

## Milk Exchange – Terms and Conditions

### 1 Definitions

**Agency Services** means MX doing the following on behalf of an End User:

- (a) registering on the Milk Exchange for the End User;
- (b) assisting (on the End User's instructions) with the population and uploading of the Particulars to the Milk Exchange;
- (c) communicating with prospective End Users with respect to any Seller's Offer, Buyer's Bid, Buyer's Offer and Seller's Bid; and
- (d) otherwise, undertaking any activities on the Milk Exchange (as instructed by the End User) that the End User could do itself if the End User was granted access to the Milk Exchange in its own right.

**Agreement** means this agreement between the End User and MX.

**Authorised Representative** means a User appointed by the End User to act on its behalf (and as agent for it) in relation to this Agreement and a Contract as per clause 10.7.

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

**Buyer** means an End User that accesses and uses the Milk Exchange for the purpose of actually or potentially purchasing Dairy Product from a Seller.

**Buyer's Bid** has the meaning given in clause 10.1(f)(ii).

**Buyer's Offer** has the meaning given in clause 10.2(a).

**Collection, Testing and Delivery Policy** means the policy governing MX's provision of the Collection, Testing and Delivery Services, as published on the Milk Exchange.

**Collection, Testing and Delivery Services** means the collection, testing and delivery services to be provided by MX (in accordance with the Collection, Testing and Delivery Policy) to an End User in relation to a Contract, where the End User has elected to receive such services from MX in relation to that Contract.

**Contract** means a binding contract entered into between a Buyer and a Seller as contemplated by the process outlined in clause 10 based upon the terms and conditions of the Standard Form Contract which governs the sale of Dairy Product by a Seller to a Buyer.

**Dairy Product** means the dairy product supplied under a Contract.

**Dairy Product Policy** means the policy governing the specific requirements of any Dairy Product supplied to a Buyer on the Milk Exchange including Dairy Product quality, collection, testing and delivery of Dairy Product, storage of Dairy Product, animal welfare, workplace health and safety and environmental management.

**End User** means any legal personality or entity which enters into this Agreement with MX and accesses or uses the Milk Exchange. Where the End User:

- (a) is an individual, the End User interacts on or with the Milk Exchange himself or herself directly; and
- (b) is not an individual, the End User interacts on or with the Milk Exchange through a User.

**End User Data** means any data uploaded or created by an End User when interacting on or with the Milk Exchange. The End User Data includes Seller's Offer, Buyer's Bid, Buyer's Offer, Seller's Bid and any business or commercial information of the End User that is provided to MX or other End Users through use of the Milk Exchange.

**Farm Milk** means Raw Milk harvested directly from dairy cattle on a dairy farm.

**Fees** means the fees payable by an End User to MX in accordance with clause 6.

**GST** means any goods and services tax imposed by the GST Law.

**GST Amount** has the meaning given to it in clause 21(a).

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time, and any associated legislation and regulations to the extent they relate to GST.

**Intellectual Property Rights** means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in confidential information, know how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which subsist or may hereafter subsist anywhere in the world.

**Laws** means any applicable law, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, whether made by a State, Territory, Commonwealth, or a local government, and includes common law and the principles of equity as applicable from time to time, and any applicable legally binding industry codes of conduct.

**Loss** means all losses, liabilities, fines, penalties, damages and claims, and all related costs and expenses (including any and all legal fees on a solicitor and client basis, and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties).

**Milk Exchange** means the online marketplace known as "Milk Exchange" found at [www.milkexchange.com.au](http://www.milkexchange.com.au) (or another designated URL) that provides a venue for Buyers and Sellers to engage with one another and negotiate and enter into Dairy Product sale and purchase agreements.

**MX** means Milk Exchange Pty Ltd (ABN 94 161 718 798).

**MX Privacy Policy** means the MX privacy policy available at [www.MilkExchange.com.au/privacy](http://www.MilkExchange.com.au/privacy);

**Particulars** means the particulars on the "Create Trade Offer Page" of the Milk Exchange which are incorporated into Schedule 1 of the Standard Form Contract which includes all details of the arrangement for the supply of Dairy Product as contemplated in clause 10.

**Payment Policy** means the policy governing:

- (a) the payment of fees to MX by an End User for use of the Milk Exchange;
- (a) the payment for the sale of Dairy Product under a Contract to a Seller;
- (b) the payment for the sale of Dairy Product under a Contract to MX to be remitted to the Seller, where an End User has appointed MX to provide RCTI Services; and
- (c) the payment of fees for any Agency Services, RCTI Services and Collection, Testing and Delivery Services provided by MX to the Buyer.

**Personal Information** has the meaning given to that term in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Raw Milk** means Dairy Product in the form of unprocessed or unpasteurised raw milk.

**RCTI** means a recipient created tax invoice which includes GST.

**RCTI Services** means MX providing full payment services in relation to the supply of Farm Milk including the calculation of payments for each relevant period based on test results, seasonal and quality incentives, deductions and charges as outlined in supply agreements, the issuance of RCTIs, the reporting and communication of payments and, if required, the provision of an online portal for daily monitoring of results.

**Related Bodies Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Seller** means an End User that accesses and uses the Milk Exchange for the purpose of actually or potentially selling Dairy Product to a Buyer.

**Seller's Bid** has the meaning given in clause 10.2(f)(ii).

**Seller's Offer** has the meaning given in clause 10.1(a).

**Share Farm** means any farm or other agricultural enterprise in respect of which two or more Sellers are legally entitled either to the Farm Milk produced on or by that enterprise or the proceeds from the sale of that Farm Milk.

