

Queensland



*Dairy Industry Act 1993*

# **DAIRY INDUSTRY (SCHEME FOR RESTRUCTURING DISTRIBUTION) ORDER 1993**

**Reprinted as in force on 24 December 1993  
(includes amendments up to SL No. 290 of 1993)**

**Reprint No. 1**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This order is reprinted as at 24 December 1993. As required by section 5 of the Reprints Act 1992, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the Reprints Act 1992, the reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the Reprints Act 1992, to do the following—

- use expressions consistent with current legislative drafting practice as permitted by section 29 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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RESTRUCTURING DISTRIBUTION)  
ORDER 1993**

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## **DAIRY INDUSTRY (SCHEME FOR RESTRUCTURING DISTRIBUTION) ORDER 1993**

[as amended by all amendments that commenced on or before 24 December 1993<sup>2</sup>]

### **PART 1—PRELIMINARY**

#### **Short title**

1. This order may be cited as the *Dairy Industry (Scheme for Restructuring Distribution) Order 1993*<sup>3-4</sup>.

#### **Objective**

2. The object of this order is to establish a scheme for restructuring the distribution of dairy produce by the holders of vendors' licences.

#### **Definitions**

3. In this order—

**“calculated consideration”** for the distribution rights of a vendor means—

- (a) the consideration calculated by the Authority under Part 2; or
- (b) the consideration that is the calculated consideration under section 5(2);

subject, however, to any reduction that applies under section 13(2);

**“distribution rights”** means the rights conferred by a vendor's licence to the milk run in respect of which the licence is issued;

**“licence”** means a vendor's licence, including a vendor's licence under the former Act;

**“milk distribution business”** means the business conducted under a

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vendor's licence;

**“nonparticipating vendor”** means a vendor who is not a participating vendor;

**“participating vendor”** has the meaning given by section 5;

**“region”** means a region under section 4;

**“scheme”** means the scheme for the acquisition, restructuring and leasing of milk runs established by this order;

**“supermarket”** means—

(a) a retail business operating under any of the following business names—

- (i) Bi-lo;
- (ii) Coles;
- (iii) Coles Fossey;
- (iv) Food-for-less;
- (v) Franklins;
- (vi) Hypermarket;
- (vii) K-Mart;
- (viii) Woolworths; or

(b) any similar business classified as a supermarket by the Authority;

**“vendor”** means the holder of a vendor's licence.

## **Regions**

**4.(1)** For the purposes of this order, Queensland is divided into the following regions—

<b>Region</b>	<b>Code No.</b>
Gold Coast	1
Brisbane	2
Sunshine Coast	3

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Toowoomba	4
Gympie	5
Maryborough	6
Balance of South East Queensland	7
Bundaberg	8
Gladstone	9
Rockhampton	10
Mackay	11
Balance of Central Queensland	12
Townsville	13
Cairns	14
Balance of North Queensland	15
Western Queensland	16

(2) The regions are as shown in Schedule 1.

### **Meaning of “participating vendor”**

**5.(1)** A “participating vendor” is a vendor—

- (a) who, on receiving the Authority’s offer of a calculated consideration for the vendor’s distribution rights under section 10(1), indicated a desire, by written notice to the Authority under section 10(2), to participate in the scheme; or
- (b) who is a participating vendor under subsection (2).

**(2)** If—

- (a) the Authority made, in anticipation of this order, an offer to a vendor for the vendor’s distribution rights; and
- (b) the offer was for a consideration calculated on a basis consistent with this order; and
- (c) the vendor, after receiving the offer, but before the commencement of this order, indicated a desire to participate in

the scheme;

the vendor is a participating vendor for the purposes of this order and the consideration mentioned in the offer is the calculated consideration for the purposes of this order.

## **PART 2—ACQUISITION OF MILK RUNS**

### **Acquisition of milk runs**

**6.** The Authority may acquire from a participating vendor the rights of the vendor to the milk run in respect of which the vendor is authorised by the licence to sell dairy produce (the vendor's "**distribution rights**").

