality Requirements in respect to the milk shall be generally in line with Australian Dairy Industry milk quality requirements for similar milk.

7.2 In the event that the Quality Requirements are not being, and have continued to not be met by the Supplier on an ongoing and persistent basis, despite prior notifications and instructions by Kyvalley Dairy Group through its Quality Assurance System (refer Supplier Handbook) to the supplier demanding the rectification of these breaches, then Kyvalley Dairy Group may immediately terminate this Agreement by written notice to the Supplier.

7.3 The Supplier agrees to co-operate fully with Kyvalley Dairy Group on all matters relating to milk quality.

8. Milk Fat and Protein Standards (Components)

8.1 Kyvalley Dairy Group reserves to itself the right to test samples of milk supplied by the Supplier to Kyvalley Dairy Group to ascertain its quality, the milk fat and protein content, and any other tests that Kyvalley Dairy Group may require.

8.2 Milk components supplied are calculated on a monthly average. Minimum requirements for the percentage fat and protein components in the supplied milk apply.

8.3 A failure to achieve the minimums specified requirements for fat and protein components as set out in the Kyvalley Dairy Group Supplier Handbook will result in deductions to your Milk Price paid for the month. These are outlined in the bonus and penalty section of this document.

9. Quality Standards

- 9.1. Enclosed in the Kyvalley Dairy Group Supplier Handbook are our Milk Quality Standards. These recommended practices are provided to assist you as the Supplier to meet our high-quality milk standards.
- 9.2. In accordance with Kyvalley Dairy Group's Quality Requirements, Quality tests will be conducted, and the results compared with the standards.
- 9.3. Test results are combined to form weighted monthly averages for comparison against the standards.
- 9.4. Where milk supplied is better than the required standards a bonus may be payable, and a failure to achieve the minimums specified in the schedule may result in deductions to the price paid for the month. These are outlined in the Minimum Pricing Table of this document.
- 9.5. Kyvalley Dairy Group is not required to collect any milk from the Supplier which does not meet Kyvalley Dairy Group's Quality Requirements or the applicable national, state and/or regulatory standards.
- 9.6. The Supplier must not adulterate, taint or contaminate any milk, or allow any person to do so.
- 9.7. The Supplier shall do all things and implement such policies and procedures including (without limit) risk management policies to ensure they comply with their obligations under this MSA and at law.

10. Milk Collection & Title

- 10.1 Kyvalley Dairy Group will arrange to pick up all your milk from your nominated dairy and transport it to our processing facility except in circumstances where contaminated milk is involved (refer to the Kyvalley Dairy Group Supplier Handbook annexed hereto).
- 10.2 Collection occurs once the milk is loaded into Kyvalley Dairy Group's own tanker or it's Agents tanker.
- 10.3 Title to the milk transfers to Kyvalley Dairy Group on collection.
- 10.4 The Supplier acknowledges the need for Kyvalley Dairy Group to obtain access to the Property at all times in order to perform to this MSA. Accordingly, the Supplier shall ensure that Kyvalley Dairy Group, its employees and agents, have free and unrestricted access to the Supplier's dairy and dairy farming property for the purposes of this MSA, including (without limit) for the purpose of collecting and testing the milk. For further details refer to the Kyvalley Dairy Group Supplier Handbook.

11. Levies and Charges

- 11.1 Statutory levies imposed by the relevant government departments will be deducted from the total milk payments. The rates are contained in the Minimum Pricing Table and are subject to change from time to time.
- 11.2 Dairy Licence Fee is levied by Dairy Food Safety Victoria. All milk processors are required to pay Dairy Food Safety Victoria the Dairy Licence fees on behalf of their suppliers.
- 11.3 An "All Milk Levy" is levied by the Australian Government Department of Agriculture and Water Resources to fund Dairy Australia. The All Milk Levy is charged on fat and protein components in your milk.

12. GST

As raw milk is subject to Goods and Services Tax (GST), Kyvalley Dairy Group will pay the supplier the GST amount payable provided that it is registered for GST purposes.