**Sharer** means a Seller that is a participant in a Share Farm.

**Standard Form Contract** means the standard form contract made available by MX and published here [www.milkexchange.com.au](http://www.milkexchange.com.au) for the sale of Dairy Product, to be entered into by a Buyer and a Seller as described in clause 10.

**Tax Invoice** means a tax invoice as defined in the GST Law, which also specifies the GST component of the Taxable Supply.

**Taxable Supply** has the same meaning as in the GST Law.

**Particulars Schedule** means Schedule 1 to the Standard Form Contract.

**Term** has the meaning given to that term in clause 3.

**Uploaded Personal Information** means any Personal Information uploaded or made available by an End User through use of the Milk Exchange.

**User** means an employee, contractor or other representative of an End User (excluding MX) who accesses or uses the Milk Exchange on behalf of, and as agent for, the relevant End User.

**Variations** means variations to the Standard Form Contract set out in item 8 of the Particulars Schedule.

## 2 Milk Exchange

- (a) This Agreement is a binding agreement between the End User and MX and applies to:
  - (i) The End User's access to and use of the Milk Exchange;
  - (ii) MX's provision of Agency Services to an End User; and
  - (iii) MX's provision of RCTI Services and MX's provision of the Collection, Testing and Delivery Services to an End User.
- (b) By accessing or using the Milk Exchange, the End User agrees to be bound by this Agreement and any policies which are referenced in this Agreement. If the End User does not agree to any part of this Agreement or any part of any policies which are referenced in this Agreement, it must not access or use the Milk Exchange.
- (c) The End User may access and use the Milk Exchange only as permitted by this Agreement and any MX policies referenced in this Agreement.
- (d) Where the End User accesses and uses the Milk Exchange through its Users, the End User agrees that:
  - (i) it will ensure that all of its Users are at least 18 years of age and have been properly authorised by the End User to access or use the Milk Exchange on behalf of the End User;
  - (ii) it will ensure that all of its Users comply with the terms of this Agreement, all policies incorporated into it by reference, and any other policies on the Milk Exchange; and
  - (iii) it is fully responsible for any access or use of the Milk Exchange by its Users (with any acts or omissions of its Users being deemed to be the acts or omissions of the End User).
- (e) To the extent of any inconsistency between the terms of this Agreement and a policy incorporated into it by reference, the order of priority (from highest to lowest) for the purpose of any interpretation is:
  - (i) this Agreement; and
  - (ii) any policies incorporated by reference.

## 3 Term

This Agreement commences on the End User's first use of or access to the Milk Exchange and continues in full force and effect until the earlier of:

- (a) The End User terminating the End User's access to the Milk Exchange by de-registering from the Milk Exchange; or
- (b) MX terminating the End User's access to the Milk Exchange in accordance with clause 20, (the **Term**).

#### **4 Milk Exchange accounts / registration**

- (a) The End User must register with MX to access and use the Milk Exchange. If the End User has appointed MX to provide Agency Services, MX will assist the End User with the registration process.
- (b) The End User will be required to provide MX with certain information when registering in accordance with this clause 4, including (without limitation and to the extent applicable):
  - (i) company / organisation details;
  - (ii) details of an Authorised Representative (including name, mailing address, and telephone number); and
  - (iii) any other details reasonably requested by MX.
- (c) The End User must ensure that this information is accurate and current. The End User acknowledges that MX may rely on information provided by the End User to MX in accordance with this clause 4.
- (d) When the End User registers with MX, the End User represents and warrants that:
  - (i) if the End User is an individual, that End User at least eighteen (18) years of age;
  - (ii) the End User possesses the legal right and ability to enter into a legally binding agreement with MX and (if applicable) the User has the authority to bind the End User to the terms of this Agreement; and
  - (iii) the End User will only use the Milk Exchange in accordance with this Agreement.
- (e) The End User is responsible for keeping its username and password, created by the End User when registering on the Milk Exchange, secure and is responsible for all access, use and activities carried out under this username.
- (f) The End User consents to MX conducting financial due diligence on the End User to ensure the End User is capable of satisfying its contractual obligations, which may include engaging external third parties to conduct financial due diligence on MX's behalf.

#### **5 Appointment of MX as End User's agent**

- (a) The End User may appoint MX to act as its agent for the purposes of performing the Agency Services during the Term. If the End User appoints MX to provide the Agency Services, the provisions of this clause 5(a) will apply.
  - (i) MX's responsibilities as agent of the End User are limited to the matters expressly set out in this Agreement.
  - (ii) The End User acknowledges that MX will hold the End User's username and password on the End User's behalf and the End User will not be provided with direct access to upload a Seller's Offer, Buyer's Bid, Buyer's Offer of Seller's Bid on the Milk Exchange.
  - (iii) The End User is solely responsible for ensuring that all information provided to MX in connection with MX's use of the Milk Exchange on behalf of the End User is accurate, complete and not misleading in any way. MX will not be liable for any Loss suffered by the End User or any third party arising from the provision of such information to MX.
  - (iv) MX will continue to act as the End User's agent with respect to the Agency Services until the earlier of the following events:
    - (A) the End User or MX elects to terminate the agency relationship by providing written notice of such termination to the other party in which case MX shall grant the End User access to its username and password so that the End User can access and use the Milk Exchange directly; or
    - (B) the termination of this Agreement.
- (b) The End User may appoint MX to act as its agent for the purposes of performing RCTI Services during the Term. If the End User appoints MX to provide the RCTI Services, the provisions of this clause 5(b) will apply.
  - (i) MX's responsibilities as agent of the End User are limited to the matters expressly set out in this Agreement.
  - (ii) The End User is solely responsible for ensuring that all information provided to MX is accurate, complete and not misleading in any way. MX will not be liable for any Loss suffered by the End User or any third party arising from the provision of such information to MX.
  - (iii) MX will continue to act as the End User's agent with respect to the RCTI Services until the earlier of the following events:
    - (A) The End User or MX elects to terminate the agency relationship by providing written notice of such termination to the other party; or
    - (B) The termination of this Agreement.