### **Calculation of consideration for acquisition**

**7.** The Authority is to calculate the consideration for the acquisition of the distribution rights of a vendor by multiplying the average weekly literage by the calculated price per weekly litre of the milk run.

### **Average weekly literage**

**8.(1)** The average weekly literage on which the calculation of consideration is to be based is a quantity (expressed in litres per week), determined by the Authority, representing the average quantity per week of pasteurised milk sold by the vendor over the period beginning on 1 July 1992 and ending on 31 December 1992.

**(2)** The Authority is to base its determination of the average weekly literage of a particular milk run on—

- (a) information about the volume of sales of pasteurised milk provided by the vendor; and
- (b) information about the volume of sales of pasteurised milk to the vendor provided by the processor that supplied the vendor with market milk.



(3) If there is a discrepancy of more than 5% between the volume of sales indicated by the information supplied by the vendor and the information supplied by the processor, the Authority's determination is to be based on the information provided by the processor unless the vendor produces documentary evidence corroborating the information provided by the vendor.

### **Calculated price per weekly litre**

9.(1) The calculated price per weekly litre of a milk run is to be determined as follows—

(a) if—

- (i) the milk distribution business was purchased by the vendor since 1 January 1985; and
- (ii) it is possible to determine a price per weekly litre for the milk run on the basis of the consideration for the sale, and the average weekly literage as at the time of the sale;

the calculated price per weekly litre is to be an amount determined by the Authority on the basis of the consideration for the sale and the average weekly literage as at the time of the sale;

- (b) in any other case—the calculated price per weekly litre is to be the relevant regional average price per weekly litre of milk runs in the region determined by the Authority on the basis of the consideration paid for milk distribution businesses sold since 1 January 1985 in the relevant region and the average weekly literage of each business as at the time of sale.

(2) In determining—

- (a) the calculated price per weekly litre of a particular milk run; or
- (b) the average price per weekly litre of milk runs within a particular region on the basis of the consideration for a milk distribution business or milk distribution businesses sold since 1 January 1985;

the Authority must disregard any component of the consideration referable to premises, plant, equipment or vehicles, and if the contract of sale does not

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differentiate between the value of the milk run and the value of premises, plant, equipment or vehicles, the Authority may have a valuation made, or make an estimate, of the value of premises, plant, equipment and vehicles.

(3) If the Authority considers it appropriate to do so, the Authority may assign an arbitrary value to plant, equipment or vehicles under subsection (2).

(4) The Authority may base its determination of the average weekly literage of a milk run at the time of sale on information shown in an application for the grant or transfer of a vendor's licence in relation to the relevant milk run or if there is in the Authority's opinion some good reason for not making its determination on that basis—

- (a) the estimated weekly literage as shown in the contract of sale (but the determination is not to be based on the contract if the purchaser establishes a variance of more than 5% between the weekly literage as shown in the contract and the actual average weekly literage); or
- (b) the quantities of pasteurised milk sold to the holder of the vendor's licence in the period preceding the date of the sale as recorded by the relevant processor; or
- (c) the quantities of pasteurised milk sold to the holder of the vendor's licence in the period of 4 weeks following the date of the sale as recorded by the relevant processor.

**Notification of calculated consideration to vendors**

**10.(1)** After the Authority determines the calculated consideration for the distribution rights of a vendor, the Authority must give the vendor written notice of its determination and offer to acquire the vendor's distribution rights under this order on the basis of that calculated consideration.

(2) A vendor must within 7 days after receiving the Authority's offer indicate, by written notice to the Authority, whether the vendor desires to participate in the scheme.

(3) If—

- (a) the Authority made an offer to a vendor in anticipation of this order; and

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- (b) the vendor, after receiving the offer, but before the commencement of this order—
  - (i) gave written notice to the Authority of a desire to participate in the scheme; or
  - (ii) gave written or oral notice to the Authority of a desire not to participate in the scheme;

no notice or offer to the vendor is required of the Authority under subsection (1), and no notice is required of the vendor under subsection (2).