General Policies

13. Milk Quantity and Quality Reports

- 13.1 Kyvalley Dairy Group will maintain Madcap, our result reporting and payment system daily,. Some tests like the Thermoduric take 3 days to complete.
- 13.2 Component and quality tests are conducted by an internal laboratory on a sample collected at the farm each collection. On occasion Kyvalley may use an external laboratory which may delay some results.
- 13.3 Access to results and payments is available through our Kyvalley supplier portal. Training can be provided to use the portal via the app or desktop.

14. Sour or Tainted Milk

As the milk supplied to Kyvalley Dairy Group goes into drinking milk, milk taste is of vital importance. Sour tastes created by feed taints, contamination with detergents or through high microorganism counts may not be collected from the vat and will need to be disposed of by the supplier.

15. Milk Collection & Access

Kyvalley Dairy Group, in conjunction with its haulage Agent, will arrange milk collection times. Collection times will be outside "normal" milking and normal vat cooling times to ensure the correct temperature of milk prior to pick up. The supplier must provide a suitable unrestricted all-weather access to the dairy at all times to allow the collection of the milk and the access must be as free from mud and manure as possible. Tanker access must be suitable for a 25m B-Double.

16. Milk Collection Volumes

Minimum collection is 1500 litres of milk at any one time from your farm. The milk must be less than 48 hours old. First three collections upon returning from a dry period may be less than 1500L. Other

collections of less than 1500 litres of milk would be at Kyvalley Dairy Group's discretion. Vat capacity should be able to hold your peak day milk production volume.

17. Exceptional Circumstances

- 17.1 In the event of an extended power loss or refrigeration system failure, the supplier should contact Kyvalley Dairy Group as soon as possible to arrange for an urgent milk pickup.
- 17.2 Milk will only be collected if Kyvalley Dairy Group has been notified of the problem within 2 hours of the milk temperature exceeding 5°C.
- 17.3 Outside this time, the milk will be sampled and tested. Only if deemed suitable, will the milk be collected.

18. Reviews

18.1 Annual Review

- a. Prior to the end of each season, the parties will meet, and the supplier will provide planned volumes and components for each month of the next 12-month season.
- b. Kyvalley Dairy Group will review pricing and other terms and conditions taking into account market conditions before setting prices for the next season.

18.2 Mid-Season Review

To assist Suppliers in providing accurate volume forecasts, a mid-season review allows the opportunity for suppliers to update their volume figures for the last half of the season (January to June).

19. Farm Dairy Licence

A copy of your dairy licence is required to be provided prior on the commencement of this MSA for our records.

20. Advertisement

The Supplier must at all times be prepared to acknowledge that it is a Supplier of milk to Kyvalley Dairy Group and be prepared to display at its dairy entrance/gateway signage approved by Kyvalley Dairy Group advertising to that effect.

21. Modern Slavery

During the term of this milk supply agreement, the supplier must comply with all applicable laws, statutes, regulations and codes relating to modern slavery, including the *Modern Slavery Act 2018* (Cth)

22. Termination

- 22.1 The Supplier may immediately terminate this MSA without incurring any liability to Kyvalley Dairy Group by providing written notice to Kyvalley Dairy Group within 14 days from the

date of execution of this Agreement (Cooling Off Period). This clause 21.1 does not allow the Supplier to terminate this MSA in response to any variation of this MSA.

21.2 This MSA automatically terminates at the end of the Term unless terminated earlier:

- a. By the Supplier before the Cooling Off Period expires;
- b. By mutual agreement;
- c. By either party as a result of a force majeure event;
- d. By either party for breach (unrectified) by the other party; or
- e. By either party as a result of an insolvency event.

21.3 If the either party fails in the opinion of the other party to comply with its respective obligations in relation to this MSA it shall deliver to the non-complying party a written notice advising them that party of such failure and requiring the non-complying party to remedy this breach within a reasonable time, but not exceeding 30 days. Should the non-complying party fail to remedy the breach within the time specified in the notice, this MSA may thereupon, at the sole discretion of the complying party, be determined to be at an end.

21.4 If a party unilaterally terminates this MSA under clauses 21.1 or 21.2, then the terminating party must give to the other party as soon as practicable after it unilaterally terminates this MSA:

21.4.1 the termination; and

21.4.2 written notice of:

- i. the reason for the termination; and
- ii. the day the termination takes effect.