#### **6 Milk Exchange Fees**

- (a) The Fees payable by the End User to MX will be calculated in accordance with the Payment Policy.
- (b) The End User agrees to pay MX any Fees in the manner and by the times specified in the Payment Policy.
- (c) The Fees are current at the time of display on the Milk Exchange but are subject to change in accordance with the process described in the Payment Policy.

#### **7 Grant of licence**

- (a) Upon the End User registering on the Milk Exchange and only where MX does not act as agent for the End User in accordance with clause 5, MX grants to the End User for the Term a non-exclusive, non-transferable, non-sub-licensable licence to use and access (and permit its Users to use and access on its behalf) the Milk Exchange in Australia in accordance with the terms of this Agreement and solely for the purpose of buying or selling (or seeking to buy or sell) Dairy Product.
- (b) All other use, reproduction or redistribution of the Milk Exchange or any part of it is prohibited (except to the extent permitted by Law).

#### **8 Access credentials and Milk Exchange access**

- (a) MX will use its reasonable endeavours to implement information and communications technologies industry standard safeguards with respect to the Milk Exchange, however security is a joint responsibility and where the End User has

been provided with access credentials to log in to an account on the Milk Exchange, the End User is solely responsible for maintaining the security of its information and communications technologies environment and any access credentials associated with its account and is fully responsible for all activities that occur under its account (whether or not authorised by the End User).

- (b) The End User is not permitted to allow any third party to use its access credentials to log in to the Milk Exchange. To avoid any doubt, this does not restrict the End User allowing its Users to use the Milk Exchange on its behalf. The End User must immediately notify MX of any unauthorised uses of registration or any other breaches of security.
- (c) MX and its Related Bodies Corporate, contractors, suppliers, and licensors will not be liable for any acts and omissions by or on behalf of the End User, including any damages of any kind arising from such acts or omissions.

## 9 Conditions of access

### 9.1 End User conditions

The End User acknowledges and agrees:

- (a) to comply with all applicable Laws (including any applicable privacy Laws);
- (b) not to copy, modify, merge, alter, adapt, translate, de-compile, disassemble or reverse engineer any aspect of the Milk Exchange or to otherwise attempt to derive the source code relating to any aspect of the Milk Exchange, or to merge any software or any part of any software with any aspect of the Milk Exchange unless expressly permitted by this Agreement or after obtaining MX's prior written consent;
- (c) not to interfere in any manner with the Milk Exchange or its source code (except as permitted by this Agreement);
- (d) not to sell or license, offer for sale or license, dispose of, pledge, encumber, underlet, lend or part with possession of its access credentials to the Milk Exchange, nor to allow any person to use or have the benefit of the Milk Exchange or any part or parts of the software, in any circumstances, other than as permitted by this Agreement;
- (e) not to remove, modify or obscure any copyright, trade mark, service mark, tagline or other notices that appear during use of the Milk Exchange;
- (f) not to use any data mining, gathering or extraction tools (excluding tools provided by MX for the End User's use);
- (g) not to compel (directly or indirectly) any other person, including (without limitation) the End User's Users or another End User, to engage in any acts or practices that, if engaged in by the End User, would breach this Agreement;
- (h) that MX cannot guarantee and does not promise:
  - (i) any specific results from the use of the Milk Exchange; or
  - (ii) the quality, completeness, accuracy or currency of any End User Data uploaded to the Milk Exchange;
- (i) that MX:
  - (i) provides a venue for Sellers and Buyers to enter into Dairy Product sale and purchase agreements via the Milk Exchange;
  - (ii) does not itself offer Dairy Product for sale or purchase to any Seller or Buyer via the Milk Exchange; and
  - (iii) (except as expressly stated in this Agreement) has no control over, and is not involved in, the performance and completion of any Contract; and
- (j) to comply with the terms and conditions of any policies referenced in this Agreement including the Payment Policy, the Dairy Product Policy and the Collection, Testing and Delivery Policy; and
- (k) it is the End User's responsibility to exercise any rights the End User may have against a Buyer or a Seller (as applicable).

## 10 Transacting a Contract via the Milk Exchange

### 10.1 Contract formation process

- (a) A Seller may, at any time, upload a proposed offer for the supply of Dairy Product to the Milk Exchange which must include the Particulars (the **Seller's Offer**).
- (b) Where MX is acting as the Seller's agent to perform the Agency Services in accordance with clause 5:
  - (i) The Seller is solely responsible for providing the information listed in clause 10.1(a) to MX and approving the Seller's Offer;
  - (ii) MX will communicate with prospective Buyers on the Seller's behalf (and on the Seller's instructions) in respect of the Seller's Offer and / or Buyer's Bid and will use reasonable endeavours to do so in a timely manner; and
  - (iii) MX is not obliged to monitor the following matters relevant to a Seller's Offer on the Milk Exchange:
    - (A) the bona fides of the Seller;
    - (B) the ability of the Seller to meet the terms of the Seller's Offer; and
    - (C) the reasonableness of the terms and conditions of the Seller's Offer.
- (c) The parties acknowledge that the Seller's Offer is capable of acceptance by the Buyer and, when accepted, will constitute a binding contract for the supply and / or sale of Dairy Product to the Buyer on the terms and conditions of the Standard Form Contract as informed by the Particulars included in the Seller's Offer.
- (d) Any and all monetary amounts included in a Seller's Offer must be in Australian Dollars.
- (e) The Seller is solely responsible for ensuring that:
  - (i) to the extent the Seller instructs MX to upload a Seller's Offer on its behalf that all information provided to MX, is accurate, complete and not misleading in any way; and
  - (ii) to the extent that the Seller uploads its own Seller's Offer to the MX, that all information is accurate, complete and not misleading in any way.
- (f) A Buyer may, in response to a Seller's Offer, at the Buyer's sole discretion and election:

- (i) accept the terms and conditions of the Seller's Offer and enter into a binding contract for the supply of Dairy Product with the Seller in accordance with the terms and conditions of the Seller's Offer; or
  - (ii) make a bid and propose amendments to the Seller's Offer which will be capable acceptance by the Seller (a **Buyer's Bid**).
- (g) Where a Buyer makes a Buyer's Bid, the parties acknowledge and agree that the Buyer's Bid is capable of acceptance by the Seller and, when accepted, will constitute a binding contract for the supply and / or sale of Dairy Product on the terms and conditions of the Standard Form Contract as informed by the Particulars (as appropriate):
- (i) included in the Buyer's Bid, or
  - (ii) included in the Seller's Offer as amended by the Buyer's Bid.
- (h) MX will not be liable for any Loss suffered by a Seller, a Buyer or any third party arising from the inaccuracy, incompleteness or misleading nature of any information described in clause 10.1.
- (i) A Seller and a Buyer may exercise their rights at Law to accept, reject or negotiate any or all of the terms of a Seller's Offer or a Buyer's Bid.

## 10.2 Buyer's Offer

- (a) A Buyer may, at any time upload a proposed offer for the receipt of Dairy Product to the Milk Exchange which must include the Particulars (the **Buyer's Offer**).
- (b) Where MX is acting as the Buyer's agent to perform the Agency Services in accordance with clause 5:
- (i) The Buyer is solely responsible for providing the information listed in clause 10.2(a) to MX, and approving the Buyer's Offer;
  - (ii) MX will communicate with prospective Seller's on the Buyer's behalf (and on the Buyer's instructions) in respect of the Buyer's Offer and / or Seller's Bid and will use reasonable endeavours to do so in a timely manner; and
  - (iii) MX is not obliged to monitor the following matters relevant to a Buyer's Offer prior to listing the Buyer's Offer on the Milk Exchange:
    - (A) the bona fides of the Buyer;
    - (B) the ability of the Buyer to meet the terms of the Buyer's Offer; and
    - (C) the reasonableness of the terms and conditions of the Buyer's Offer.
- (c) The parties acknowledge that the Buyer's Offer is capable of acceptance by the Seller and, when accepted, will form a binding contract for the supply or sale of Dairy Product to the Buyer on the terms and conditions of the Standard Form Contract as informed by the Particulars included in the Buyer's Offer.
- (d) Any and all monetary amounts included in a Buyer's Offer must be in Australian Dollars.
- (e) The Buyer is solely responsible for ensuring that:
- (i) to the extent the Buyer instructs MX to upload a Buyer's Offer on its behalf that all information provided to MX, is accurate, complete and not misleading in any way; and
  - (ii) to the extent that the Buyer uploads its own Buyer's Offer to the MX, that all information is accurate, complete and not misleading in any way.
- (f) The Seller may, in response to a Buyer's Offer, at the Seller's sole discretion and election:
- (i) accept the terms and conditions of the Buyer's Offer and enter into a binding contract for the supply and / or sale of Dairy Product with the Buyer in accordance with the terms and conditions of the Buyer's Offer; or
  - (ii) make a bid and propose amendments to the Buyer's Offer which will be capable of acceptance by the Buyer (a **Seller's Bid**).
- (g) Where a Seller makes a Seller's Bid, the parties acknowledge and agree that the Seller's Bid is capable of acceptance by the Buyer and, when accepted, will form a binding contract for the supply and / or sale of Dairy Product from the Seller to the Buyer on the terms and conditions of the Standard Form Contract as informed by the Particulars:
- (i) included in the Seller's Bid; or
  - (ii) included in the Buyer's Offer as amended by the Seller's Bid.
- (h) MX will not be liable for any Loss suffered by a Seller, a Buyer or any third party arising from the inaccuracy, incompleteness or misleading nature of any information described in clause 10.2.
- (i) A Seller and a Buyer may exercise their rights at Law to accept, reject or negotiate any or all of the terms of a Buyer's Offer or a Seller's Bid.

## 10.3 Communications with Buyers and Sellers

- (a) The End User acknowledges that MX may communicate with prospective Sellers and Buyers via telephone and email with respect to any Seller's Offer, Buyer's Bid, Buyer's Offer or Seller's Bid.
- (b) The End User acknowledges that there may be circumstances which arise where MX is engaged to act as agent on behalf of both a Buyer and a Seller with respect to:
- (i) a Seller's Offer, Buyer's Bid, Buyer's Offer or Seller's Bid; and
  - (ii) the ongoing performance of a Contract, including where MX provides Agency Services or RCTI Services.
- (c) Where such circumstances arise, the End User agrees and consents to MX acting as agent of both a Buyer and a Seller in relation to the matters contemplated in clause 10.3.

## 10.4 Authority to bind the End User

- (a) The End User warrants to MX that it and (where applicable) its User has sufficient authority to bind the End User to a Contract in the manner contemplated in clause 10.5 (whether or not, in the case of a User, that User is appointed as an Authorised Representative in accordance with clause 10.7).
- (b) Where the End User is a Sharer and publishes a Seller's Offer or a Seller's Bid or accepts a Buyer's Offer or Buyer's Bid, the End User:

- (i) warrants and undertakes that it has the lawful authority of each other Sharer in the same Share Farm to sell that Farm Milk on the Milk Exchange on behalf of itself and each other such Sharer; and
- (ii) indemnifies and holds harmless MX for any loss MX suffers in connection with the warranty in clause 10.4(b)(i) being untrue, including without limitation in connection with any claims made against MX by any other such Sharer.