(4) If a participating vendor is not satisfied that the consideration offered by the Authority has been correctly determined, the vendor may apply for a review of the calculated consideration.

(5) The review is to be conducted by a committee established for the purpose by the Authority.

(6) On the review the review committee may confirm or vary the Authority's determination.

### **Notice of acquisition**

11.(1) The Authority may, by notice of acquisition given to a participating vendor, acquire the vendor's distribution rights.

(2) The acquisition takes effect (and the distribution rights vest, by force of this order, in the Authority) on a date stated in the notice.

### **General condition of offers and notices of acquisition**

12.(1) Any offer made by the Authority for the acquisition of a vendor's distribution rights (either in anticipation of this order or under this order), and any notice of acquisition issued under this order, is subject to a condition precedent that the Authority will succeed in raising the loan finance that it requires for carrying the scheme into effect on terms that the Authority considers satisfactory.

(2) The Authority may, by Gazette notice, rescind—

- (a) all offers made by the Authority (before or after the commencement of this order) for the acquisition of vendors'

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distribution rights; and

- (b) the notices of acquisition (if any) issued under this order;

on the ground that the Authority has not succeeded in raising the loan finance that it requires for carrying the scheme into effect on terms that the Authority considers satisfactory.

- (3) A notice under subsection (2)—

- (a) rescinds an offer (even though the offer may have been accepted by a vendor), and extinguishes any rights that might otherwise have been founded on the offer or on its acceptance; and
- (b) rescinds all notices of acquisition issued under this order before the date of the notice, and extinguishes any rights that might otherwise have been founded on the notices.

### **Payments to participating vendors**

**13.(1)** The consideration for the distribution rights of participating vendors is to be paid as follows—

- (a) a payment equivalent to 69.7752% of the calculated consideration is to be paid within 14 days after the date of acquisition specified in the notice of acquisition;
- (b) the balance of the consideration is to be paid on or about 31 March 1994.

(2) However, if the funds available to the Authority for the purpose of acquiring distribution rights from participating vendors are insufficient to pay the whole of the balance of the calculated consideration, there is to be a rateable reduction in the second payment to be made to participating vendors under subsection (1) and a corresponding reduction in the calculated consideration payable for the distribution rights of participating vendors.

(3) A determination by the Authority of the amount of the funds available to the Authority for the acquisition of distribution rights is to be taken, in any legal proceedings, as conclusive evidence of the amount.

(4) The Authority may defer a payment to a participating vendor who has not paid all amounts due to a processor until the Authority is satisfied that the vendor has paid the amounts or has entered into an arrangement with the

processor for the payment of the amounts.

### **Mortgages and charges**

**14.(1)** If a licence is subject to a mortgage or charge, the mortgage or charge extends to the vendor's entitlement to payment for distribution rights, conferred by the licence, that are acquired under this order.

**(2)** If the Authority has notice of a mortgage or charge to which a vendor's entitlement is subject under this section, the Authority must not make the payment to the vendor unless—

- (a) the holder of the mortgage or charge consents; or
- (b) the Authority is satisfied that the vendor has extended the mortgage or charge, or granted a fresh mortgage or charge, over a licence of equal or greater value; or
- (c) a Magistrates Court orders the payment under subsection (3).

**(3)** A Magistrates Court may, on the application of the Authority or any other interested person, resolve any question about the payment of money under an entitlement affected by a mortgage or charge, and make any consequential orders that may be appropriate in the circumstances of the particular case.