21.5 This MSA will continue to apply to Milk supplied under it before the termination takes effect (including during a Cooling Off Period, or in response to a Unilateral Prospective Stepdown).

22. Effect of Termination

22.1 Termination of this MSA for any reason shall not affect the rights of the parties which accrued prior to such Termination. Such rights shall survive the Termination of this MSA.

23. Dispute Resolution Procedure

23.1 If a party to this MSA has a complaint or there is a Dispute in relation to a matter arising under or in connection with the MSA, the matter may be dealt with or resolved:

- a. in accordance with the Complaint Handling Procedure and clauses 23.7 to 23.11; or

- b. by mediation as provided by the Code and replicated in clause 38 Definition & Interpretation of Terms.
- 23.2 If the matter relates to the termination of this MSA, then a reference to a party to this MSA includes a reference to a person who was a party to the MSA before it was terminated.
- 23.3 The Processor must have a complaint handling officer to manage complaints in accordance with the Complaint Handling Procedure. The complaint handling officer is the General Manager Milk Supply, contact details on Page 2.
- 23.4 The Supplier will provide Kyvalley Dairy Group with any information reasonably requested by Kyvalley Dairy Group to assist in complying with its dispute reporting obligations under section 56 of the Dairy Code.
- 23.5 The parties to a complaint or a Dispute about a matter arising under or in connection with this Agreement must observe the confidentiality requirements under clause 24. relating to information disclosed or obtained in dealing with or resolving the complaint or dispute.
- 23.6 This clause 23 adopts the procedures for mediation outlined in the Dairy Code to this MSA. To the extent there is any inconsistency between this MSA and the Code, then the Code prevails.
- 23.7 If a party wishes for a complaint in relation to a matter arising under or in connection with this MSA to be dealt with in accordance with the Complaint Handling Procedure, provided in clauses 23.7 to 23.11 herein, then the complaint must be dealt with in accordance with in that procedure before the parties take action to resolve the complaint by mediation.
- 23.8 When a party wishes to have a matter dealt with in accordance to the Complaint Handling Procedure (Complainant), the Complainant must notify the other party to the MSA (Respondent) in writing of the following:
 - a. the nature of the complaint;
 - b. that the Complainant wishes the complaint to be dealt with in accordance with the Complaint Handling Procedure provided in this Agreement; and
 - c. the outcome the Complainant wants (together, the Complaint Notice).
- 23.9 Within 5 working days after receiving the Complaint Notice, the Respondent must give a written acknowledgement to the Complainant stating:
 - a. that the Complaint Notice has been received; and
 - b. the steps to be taken to deal with the complaint.
- 23.10 If the complaint is not resolved within 60 days after the acknowledgement was given to the Complainant under clause 23.9, either party may take action to have the complaint resolved by mediation
- 23.11 The Complainant may, at any time, withdraw the complaint by notice in writing to the Respondent.

24. Confidentiality

The Parties shall at all times keep strictly confidential the terms and conditions of this Agreement, and all matters relating thereto, including, but not limited to, information pertaining to:

- a. Kyvalley Dairy Group's commercial dealings;
- b. Kyvalley Dairy Group's milk supply;
- c. The arrangements relating to Kyvalley Dairy Group's supply to the a2 Milk Company.

25. Warranties

The Supplier warrants:

- a. that it is lawfully able to enter into this MSA;
- b. there are no contractual impediments to it entering into this MSA;
- c. the Supplier will own all milk to be supplied pursuant to this MSA; and
- d. that all representation, statements and written documents made or supplied by them to Kyvalley Dairy Group prior to entering into this MSA are true and accurate in all respects and not misleading.

26. Indemnity

The Supplier shall indemnify, and keep indemnified, Kyvalley Dairy Group against all claims, suits, demands, costs, expenses, liability or loss of any kind (including consequential loss) on account of any injury, death, damage or loss caused to, or sustained by, any person arising from the breach by the Supplier of their obligations under this MSA or at law including (without limit) laws relating to product liability and the Competition and Consumer Act 2010 (Cth). This indemnity shall not extend to acts or omissions of Kyvalley Dairy Group or its employees or agents.

