



Coles Milk Purchase Agreement – Summary of changes to the terms and conditions contained in 2020/21 Milk Purchase Agreement (as compared to Coles’ 2019/20 Milk Purchase Agreement).

This is provided as a summary for discussion purposes only and is not an exhaustive list by any means. This summary does not constitute legal advice or form part of any agreement with Coles.

You should obtain independent legal advice to understand the 20/21 Milk Purchase Agreement and prior to entering into an agreement with Coles.

	NEW	AMENDED	REMOVED	CONTINUING OBLIGATIONS
Topic/Section	<i>The below column highlights key legal terms and conditions that are new under the 20/21 MPA that were not included in the 19/20 MPA.</i>	<i>The below column highlights key legal terms and conditions from the 19/20 MPA that have changed under the 20/21 MPA.</i>	<i>The below column highlights key legal terms and conditions from 19/20 MPA that no longer exist under the 20/21 MPA.</i>	<i>The below column highlights examples of legal terms and conditions from the 19/20 MPA that will continue under the 20/21 MPA.</i> <i>Please ensure you read the Agreement in full and obtain independent legal advice.</i>
Definitions	New definitions included into the Agreement, including: <ul style="list-style-type: none"> • ACCC • Arbitration Adviser • Audit Trail • Dairy Industry Code • Fair Market Price • Farmer • Location Fee • Mediation Advisor • Required Volume Milk Price • Seasonal Milk Price • State Based Levies • Stop Charge • Voluntary Deductions 	Amended the following definitions: <ul style="list-style-type: none"> • Agreement - a single document, relevant policies are physically attached. • Term – removed the ability to negotiate a further term. • Policies and Procedures – new ethical sourcing policy now attached to the Agreement. • Milk Policy - now referred to as Milk Quality Program. • Milk Quality Deductions are now referred to as Milk Quality and Location Fees. 	Removed the following definitions: <ul style="list-style-type: none"> • Change of Control; • Fundamental Change. 	Please refer to the Agreement.
Good Faith	Good Faith - Inserted an explicit obligation to act in good faith, as is required by the Dairy Industry Code.			
Agreement length and termination	Cooling Off Period - Whilst this was available to the Farmer in the 19/20 Agreement, it now has its own section and referred to explicitly as a cooling off period (as outlined in the Dairy Industry Code).	Termination - The Farmer may terminate the Agreement if they intend to exit the dairy industry – notice period reduced to 45 days (previously 90).	Agreement - No longer any ability to extend the Agreement. The Agreement has a clear start and end date, meaning the parties will need to negotiate a new agreement if they wish to continue beyond the end date. Termination – removal of Coles’ explicit unilateral termination rights.	Termination - the parties continue to have a number of mutual termination rights for eg. if the other party commits a material breach of the Agreement and not remedied within 30 days. The parties may terminate or otherwise vary the agreement at any time during the Term, by mutual agreement.



Coles Milk Purchase Agreement – Summary of changes to the terms and conditions contained in 2020/21 Milk Purchase Agreement (as compared to Coles’ 2019/20 Milk Purchase Agreement).

This is provided as a summary for discussion purposes only and is not an exhaustive list by any means. This summary does not constitute legal advice or form part of any agreement with Coles.

You should obtain independent legal advice to understand the 20/21 Milk Purchase Agreement and prior to entering into an agreement with Coles.