## **PART 3—RESTRUCTURING OF MILK RUNS**

### **Restructuring of milk runs**

**15.(1)** The Authority is to restructure the distribution rights acquired under this order to form milk runs of the following categories—

- (a) Category A—a milk run consisting of a list of supermarkets to which the vendor who holds a vendor's licence in respect of the milk run is authorised to sell dairy produce;
- (b) Category B—a milk run consisting of a list of businesses (not including supermarkets) to which the vendor who holds a

vendor's licence in respect of the milk run is authorised to sell dairy produce;

- (c) Category C—a milk run consisting of either or both of—
  - (i) a list of streets or a residential area defined in some other way in which the vendor who holds a vendor's licence in respect of the milk run is authorised to sell dairy produce; or
  - (ii) a list of businesses that are small commercial consumers of dairy produce to which the vendor who holds a vendor's licence in respect of the milk run is authorised to sell dairy produce;
- (d) Category D—a milk run consisting of a combination of the above categories or any 2 of those categories.

(2) For the purposes of subsection (1)(c), a business is a small commercial consumer of dairy produce if the business—

- (a) buys not more than 80 L of pasteurised milk per week; and
- (b) does not sell the milk by retail in the form in which it is purchased.

### **Leasing of restructured milk runs**

**16.(1)** On completing the restructuring of milk runs, the Authority is to offer the restructured milk runs for lease.

(2) The term of any such lease is to extend from the date of the lease until 31 December 1998.

(3) The annual rental for leases of the restructured milk runs is to be determined by offering the leases at a public auction but if the bids at the auction for a particular milk run do not reach a reserve determined by the Authority, the Authority may re-offer the lease by public auction or lease the milk run for an annual rental determined by private agreement with a prospective lessee.

(4) However, the annual rental payable by a lessee of a milk run of Category C may be determined by private agreement with the prospective lessee without offering the milk run for lease at a public auction.

(5) The aggregate rental for a milk run is to be payable in advance, in accordance with terms, determined by the Authority, on which the milk run is offered for lease.

(6) The Authority is to compile a catalogue of the restructured milk runs to be offered at public auction and copies of the catalogue are to be available to interested members of the public before the auction without charge.

(7) The Authority is to advertise an auction under this section to ensure that the public is given reasonable notice of the auction.

## **PART 4—CANCELLATION AND REISSUE OF VENDORS' LICENCES**

### **Cancellation of vendors' licences**

**17.(1)** All vendors' licences issued before a date (the “**restructuring date**”) determined by the Authority for the purposes of this section are, by force of this section, to be cancelled.

(2) The date or dates on which the cancellation is to take effect are to be determined by the Authority.

### **Reclassification and reissue of licences**

**18.(1)** After the restructuring date, licences are to be classified as follows—

- (a) Class A—licences issued in respect of Category A milk runs;
- (b) Class B—licences issued in respect of Category B milk runs;
- (c) Class C—licences issued in respect of Category C milk runs;
- (d) Class D—licences issued in respect of Category D milk runs;
- (e) Class E—licences of nonparticipating vendors (other than nonparticipating vendors authorised to sell only unpasteurised milk and unpasteurised cream);

- (f) Class F—licences of nonparticipating vendors authorised to sell only unpasteurised milk and unpasteurised cream.

(2) The Authority is to reissue licences of the appropriate classes to persons who have agreed to lease the restructured milk runs and to the nonparticipating vendors.

## **PART 5—FINANCING OF RESTRUCTURING SCHEME**

### *Division 1—General*

#### **Financing of restructuring scheme**

**19.(1)** The restructuring scheme is to be financed—

- (a) from rentals received from the leasing of the restructured milk runs; and
- (b) from income received by the Authority because of a condition of a price fixing order made under section 28(5) of the Act for the purpose of financing the restructuring scheme; and
- (c) from amounts borrowed by the Authority to finance the restructuring scheme; and
- (d) from any other amount that the Authority allocates to financing the scheme.

(2) The income of the Authority under subsection (1)(a) and (b), and any amount allocated to financing the scheme under subsection (1)(d)—

- (a) is to be paid into a sinking fund account established by the Authority for the purpose; and
- (b) is to be applied towards—
  - (i) the costs of implementing and administering the restructuring scheme; and



- (ii) the Authority's obligations for borrowings made to finance the restructuring scheme.