27. Insurance

The Supplier shall take out and maintain at all times adequate insurance with a reputable insurer to cover all risks associated with this MSA.

28. Force Majeure

28.1 Party unable to carry out obligation

If a Party becomes unable, wholly or in part, to carry out an obligation placed on it by reason of a Force Majeure, then:

that Party must give the other Party prompt written notice of:

- a. the reasonable particulars of the Force Majeure;
- b. the probable extent to which that Party will be unable to perform its obligations or be delayed in performing its obligations; and

the relevant obligation, so far as it is affected by the Force Majeure, will be suspended during the continuation of the Force Majeure or 90 calendar days from commencement of the Force Majeure, whichever occurs the earlier.

28.2 Kyvalley Dairy Group can obtain milk from another supplier.

In the event of the Supplier being unable to comply with its obligations because of Force Majeure, Kyvalley Dairy Group shall be at liberty to obtain milk from another supplier during the period of Force Majeure.

28.3 Termination for Force Majeure

If a Party is affected by the Force Majeure for a period of more than 90 consecutive calendar days, the other Party may at its sole discretion terminate this MSA.

28.4 Definition

For the purposes of this clause, a "Force Majeure" affecting a Party means anything outside that Party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, or an act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or governmental agencies).

29. Relationship between the Parties

This Agreement will not be deemed to create a partnership, joint venture, employment or agency relationship of any kind between Kyvalley Dairy Group and the Supplier.

30. Notices

30.1 Method

Any notice, consent, approval, demand, request, offer or other communication (each a "Notice") given by a party under this Agreement must be:

- a. In writing;
- b. Directed to the recipient's address; and
- c. Hand delivered, sent by pre-paid mail or transmitted by email or facsimile to that address or as otherwise agreed by the Parties.

30.2 Receipt

A Notice given in accordance with this clause is taken to having being given and received:

- a. If hand delivered, on the day of delivery if a business day or otherwise on the next Business Day;
- b. If sent by pre-paid mail, on the second Business Day after the date of posting; and
- c. If transmitted by email or facsimile, on the day of transmission if a Business Day or otherwise on the next Business Day.

31. General

31.1 Accrued rights

Termination or expiry of this document for any reason does not affect the accrued rights of the parties under it.

31.2 Transfer

A party may not assign, encumber, novate or otherwise dispose of any benefit or obligation under this document without the consent of the other party (such consent not to be unreasonably withheld). Any consent (other than by a novation) will not relieve a party from liability for the performance of any obligations, responsibilities or duties under this document.

31.3 Entire agreement

This document embodies the entire agreement between the parties in respect of its subject matter and supersedes all previous agreements, communications and understandings, whether oral or written, between the parties.

31.4 Exercise of rights

A party may exercise a right or a remedy, or give or withhold a consent, waiver or approval, in its absolute discretion (including by imposing conditions), unless this document expressly provides otherwise.

31.5 Further acts

Each party must, at its own expense, do all things (including the execution and delivery of documents) required by law or reasonably requested by another party to give effect to this document and the transactions contemplated by it.

31.6 Severance

If a provision of this document would, but for this clause 31.6, be void, unenforceable or illegal in a jurisdiction:

- a. the provision is read down to the extent necessary to avoid that result; and
- b. if the provision cannot be read down, to that extent, it is severed in that jurisdiction,

without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this document. This clause 31.6 has no effect if its operation alters the basic nature of this document or is contrary to public policy.

31.7 Time is of the essence

The parties acknowledge that time is of the essence in relation to the payment of the Price and Delivery of Products under this document.

31.8 Variation

This document can only be varied by a document signed by all of the parties, and:

- a. All variations made under this Agreement must comply with the Dairy Code and must be in writing. If provisions of a variation are noncompliant with the Dairy Code, those provisions shall be severed from the variation, to the extent of the noncompliance, and the validity, existence, legality and enforceability of the remaining provisions will not in this Agreement any way be affected, prejudiced or impaired;
- b. The Minimum Milk Price shall not be varied except to increase the Minimum Milk Price by agreement; and
- c. Retrospective Stepdowns are not permitted.
- d. If there is a change in a Commonwealth, State or Territory law, then Kyvalley Dairy Group may unilaterally vary this MSA:
- e. only to the extent necessary to comply with the changed law; and
- f. without reducing the Minimum Price.
- g. If Kyvalley Dairy Group unilaterally varies this Agreement, Kyvalley Dairy Group must as soon as practicable after the variation provide the Supplier with:
 - i. the variation; and
 - ii. written notice of:
 - a. the reason for the variation; and
 - b. the day the variation takes effect.