#### **10.5 Contractual arrangements**

- (a) Where a Buyer and a Seller enter into a Contract, MX will compile all documents which form the Contract (including the agreed Particulars, the Standard Form Contract and any relevant schedules) into one .pdf or word document (or similar document format) for each party to keep as a record and evidence of the ongoing supply arrangement. Each party agrees to notify the other party that the compiled version of the Contract is an accurate representation of the terms and conditions of the Contract within five (5) Business Days of a Contract being entered into between a Buyer and a Seller as per the process specified in clauses 10.1 and 10.2 above.
- (b) A Seller's Offer, Buyer's Bid, Buyer's Offer or Seller's Bid must not, under any circumstances, impose or purport to impose any obligations on MX either as a party or otherwise unless specifically agreed by MX prior to that offer or bid being uploaded to the Milk Exchange.
- (c) The Buyer and the Seller acknowledge that:
  - (i) the Standard Form Contract is a fair, balanced and reasonable contract and the terms of the Standard Form Contract may not be amended, altered or changed without the prior written consent of MX, with the exception of the Variations;
  - (ii) MX does not represent that it has considered the rights and obligations of each of the Buyer or the Seller under the Standard Form Contract;
  - (iii) the Standard Form Contract provided by MX is intended only to enable the End User to buy and / or sell Dairy Product on the terms and conditions described in the Contract and is not intended to and must not be relied upon as legal advice;
  - (iv) MX only provides a platform for the entering into of contracts for the supply of Dairy Product between a Buyer and a Seller;
  - (v) any Variations and any representations made to the Standard Form Contract are not Variations or representations made by MX; and
  - (vi) except as expressly stated in this Agreement, MX does not act as agent on behalf of the Buyer or the Seller nor is MX a reseller of Dairy Product or entitled to Dairy Product under any Contract.
- (d) MX attempts to ensure that the Standard Form Contract is current as at the date it is made available on the Milk Exchange, but Laws or other circumstances may have changed since this time and MX does not guarantee the currency or suitability of the Standard Form Contract.
- (e) MX recommends that End Users seek specific legal or other professional advice before acting or relying on any part of the Standard Form Contract including as to its compliance with the Competition and Consumer (Industry Codes – Dairy) Regulations 2019. MX is not responsible for any action taken or not taken in reliance on the Standard Form Contract.
- (f) MX makes no warranties or representations about the Standard Form Contract, including but not limited to warranties or representations that the Standard Form Contract will be complete, accurate or up-to-date.
- (g) An End User must not circumvent the process described in this clause 10.5 by directly engaging with another party with the purpose of entering, or seeking to enter, into an agreement for the sale of Dairy Product where such opportunity arose as a result of interaction on the Milk Exchange. Notwithstanding a breach of this clause 10.5(g), the End User must pay to MX the Milk Exchange Fee for use of the Milk Exchange in accordance with the Payment Policy.

#### **10.6 Collection and delivery**

- (a) Prior to the Buyer and the Seller entering into the Contract, the Buyer will have the option to:
  - (i) nominate self-collection, testing and delivery of the Dairy Product; or
  - (ii) engage a third party (either MX or another third party licensed to test, accept and deliver Dairy Product) to provide Collection, Testing and Delivery Services.
- (b) Where the Buyer elects to engage MX to provide Collection, Testing and Delivery Services, the Buyer agrees to be bound by the terms and conditions of the Collection, Testing and Delivery Policy.
- (c) The Buyer acknowledges that MX, may enter into a binding contractual relationship for the provision of the Collection, Testing and Delivery Services with the Buyer on the terms and conditions outlined in the Collection, Testing and Delivery Policy.

#### **10.7 Authorised Representative**

- (a) Where an End User is not an individual, such End User must appoint a User to act as an Authorised Representative on behalf of the End User in respect of the Milk Exchange.
- (b) The End User agrees to be fully responsible for all acts and omissions of its Authorised Representative and agrees to complete all Contracts which are created by it, regardless of whether the Authorised Representative has acted outside the scope of his / her authority, in breach of the terms of this Agreement, in breach of any agreement between the End User and the Authorised Representative, or negligently or contrary to the End User's instructions or directions.
- (c) Where the End User has appointed an Authorised Representative, it must give its Authorised Representative written authority to do any and all of the acts which are permitted to be done under this Agreement.
- (d) If the End User terminates the appointment of an Authorised Representative, the End User must notify MX in writing noting the date of termination.
- (e) If the End User changes its Authorised Representative, it must notify MX in writing of all relevant details of the replacement Authorised Representative, noting the date of appointment.

- (f) The appointment of an Authorised Representative remains effective for the purposes of this Agreement until MX receives a written notice from the End User and, subject to the receipt of any such notice, MX is entitled to rely upon conduct of an existing Authorised Representative.
- (g) Where MX is acting as the End User's agent in accordance with clause 5, the Authorised Representative of the Seller is responsible for communicating and providing instructions to MX on the Seller's behalf. MX may rely on any and all instructions and information provided by the Authorised Representative on the Seller's behalf.

#### **10.8 Default Events under the Contract**

Without prejudice to clause 9.1(i)(iii), if a Seller has entered into a Contract and is subsequently unable to:

- (a) supply a sufficient quality of Dairy Product to meet its obligations under the Contract, or
  - (b) meet the specifications described in the Contract for that Dairy Product,
- (each, a **Default Event**), the Seller must:
- (c) notify the Buyer by email or telephone as soon as possible of the Default Event occurring; and
  - (d) provide details of the Default Event, the length of time it will take for the Seller to rectify the Default Event and the suspected cause of the Default Event.