### ***Division 2—Borrowing from the National Australia Bank***

#### **Raising of loan from NAB**

**20.(1)** For the purpose of financing the restructuring scheme, the Authority may raise a capital sum (not exceeding \$60 million) by way of loan or bill finance accommodation under a financial arrangement with National Australia Bank Ltd (“NAB”).

**(2)** The Authority may issue debentures or grant any other form of security to secure its obligations under the financial arrangement.

**(3)** In particular, the Authority may, as part of the financial arrangement with NAB, enter into a deed, in the terms of Schedule 2, creating a charge over assets of the Authority.

**(4)** The charge has priority over any other mortgage, charge or other security affecting the same assets.

**(5)** If—

- (a) the Authority defaults in complying with its obligations under the financial arrangement; and
- (b) NAB appoints a receiver under the financial arrangement because of the default;

the receiver may exercise the Authority's powers to the extent provided in the financial arrangement as if the receiver were entitled to do so under an irrevocable power of attorney granted by the Authority.

#### **Non-derogation**

**21.** This Division is in addition to, and does not limit, powers that the Authority has apart from this Division.

## **PART 6—INFORMATION TO BE PROVIDED TO AUTHORITY**

### **Obligation to provide information**

**22.(1)** A participating vendor must, at the request of the Authority, provide the Authority with—

- (a) full particulars of the vendor's milk run, including a map showing the location of any businesses or institutions to which, and any streets in which, the vendor supplies pasteurised milk; and
- (b) details of the aggregate quantity of pasteurised milk sold under the vendor's licence for the period beginning on 1 July 1992 and ending on 31 December 1992; and
- (c) details of the quantities of pasteurised milk sold under the vendor's licence to—
  - (i) wholesalers; and
  - (ii) supermarkets; and
  - (iii) institutions; and
  - (iv) any other person other than an occupant of residential premises to whom milk is sold and delivered at those premises;  
over a period specified in the request; and
- (d) the name of the processor from which the vendor obtained supplies of pasteurised milk; and
- (e) copies of any accounts or invoices relating to the acquisition of pasteurised milk for sale under the vendor's licence; and
- (f) any other information specified in the request.

**(2)** A processor must, at the request of the Authority, provide the Authority with details of quantities of pasteurised milk supplied to each vendor specified in the request over the a period specified in the request.