31.9 Unilateral Prospective Stepdown

- a. The Processor must not implement a Unilateral Prospective Stepdown unless in accordance with the Code.
- b. Without limiting clause 31.9.1, the Processor must only implement a Unilateral Prospective Stepdown in Exceptional Circumstances and in accordance with the Code.

31.10 Waiver

A party is only bound by a waiver that it gives or confirms in writing. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. No

other conduct of a party (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right or otherwise prevents the exercise of a right.

32 Counterparts and execution

32.1 Counterparts

This document may be executed in counterparts which together constitute one instrument but is not effective until each party has executed at least one counterpart and the counterparts have been exchanged. Each party consents to the exchange of counterparts by facsimile, email or other electronic means.

32.2 Authority of signatory

Each person, who executes this document on behalf of a party under a power of attorney or other authority, declares and warrants that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that authority.

33. Records

33.1 The parties must keep originals or copies of:

- a. this MSA;
- b. any variations to or termination of this MSA; and
- c. any notices or statements issued under this MSA or the Code,

for the period set out in clause 33.2 below.

33.2 A record, or a copy of a record, must be kept for the period:

- a. starting on the day on which the record is made or given; and
- b. ending on the last day of the 6 years beginning on the day this Agreement ends.

34. Governing Law

This Agreement will be governed by and construed in accordance with the laws in force in the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that state and any appeals to them.

35. Special Conditions

The parties agree to the following special conditions. (To the extent of any inconsistency between these special conditions and the remainder of the agreement, these special conditions prevail.)

36. Further Provisions.

The further provisions set out in the Annexure A (Kyvalley Dairy Group Northern Victoria Supplier Handbook) apply to this MSA.

37. Schedules

Schedule 1

Northern Victoria/NSW Postcode locations that apply to Northern Victoria payment model currently serviced by Kyvalley dairy Group.

3561	3564	3610	3612	3614
3616	3617	3618	3620	3621
3622	3623	3624	3629	3630
3631	3634	3635	3636	3637
3638	3639	3640	3641	3644
2713				

38. Definition and Interpretation of Terms

38.1. Definitions

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Disputes Handling Procedure means the procedure set out in this Kyvalley Dairy Group Supplier Handbook.

Cooling Off Period is defined in clause 11.1.

Dairy Code means the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019* (Cth), as updated from time to time.

Dispute means a dispute between the parties to this MSA in relation to a matter arising under or in connection with this MSA.

Exceptional Circumstances has the same meaning as in section 28 of the Dairy Code, namely circumstances that:

- (a) are temporary; and
- (b) involve an extraordinary event (including an emergency or change in market conditions) that:
 - (i) occurs outside of Australia; and
 - (ii) has a highly significant effect on supply, demand or costs in the dairy industry; and
 - (iii) is not caused by decisions made by processors.

Exclusive Supply Agreement means an agreement between the Farmer and the Processor that prohibits the Farmer from supplying milk to another Processor.

Good Faith means good faith within the meaning of the unwritten law as in force from time to time, in relation to the supply of Milk and, without limitation, the factors set out as follows may be taken into account:

- (a) Without limitation, Good Faith applies in relation to the following:
 - (i) negotiating and entering into this MSA;
 - (ii) exercising rights, or performing obligations, under this MSA;
 - (iii) dealing with or resolving complaints or disputes arising under or in connection with this MSA; and
 - (iv) varying or terminating this MSA.
- (b) Without limitation, in determining whether Kyvalley Dairy Group or the Supplier (first party) has acted in Good Faith in dealing with the Kyvalley Dairy Group or the Supplier (other party), the following may be taken into account:
 - (i) whether the first party has acted honestly;
 - (ii) whether the first party has tried to cooperate with the other party to achieve the purposes of this Agreement;
 - (iii) whether the first party has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
 - (iv) whether the first party has not acted in a way that constitutes retribution against the other party for past complaints and disputes;
 - (v) whether the first party's relationship with the other party has been conducted without duress;

- (vi) whether the first party's relationship with the other party has been conducted in recognition of the need for certainty regarding the risks and costs of supplying or purchasing Milk;
- (vii) whether the first party has undermined, or denied the other party, a benefit of this Agreement;
- (viii) whether the first party has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint or dispute with the other party; and
- (ix) whether, in dealing with the first party, the other party has acted in good faith.