<p>Buying the milk</p>	<p>Buying the Milk - Insertion of separate Milk Collection Start and End Date, which is separate to agreement start and end date.</p>	<p>Over Milk – now referred to as Over Milk (previously referred to as Additional Milk). If the Farmer elects to supply Coles with the Over Milk, they now have to provide Coles 45 days written notice of ceasing the supply of Over Milk (was previously 21 days).</p> <p>Previously, the Farmer received the price for the Additional Milk, under clause 12, the Farmer will now receive a separate price for the Over Milk (referred to as the Seasonal Milk Price).</p>		<p>Buying the Milk– The Farmer must still provide the milk:</p> <ul style="list-style-type: none"> • in the Required Volumes; • at or exceeding the Specifications; • for the Price; • at the Delivery Intervals; • in compliance with the Special Conditions (if any); and • in accordance with the Policies and Procedures.
<p>Collection, transport and testing of milk.</p>	<p>Milk Testing – If Milk is rejected by Coles, Coles now has an option to seek a credit from the Farmer for the difference between the Price paid to the Farmer and the fair market price that Coles was required to pay to replace the Farmer’s rejected volume.</p> <p>Fair Market Price is defined as the price per kilogram of milk solids that Coles is required to pay (acting reasonably) any third party as a result of the Farmer not being able to supply the Required Volume.</p> <p>Milk Testing– if Milk is rejected by Coles, Coles now has a right to suspend collection of the Farmer’s milk until such time as the Farmer can demonstrate compliance with the Specifications. Non-compliance with this clause constitutes a material breach of the Agreement.</p>	<p>Milk Testing – revised wording to be clearer about when milk is tested and why, in addition to inserting an obligation that Coles provide information about any test results as soon as possible to the Farmer. If any disputes arise in relation to the Milk (i.e Coles rejects the Milk), there is prescribed information that Coles must provide the Farmer with.</p>	<p>We have removed the clause regarding a change to product specifications. Any change to product specifications would have to be dealt with by clause 14 (Mutually Agreed Variation) or 15 (Variation in response to change in law).</p>	<p>Collection and Transport of Milk –Legal ownership and liability for loss and damage to the Milk passes to Coles when Coles collects the Milk from the Farm Gate.</p> <p>Defects in Milk –If either party becomes aware of a possible defect, they must immediately notify the other party in writing and both parties are required to cooperate to the fullest extent possible.</p>



Coles Milk Purchase Agreement – Summary of changes to the terms and conditions contained in 2020/21 Milk Purchase Agreement (as compared to Coles’ 2019/20 Milk Purchase Agreement).

This is provided as a summary for discussion purposes only and is not an exhaustive list by any means. This summary does not constitute legal advice or form part of any agreement with Coles.

You should obtain independent legal advice to understand the 20/21 Milk Purchase Agreement and prior to entering into an agreement with Coles.

<p>Price</p>	<p>Price – Coles now has the ability to charge a Location Fee.</p>	<p>Two separate prices for the Required Volume (Required Volume Milk Price) and the Over Milk (Seasonal Milk Price).</p> <p>The Seasonal Milk Price is the Minimum Price payable to the Farmer, pursuant to the Dairy Industry Code.</p> <p>All quality deductions are now referred to, and applied as, quality fees.</p>		<p>Prices will be listed as a schedule of monthly minimum prices.</p> <p>No retrospective step-downs or loyalty payments.</p>
<p>Other notable terms</p>	<p>Mutually Agreed Variation – new clause providing explicit right for the parties to vary the agreement in writing.</p> <p>Variation in response to a change in law – new clause, as permitted by the Dairy Industry Code of Conduct, allowing Coles to vary the Agreement if it is necessary to comply with a change in the law (as long as it does not impact the Price).</p> <p>Audit – Coles, upon giving reasonable notice to a Farmer, is able to have an independent third party auditor access and review any records forming part of the Audit Trail to determine whether the Farmer is complying with its obligations under the Agreement.</p> <p>Audit Trail is defined as all relevant electronic and paper records held by the Farmer, including (but not limited to) compliance with this Agreement and any relevant laws.</p>	<p>Dispute Resolution - New dispute resolution wording to reflect the wording in the Dairy Industry Code of Conduct. Coles has appointed a Complaints Handling Officer as per the Code (DairyCodeComplaintOfficer@coles.com.au) and the agreement now documents processes available for mediation and arbitration.</p> <p>Coles will pay for reasonable costs incurred for a dispute raised the reasonable costs of the mediator/arbitrator and the cost to the farmer for having to engage with those processes (eg. travel costs).</p>	<p>Liability and Indemnity- removal of grace period, which excused the Farmer from liability in the first year of the contract for failing to provide the Required Volume for any collection.</p>	<p>Warranties - The Farmer warrants that they (amongst other warranties) are:</p> <ul style="list-style-type: none"> legally entitled to contract the dairy farm is operated in accordance with the Policies and Procedures, any relevant laws, regulations and codes of practice and the Farmer has all necessary licences, approvals and permits required to supply the Milk to Coles. <p>Force Majeure– no material change to obligations.</p>