**(3)** A person must not, without reasonable excuse, fail to comply with a request under this section.

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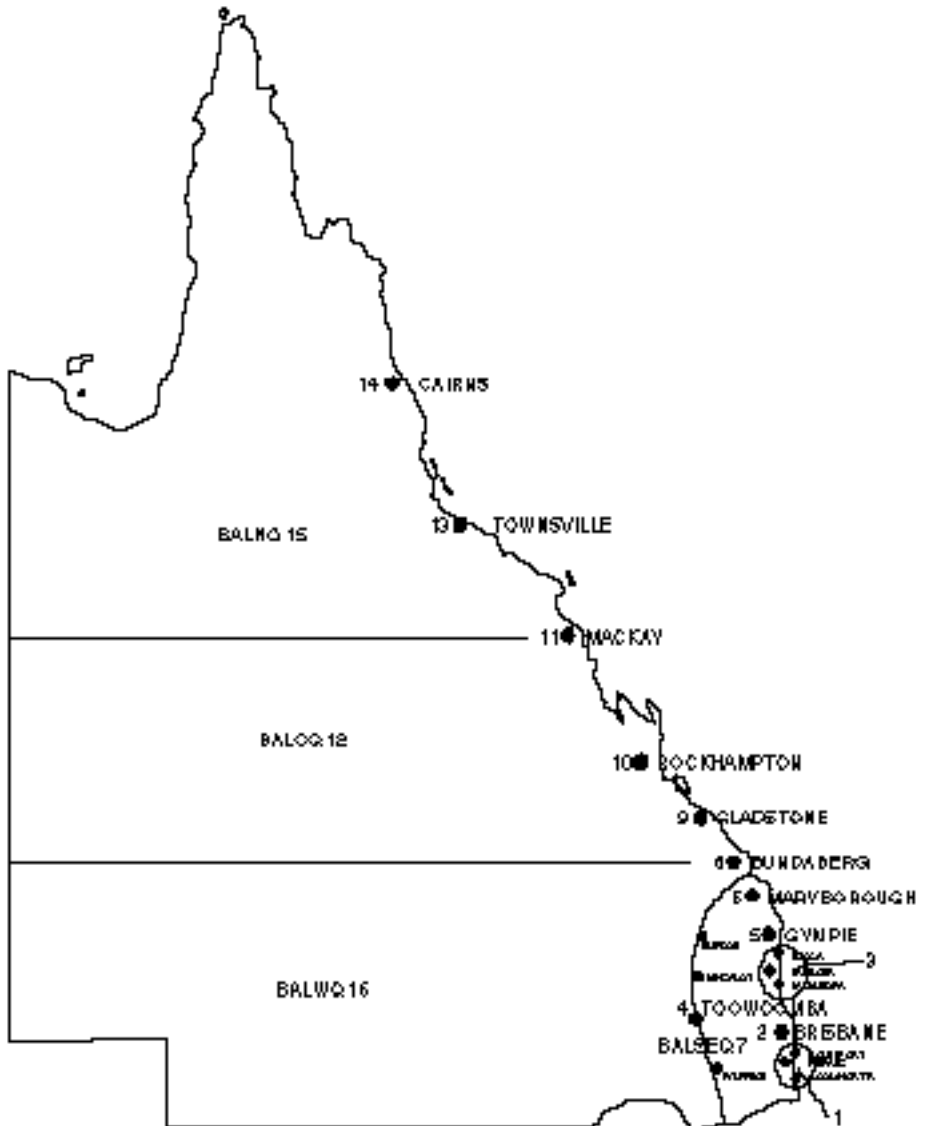
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Maximum penalty—40 penalty units.

# SCHEDULE 1

## REGIONS

section 4



## **SCHEDULE 2**

### **CHARGE OVER SPECIFIED PRICE PROPORTION DEBTS AND SINKING FUND ACCOUNT**

section 20(3)

THIS DEED is made on July 1993.

**BETWEEN:QUEENSLAND DAIRY INDUSTRY AUTHORITY**  
(ARBN) of 231 North Quay, Brisbane, Queensland  
("Chargor")

**AND:NATIONAL AUSTRALIA BANK LIMITED** (ACN  
004 004 937) of 255 Adelaide Street, Brisbane, Queensland  
("Chargee")

#### **1. INTERPRETATION**

**1.1** The following words have these meanings in this charge unless the contrary intention appears.

**"Act"** means the *Dairy Industry Act 1993* (Queensland).

**"Agreement"** means the Bill Acceptance and Discount Facility Agreement between the Chargor and the Chargee dated on or about the date of this Charge.

**"Authorised Officer"** means—

- (a) in the case of the Chargee, a director, secretary or an officer whose title contains the word 'manager' or a person performing the functions of any of them; and
- (b) in the case of the Chargor, the Chairman, Secretary or a person appointed by the Chargor to act as an Authorised Officer for the purpose of this Charge.

SCHEDULE 2 (continued)

**“Collateral Security”** means a present or future Security Interest (other than this charge), guarantee or indemnity given by the Chargor or another person to secure or otherwise provide for the payment of the Secured Money including, without limitation, the documents identified in item 1 of the Schedule.

**“Encumbrance”** means any Security Interest, notice under sections 218 or 255 of the *Income Tax Assessment Act 1936* (Cwth) or under section 38 of the *Sales Tax Assessment Act 1992* (Cwth) or under any similar provisions of a State, Territory or Commonwealth law, profit a prendre, easement, restrictive covenant, equity, interest, garnishee order, writ of execution, right of set-off, lease, licence to use or occupy, assignment of income or monetary claim, and any agreement to create any of them or allow them to exist.