Milk means unprocessed raw milk (within the meaning of the *Dairy Produce Act 1986* (Cth)).

Minimum Price means the lowest price payable, for a period, under this Agreement for Milk supplied during that period, disregarding:

- (a) Loyalty Payments; and
- (b) any possibility of a Unilateral Prospective Stepdown; and
- (c) any fees payable by the Farmer under this Agreement.

Retrospective Stepdown is a variation of this Agreement that reduces a Minimum Price for Milk supplied under this Agreement before the variation occurs.

Specifications means the quality and milk supply specifications as set out this Kyvalley Dairy Group Supplier Handbook.

Term as defined in clause 2.

Tier Pricing means the Minimum Price payable for a specified amount of Milk supplied during a period is greater than the Minimum Price for Milk supplied in excess of the specified amount.

Unilateral Prospective Stepdown means a unilateral variation of this Agreement by the Processor that reduces the Minimum Price for Milk supplied under the Agreement after the variation occurs.

Kyvalley Dairy Group must only implement a Unilateral Prospective Stepdown in Exceptional Circumstances if:

- the Unilateral Prospective Stepdown does not reduce a Minimum Milk Price for Milk supplied after the expected end of the Exceptional Circumstances; and
- the following requirements are satisfied:
either:
 - i. the Processor has taken or will take all reasonable steps to prevent or limit the impact of the Exceptional Circumstances on the Processor; or
 - ii. there are no such steps the Processor can take;
- because of the Exceptional Circumstances, the Unilateral Prospective Stepdown is unavoidable; and
- the Processor gives the Farmer and the Australian Competition and Consumer Commission written notice at least 30 days before the Unilateral Prospective Stepdown occurs of the following:
 - i. the Unilateral Prospective Stepdown;
 - ii. the Exceptional Circumstances;
 - iii. the reasonable steps (if any) the Processor has taken or will take as mentioned in paragraph 0;

- iv. why the Unilateral Prospective Stepdown is unavoidable;
- v. the period to which the Unilateral Prospective Stepdown applies.

If the Processor implements a Unilateral Prospective Stepdown, the Processor must as soon as practicable after the variation provide the Farmer with:

- the variation; and
- written notice of:
 - i. the reason for the variation; and
 - ii. the day the variation takes effect.

The Supplier has the right to terminate this Agreement within 21 days after receiving notice of a Unilateral Prospective Stepdown, with effect from the day the Unilateral Prospective Stepdown occurs. The Supplier may rescind a termination under this provision before the end of the 21 day period.

The Minimum Price must not be further reduced as a result of the Supplier rescinding a termination under this provision.

GST Law has the meaning set out in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event, in relation to a party, means any of the following events:

- (a) an order is made, or a resolution is passed, that the party be wound up, dissolved or liquidated;
- (b) a liquidator, provisional liquidator, controller or voluntary administrator is appointed in respect of the party or a substantial portion of its assets whether or not under an order;
- (c) the party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or gives notice of its intention to do so (with or without conditions);
- (d) the party suspends payment of its debts or proposes or is subject to a moratorium of its debts;
- (e) the party seeks or obtains protection from its creditors under any statute or other law;
- (f) the party is or states that it is insolvent, or is deemed or presumed to be insolvent under applicable law;
- (g) any attachment, distress, execution or other process is made or levied against any material asset of the party and is not satisfied within seven days;
- (h) the party ceases to carry on all or the substantial part of its business (or threatens to do so); or
- (i) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property includes all rights to, and any interests in, any patent, design, trade mark, copyright, know-how, trade secret and any other proprietary right or form of intellectual property (whether protectable by registration or not) in respect of any technology, concept, idea, data, programme or other software (including in source and object codes), specification, formula, recipes, ingredients lists, drawing, programme, design, system, process, logo, mark, style or other matter or thing, existing or conceived, used, developed or produced by any person and all other rights as defined in Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation, including all applications for any of such rights as may exist anywhere in the world.