#### **11 Intellectual Property Rights**

- (a) MX owns (or licenses from third parties) all Intellectual Property Rights in the Milk Exchange.
- (b) The End User agrees that all rights, title and interest in the Milk Exchange not expressly granted or licensed to the End User in accordance with this Agreement are reserved to MX or its third party licensors. The End User must not claim ownership of any Intellectual Property Rights in the Milk Exchange either verbally or in writing.

#### **12 End User Data**

- (a) By submitting, posting, uploading or otherwise allowing access to the End User Data (or allowing Users to do so), the End User represents and warrants that the End User has rights to and is legally entitled to make available such content to MX and other third parties as contemplated by this Agreement.
- (b) MX does not claim ownership over any End User Data. The End User agrees that by using the Milk Exchange, the End User grants MX a royalty-free, perpetual, irrevocable, sub-licensable right to:
  - (i) use End User Data to provide (and make offers to provide) products and services to the End User via the Milk Exchange; and
  - (ii) create and commercially exploit derivative, aggregated and anonymised works (for example, data products) from such End User Data, but only to the extent such derivative works do not disburse any Uploaded Personal Information.
- (c) The End User warrants that it has all rights necessary to grant the licence set out at sub-clause 12(b) above, including in relation to the End User Data generated by its Users.
- (d) The End User acknowledges that despite MX's commercially reasonable efforts to secure and store safely all End User Data on the Milk Exchange, MX cannot guarantee that third parties will not succeed in penetrating its systems by nefarious actions.
- (e) MX may, but is not obliged to, refuse or remove or direct the removal of any End User Data that it reasonably considers violates any of the terms of this Agreement or any applicable Law, without notice.

#### **13 Acceptable use**

- (a) The End User must use the Milk Exchange for lawful conduct only.
- (b) The End User must not access or use the Milk Exchange, or post, provide or transmit the End User Data in any way that:
  - (i) violates or infringes the rights of others including, without limitation, Intellectual Property Rights, privacy rights or confidentiality rights;
  - (ii) is unlawful, offensive, indecent, objectionable, harassing, threatening, abusive, defamatory, fraudulent, tortious, or invasive of another's privacy;
  - (iii) impersonates any person, business or entity, including MX and its affiliates, employees and agents;
  - (iv) includes personal or identifying information about another person without that person's consent to the use and handling of that person's information as contemplated by this Agreement and as set out in the MX Privacy Policy;
  - (v) is false, misleading, or deceptive;
  - (vi) violates this Agreement or any policy posted on the Milk Exchange;
  - (vii) contains viruses or any other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, or otherwise permit the unauthorised use of a computer or computer network;
  - (viii) interferes with the use of the Milk Exchange by other End Users or potential End Users;
  - (ix) could damage, disable or impair the servers or networks used by the Milk Exchange or End Users; or
  - (x) advertises other products or services (other than as expressly permitted under this Agreement).

#### **14 Privacy**

- (a) MX will handle all Uploaded Personal Information in accordance with the MX Privacy Policy.
- (b) Where the End User is an individual and makes his or her Personal Information available to MX through use of the Milk Exchange, the End User consents to the collection, use, storage and disclosure of that information as described in this Agreement, the MX Privacy Policy and any other policy posted on the Milk Exchange. For the avoidance of doubt, MX will use Uploaded Personal Information to the extent:
  - (i) required to provide its services as described in this Agreement; or
  - (ii) described in the MX Privacy Policy.

- (c) Where the End User is not an individual, the End User must procure from each of its Users the User's consent to the collection, use, storage and disclosure of his or her Personal Information as described in this Agreement, the MX Privacy Policy and any other policy posted on the Milk Exchange.
- (d) MX will not disclose any Uploaded Personal Information to third parties except to the extent:
  - (i) required to provide its services as described in this Agreement; or
  - (ii) described in the MX Privacy Policy.
- (e) The End User warrants that:
  - (i) any Uploaded Personal Information was lawfully collected and made available to MX (and other third parties as contemplated by this Agreement); and
  - (ii) it has complied and will comply with the Privacy Act (whether or not actually bound by that Act) in relation to that Uploaded Personal Information including by:
    - (A) obtaining and maintaining any necessary consents from the individuals to whom the Uploaded Personal Information relates;
    - (B) providing necessary notifications to the relevant individual that his or her Personal Information will be disclosed to MX; and
    - (C) directing the relevant individuals to MX's Privacy Policy.

## 15 Updates and enhancements

MX may, but is not required to:

- (a) provide standard or progressive updates, changes or amendments to the Milk Exchange as MX sees fit to ensure proper operation and interaction of all parts of the Milk Exchange and any general enhancements that may be introduced; and
- (b) offer new services and / or features for the Milk Exchange (which may incur a different set of fees at MX's discretion), which will be subject to the terms of this Agreement.

## 16 Warranties and disclaimers

### 16.1 Milk Exchange warranties and disclaimers

- (a) The *Competition and Consumer Act (2010)* (Cth), including the Australian Consumer Law, implies certain conditions, warranties and undertakings in relation to the quality and fitness for purpose of services provided to consumers in Australia. These cannot be modified nor excluded by any contract, including this Agreement. Nothing in this Agreement purports to modify or exclude the conditions, warranties and undertakings, and other legal rights that the End User may have available under the Australian Consumer Law.
- (b) To the maximum extent permitted by Law, including the Australian Consumer Law:
  - (i) MX does not warrant or represent that the Milk Exchange:
    - (A) will operate and be available uninterrupted or error-free;
    - (B) is free from viruses or other harmful mechanisms;
    - (C) that data contained on the Milk Exchange will be accessible or backed-up; or
    - (D) will be secure; and
  - (ii) the Milk Exchange is provided on an "as is" basis without warranties and MX makes no warranties about the accuracy, reliability, completeness, or timeliness of the Milk Exchange.
- (c) All implied terms, conditions, warranties and any other additional obligations are excluded from this Agreement, to the maximum extent permitted by Law.
- (d) MX reserves the right to restrict, suspend or terminate the End User's or a User's access to the Milk Exchange at any time without notice where MX determines, in its sole discretion, that this is necessary or desirable for purposes related to the efficient, proper and lawful operation of the Milk Exchange. MX will not be responsible for any Loss that may arise as a result.
- (e) MX cannot and does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through or stored in or via the Milk Exchange by End Users.
- (f) Subject to the terms and conditions of this Agreement, MX will use commercially reasonable efforts to make the Milk Exchange available, subject to the need to conduct scheduled and emergency maintenance from time to time.
- (g) To the maximum extent permitted by Law, including the Australian Consumer Law, the End User agrees that:
  - (i) MX makes no warranties or representations (including as to non-infringement) with respect to any Seller's Offer, Buyer's Bid, Buyer's Offer, Seller's Bid or Contract (whether that be the End User Data of a Seller and / or a Buyer); and
  - (ii) it will not bring any claims against MX in connection with any Seller's Offer, Buyer's Bid, Buyer's Offer, Seller's Bid or Contract including (without limitation) their reliability, accuracy or completeness.

### 16.2 Contract warranties and disclaimers

To the maximum extent permitted by Law, including the Australian Consumer Law, MX does not make any warranties or representations as to:

- (a) the quality or safety of Dairy Product offered by Sellers on the Milk Exchange;
- (b) the quality, truth, accuracy or currency of any Seller's Offer or Buyer's Offer published or accessible on the Milk Exchange;
- (c) the ability of Sellers to supply Dairy Product to Buyers;
- (d) the ability of Buyers to make payment to Sellers;
- (e) whether a Seller or a Buyer will complete a Contract or their suitability or ability to do so; or



- (f) the performance or completion of any obligations of a Seller or a Buyer under a Contract or under any subsequent contract entered into by a Seller or a Buyer.

**17 End User warranties where End User is acting as a Seller**

- (a) By a Seller making a Seller's Offer, Seller's Bid or entering into a Contract, the Seller represents and warrants to MX that:
- (i) it has the legal and beneficial ownership of the Dairy Product (or the right to deal with the beneficial ownership of the Dairy Product) and that the ownership is unencumbered, or, if the Seller's ownership or right to deal with it is encumbered, the Seller has the requisite authority from the third party holding the encumbrance to deal with the Dairy Product in accordance with this Agreement;
  - (ii) the specifications contained in the Seller's Offer or Seller's Bid are true, accurate and not misleading in any way; and
  - (iii) if the Seller operates a dairy farm:
    - (A) the Seller adheres to best practice described in the Dairy Product Policy;
    - (B) the dairy farm is operated in accordance relevant Laws, regulations and codes of practice;
    - (C) all Farm Milk supplied will comply with the Dairy Product Policy, relevant Laws, regulations and codes of practice and good industry practice and will meet or exceed the specifications required for that Farm Milk supply;
    - (D) the Farm Milk will not be adulterated, tainted or contaminated in any way; and
    - (E) all licences, approvals and permits have been obtained and are maintained.

**18 Insurance**

The End User is responsible for maintaining appropriate insurances related to product and public liability relevant to the activities that will be undertaken on Milk Exchange. Evidence of appropriate insurances must be provided to MX upon request.

**19 Indemnity and liability**

- (a) Without limitation to the other provisions of this clause 19, the End User will defend, indemnify and hold harmless MX and its Related Bodies Corporate from and against any and all Loss, including all claims, suits, losses, damages, liabilities, costs and expenses brought by third parties, resulting from or relating to:
- (i) a breach by the End User (including its Users) of any provision of this Agreement or any representation or warranty given to MX;
  - (ii) any claim that the End User Data, as provided by or on behalf of the End User, infringes or misappropriates the rights (including Intellectual Property Rights) of any third party; or
  - (iii) any misuse of the Milk Exchange of any kind.
- (b) Without limitation to the other provisions of this clause 19, to the maximum extent permitted by Law, including the Australian Consumer Law, where MX is acting as a Seller's agent in accordance with clause 5:
- (i) in no event will MX or its Related Bodies Corporate be liable for, and the End User irrevocably releases MX and its Related Bodies Corporate from, any direct or indirect loss, damage or expense – irrespective of the manner in which it occurs – which may be suffered due to MX's provision of the Agency Services (including in relation to any delays in MX communicating with prospective Buyers on the Seller's behalf); and
  - (ii) The End User will defend, indemnify and hold harmless MX and its Related Bodies Corporate from and against any and all Loss, including all claims, suits, losses, damages, liabilities, costs and expenses brought by third parties, resulting from or relation to:
    - (A) any false, inaccurate or misleading information (including instructions or directions) in relation to the Agency Services provided by the End User to MX; and
    - (B) the performance of the Agency Services by MX provided that the Loss is not suffered as a result of MX's own negligence, wilful misconduct or fraud.
- (c) Without limitation to the other provisions of this clause 19, to the maximum extent permitted by Law, including the Australian Consumer Law:
- (i) in no event will MX or its Related Bodies Corporate be liable for, and the End User irrevocably releases MX and its Related Bodies Corporate from, any direct or indirect loss, damage or expense – irrespective of the manner in which it occurs – which may be suffered due to:
    - (A) the End User's (including its Users') use of the Milk Exchange including where the End User (or its Users) enters into a Contract with a Seller or a Buyer (as applicable);
    - (B) inaccessibility of the Milk Exchange; and / or
    - (C) the fact that certain information or materials contained on the Milk Exchange are incorrect, incomplete or not current, including (without limitation) the End User Data;
  - (ii) if the End User is a Buyer, MX's maximum liability in the aggregate arising out of or in connection with this Agreement and the Milk Exchange, whether in contract, tort, breach of warranty or otherwise, will not exceed an amount equivalent to the Fees paid or payable by the End User to MX in the 12 month period prior to the claim; and
  - (iii) if the End User is a Seller, MX's maximum liability in the aggregate arising out of or in connection with this Agreement and the Milk Exchange, whether in contract, tort, breach of warranty or otherwise, will not exceed \$10,000.