Mediation pursuant to the Code

Mediation

Appointment of mediator

- (a) Mediation Adviser means the person appointed as mediation adviser under regulation 44 of the Dairy Code by the Minister for Agriculture, Drought and Emergency Management (Federal).
- (b) The parties must request the Mediation Adviser to appoint a mediator for the dispute.
- (c) The Mediation Adviser:
 - (i) must appoint a mediator within 14 days after receiving the request under clause 0 unless the Mediation Adviser is satisfied that the complaint giving rise to the dispute:
 - (a) is frivolous or vexatious; or
 - (b) has previously been the subject of another mediation; and
 - (ii) must give the parties to the dispute, in writing, details of the mediator appointed.

Conduct of mediation

- (d) Subject to (c), the mediator must decide:
 - (i) how the mediation is to be conducted (for example, by telephone or in meetings); and
 - (ii) the time and place for the mediation; and
 - (iii) the day the mediation commences for the purposes of this Agreement.
- (e) The mediation must be conducted in Australia.

Notice of commencement of mediation

- (f) Within 14 days after the mediation has commenced, the mediator must notify the Mediation Adviser, in writing, that the mediation has commenced and of the nature of the dispute.

Attendance at mediation

- (g) Each party to the dispute must attend the mediation and attempt to resolve the dispute.
- (h) A party is taken to attend a mediation to attempt to resolve a dispute if the party is represented at the mediation by a person who has authority to enter into an agreement to settle the dispute on behalf of the party.

Notice of successful mediation

- (i) If an agreement is reached in relation to the dispute, the mediator must, within 14 days after the agreement is reached:
 - (i) set out, in writing, the terms of the agreement; and
 - (ii) give a copy of the terms to each party to the dispute; and
 - (iii) notify the Mediation Adviser that an agreement has been reached.
- (j) The party who requested the mediation may, at any time, withdraw the complaint that is the subject of the dispute by notice in writing to the other party to the dispute and the mediator.

Termination of mediation

- (k) The mediator conducting a mediation of a dispute in accordance with this Agreement:
 - (i) may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur; and
 - (ii) must terminate the mediation if the party who requested the mediation requests the mediator to do so.
- (l) If a dispute that is the subject of mediation in accordance with this Agreement is not resolved within 30 days after the mediation commenced:
 - (i) the respondent to the mediation may ask the mediator to terminate the mediation; and
 - (ii) the mediator must do so.
- (m) If the mediator terminates a mediation, the mediator must issue a certificate stating:
 - (i) the names of the parties to the mediation; and
 - (ii) the nature of the dispute that was the subject of the mediation; and
 - (iii) that the mediation has been terminated; and
 - (iv) that the dispute has not been resolved.
- (n) The mediator must give a copy of the certificate to:
 - (i) the Mediation Adviser; and
 - (ii) each party to the dispute.

Costs of mediation

- (o) Each party to a dispute that was the subject of a mediation must pay half the costs (if any) of the mediation (being all reasonable costs associated with the conduct of the mediation).
- (p) Each party to a dispute that was the subject of a mediation must pay that party's costs of attending the mediation.

Personnel of a person means a director or other officer, employee, or contractor of, or sub-contractor, consultant, or adviser to, that person or any of its related bodies corporate, when acting in that capacity. The Personnel of a2MCA do not include Kyvalley Dairy Group or any of Kyvalley Dairy Group's Personnel.

38.2. Interpretation

In this document, the following rules of interpretation apply unless a contrary intention appears.

- 38.2.1. Any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this document.
- 38.2.2. The singular includes the plural and vice versa and a reference to a gender includes all other genders.
- 38.2.3. A person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and Government Agency.
- 38.2.4. A reference to:
 - 38.2.4.1. *a person includes that person's successors, permitted substitutes and permitted assigns;*

- 38.2.4.2. *a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this document;*
- 38.2.4.3. *this document or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;*
- 38.2.4.4. *“agreement” includes an undertaking, deed, contract or other legally enforceable arrangement, whether or not in writing, and a reference to “document” includes an agreement (as so defined) in writing or any certificate, notice, instrument or other document of any kind;*
- 38.2.4.5. *legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;*
- 38.2.4.6. *“include”, “including” and “for example”, and similar expressions, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;*
- 38.2.4.7. *dollars or \$ is to Australian dollars;*
- 38.2.4.8. *time is to the time in Melbourne, Victoria; and*
- 38.2.4.9. *writing includes any mode of representing or reproducing words in tangible and permanently visible form.*
- 38.2.5. Where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning.
- 38.2.6. A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this document or the inclusion of the provision in this document.
- 38.2.7. Where an act would be required to be done (including the payment of any money), or a time limit or period would expire, on a day that is not a Business Day, the act must be done or the limit or period will expire, on the following Business Day.
- 38.2.8. A period of time expressed to commence:
 - 38.2.8.1. *before or after a given day, or before or after the day of an act or event, is to be calculated exclusive of that day; and*
 - 38.2.8.2. *on a given day, or on the day of an act or event, is to be calculated inclusive of that day.*

38.3. Payments

If a party is required to pay an amount under this document, it must pay the amount by direct deposit of cleared funds to a bank account in the name of the payee, the details of which are notified by the payee at least two Business Days before the due date for payment, without any set-off, deduction, withholding or retention of any amount unless expressly contemplated by this document, required by law or directed by the payee.

EXECUTION PAGE

Signed for and on behalf of Kyvalley Dairy Group Pty Ltd:

Executed for and on behalf of Kyvalley Dairy
Group Pty Ltd in accordance with section 127 of
the Corporations Act 2001 (Cth) by:

Director signature

Director full name
(BLOCK LETTERS)

Signed for and on behalf of the Supplier:

Where the Supplier is an individual, use the
following execution block:

Signed, sealed and delivered as a deed poll
by the Supplier in the presence of:

Supplier signature

Supplier full name
(BLOCK LETTERS)

Supplier signature

Supplier full name
(BLOCK LETTERS)

Witness signature

Witness full name
(BLOCK LETTERS)

Witness signature

Witness full name
(BLOCK LETTERS)

Where the Supplier is a company, use the following execution block:
Executed for and on behalf of the Supplier in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

SHARE FARMING AGREEMENT

Kyvalley Dairy Group Pty. Ltd. (Kyvalley Dairy Group) makes this agreement with the "Supplier" to split the payment it makes for milk purchased each month from the "Supplier" with the "Sharefarmer" according to the following terms.

The Supplier requests and authorises Kyvalley Dairy Group to split the net milk payments and applicable levies and charges payable, known as the Net Revenue (including GST) line of the Recipient Created Tax Invoice (RCTI) according to the following share formula:

Supplier Split:%
Shareholder Split:%
Total:	100%

The Supplier further requests and Kyvalley Dairy Group agrees to:

1. Make two payments and issue two RCTI Milk Statements for milk purchased each month; the first to the Supplier for their share of the milk supplied and the second to the Sharefarmer for their share of the milk supplied.
2. Share a copy of the Milk Volumes and Quality Reports and any other correspondence the Supplier receives with the Shareholder

Supplier Details:

Name of Supplier:

Address of Supplier:

.....

Supplier ABN as provided on page 4 of MSA.

Bank Details as provided on page 8 of MSA.

Supplier signature

Date

Supplier full name
(BLOCK LETTERS)

Sharefarmer Details:

Name of Sharefarmer:

Postal address of Sharefarmer:

.....

Sharefarmer ABN:

Bank Name: Account Name:

Bank BSB: Account No:

Sharefarmer signature/s

Date

Sharefarmer full name/s
(BLOCK LETTERS)

Executed for and on behalf of Kyvalley Dairy
Group Pty Ltd in accordance with section 127 of
the Corporations Act 2001 (Cth) by:

GM Milk Supply signature

GM Milk Supply full name
(BLOCK LETTERS)

ANNEXURE A

Kyvalley Dairy Group Northern Victoria Supplier Handbook

www.kyvalleydairy.com.au/milk-supply-agreements