**19.1 Acknowledgements by End User**

Each End User acknowledges and agrees that MX does not, by providing the Milk Exchange, provide advice or make recommendations to the End User and that it is the End User's responsibility, before making a Seller's Offer, Buyer's Bid, Buyer's Offer or Seller's Bid or entering into a Contract, to make its own assessment and evaluations, and MX is not liable in any way for any Loss (including but not limited to indirect, special or consequential loss) suffered by the End User as a result

of a decision to make, negotiate, accept or reject a Seller's Offer, Buyer's Bid, Buyer's Offer or Seller's Bid or to enter into a Contract.

## 20 Termination

### 20.1 General

- (a) If the End User (including through a User) breaches any term of this Agreement, MX may (without notice to the End User):
  - (i) terminate this Agreement or suspend the End User's access to the Milk Exchange; and
  - (ii) prevent the End User's further access to the Milk Exchange.
- (b) To the full extent permitted by Law, MX will not be responsible for Loss that may arise as a result of MX exercising its rights under this clause 20, including, without limitation, any Loss that may arise in relation to MX's deletion of the End User Data.
- (c) To the full extent permitted by Law (including the Australian Consumer Law), MX reserves the right, without obligation or liability to the End User or any third party, to take any of the following actions at MX's sole discretion at any time and for any reason without giving the End User any prior notice:
  - (i) restrict, suspend or terminate the End User's (or any of its Users') access to all or any part of the Milk Exchange (including the End User's account) temporarily or permanently; and
  - (ii) terminate the End User's account or prevent the End User (or any of its Users') from accessing all or parts of its account details or other content contained in its account temporarily or permanently, and MX will not be responsible for any, and the End User irrevocably releases MX from, Loss that may arise as a result.
- (d) MX reserves the right to discontinue provision of the Milk Exchange at any time in MX's sole and absolute discretion. MX will, where possible, seek to provide the End User with reasonable notice of such discontinuance by publication on the Milk Exchange.

### 20.2 Consequences of termination

- (a) Upon termination or discontinuance, the End User will cease all use of the Milk Exchange, and MX reserves the right to deny access to the End User to the Milk Exchange and all the End User Data.
- (b) Upon termination or discontinuance:
  - (i) the End User will be indebted to MX for the payment of any outstanding Fees and MX may set-off the amount of any such outstanding Fees from any money which is otherwise payable by MX to the End User;
  - (ii) any such Fees to MX are payable within five Business Days of the notice of termination / discontinuance (unless MX agrees otherwise in writing); and
  - (iii) the End User will cease to be a Seller or a Buyer (as the case may be) and unable to transact on the Milk Exchange.

## 21 GST

- (a) If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.
- (b) Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
- (c) If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- (d) This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.
- (e) Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST Law (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) shall have the same meaning in this clause.

## 22 Dispute Resolution

- (a) If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case a nominated representative of each affected party must promptly attempt in good faith to resolve the dispute.
- (b) If the dispute is not settled within 30 days of notification under this clause 22, the parties will, if mutually agreed, submit the dispute to mediation administered by the Australian Disputes Centre (**ADC**).
- (c) The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the ADC.
- (d) Any mediation meetings and proceedings under this clause must be held in Melbourne, Victoria or such other location as nominated by MX.
- (e) All communications during the mediation are confidential and must be treated as made in the course of compromise and settlement negotiations for the purposes of the applicable rules of evidence and any professional secrecy protections provided by applicable law.
- (f) A party must not start court proceedings in relation to a dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.
- (g) Despite the existence of a dispute or difference each party must continue to perform the Agreement.

## 23 Notices

### 23.1 Notices under this Agreement

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient in person or by fax or email to the fax number or email address last notified by the intended recipient to the sender;
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error; and
  - (iii) in the case of email, the earlier of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
    - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,
 but if the result is that a Notice would be taken to be given or made:
    - (1) in the case of delivery by hand, post or fax, at a time that is later than 5pm;
    - (2) in the case of delivery by email, at a time that is later than 5pm; or
    - (3) on a day that is not a Business Day,
 in the place specified by the intended recipient as its postal address under clause 21.1 (b), it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

### 24 Amendment to Agreement

- (a) MX may in its sole discretion modify or replace any part of this Agreement or any of the policies which are incorporated into this Agreement. MX will give the End User seven days' notice of any change by notifying the End User at the contact details supplied and publishing a notice and the amended Agreement on the Milk Exchange. The End User is responsible for checking the Milk Exchange for changes to this Agreement.
- (b) The End User's continued access to or use of the Milk Exchange following the effective date of any changes to this Agreement constitutes acceptance of those changes.

### 25 General

- (a) On termination or expiry of this Agreement or discontinuance of the service, clauses 11, 12, 14, 16, 17, 19 and 25(a) will continue in full force and effect notwithstanding any such termination or expiry.
- (b) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (c) A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (d) This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively Conduct) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.
- (e) This Agreement and the End User's use of the Milk Exchange is governed by the Laws of Victoria, Australia and the End User submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there.