**“Event of Default”** has the meaning given to it in clause 11.1.

**“Insolvency Event”** means the happening of any of these events—

- (a) an application is made to a court for an order (which, in the case of an order in respect of the Chargor, is not dismissed within 10 days of such application being made) or an order is made that a body corporate be wound up; or
- (b) an application is made to a court for an order (which, in the case of an order in respect of the Chargor, is not dismissed within 10 days of such application being made) appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent on terms approved by the Chargee, a body corporate 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 it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Chargee or is otherwise wound up or dissolved; or

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SCHEDULE 2 (continued)

- (e) a body corporate is or states that it is unable to pay its debts when they fall due; or
- (f) as a result of the operation of section 459F(1) of the Corporations Law, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate is, or makes a statement from which it may be reasonably deduced by the Chargee that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Law; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**“Nominated Signatory”** means a person nominated by the Chargee as a signatory to the Sinking Fund Account.

**“Price Order”** means a price fixing order for market milk (as defined in the Act) imposed under section 28 of the Act.

**“Receiver”** means a person or persons appointed under or by virtue of this charge as receiver or receiver and manager.

**“Related Entity”** of an entity means another Entity which is related to the first within the meaning of section 50 of the Corporations Law or is in any economic entity (as defined in any approved accounting standard) which contains the first.

**“Relevant Documents”** means all documents and records in connection with the Specified Price Proportion Debts which exist at the date of this charge or come into existence after the date of this charge including, without limitation, books of account, invoices, statements, ledger cards, computer software and records and other media relating to the

SCHEDULE 2 (continued)

Specified Price Proportion Debts.

**“Restructuring Order”** means a restructuring order under section 47 of the Act.

**“Secured Money”** means all amounts which at any time for any reason or circumstance in connection with the Agreement or this deed or any transaction contemplated by either of them or any swap, hedging or other money market transaction relating to the Facility (as defined in the Agreement) whether at law, in equity, under statute or otherwise—

- (a) are payable, are owing but not currently payable, are contingently owing, or remain unpaid by the Chargor to the Chargee; or
- (b) have been advanced or paid by the Chargee—
  - (i) at the express or implied request of the Chargor; or
  - (ii) on behalf of the Chargor; or
- (c) have been advanced or paid by the Chargee or which the Chargee is liable to pay by reason of any act or omission of the Chargor; or
- (d) are reasonably foreseeable as likely, after that time, to fall within any of paragraphs (a), (b) or (c) above;

but does not include an amount which is payable under a covenant or stipulation which is void under section 261 of the *Income Tax Assessment Act 1936* (Cwth). A reference to “Secured Money” includes any part of it.

This definition applies—

- (i) irrespective of the capacity of the Chargor or the Chargee;
- (ii) whether the Chargor or Chargee is liable as principal debtor or surety or otherwise;
- (iii) whether the Chargor is liable alone, or jointly, or jointly and severally with another person;
- (iv) whether the Chargee is the original obligee or an assignee of the Secured Money and whether or not—
  - (A) the assignment took place before or after the delivery of this charge; or



SCHEDULE 2 (continued)

- (B) the Chargor consented to or was aware of the assignment; or
- (C) the assigned obligation was secured;
- (v) whether the Chargee is the original chargee or an assignee of the original chargee and whether or not the Chargor consented to or was aware of the assignment.

**“Secured Property”** means all the right, title and interest of the Chargor in—

- (a) all Specified Price Proportion Debts which exist at any time; and
- (b) any cash, cheque or negotiable instrument received in satisfaction of the obligation to pay any Specified Price Proportion Debts; and
- (c) the Sinking Fund Account; and
- (d) the Relevant Documents.

A reference to “Secured Property” includes any part of it.

**“Security Interest”** means any bill or sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

**“Sinking Fund Account”** means the account specified in item 2 of the schedule or any other account opened in the name of the Chargor with the Chargee and designated by the Chargee as the sinking fund account for the purpose of this charge.

**“Specified Price Proportion”** means the proportion of the price fixed pursuant to a Price Order which is to be collected and used by the Chargor to satisfy all of its obligations to the Chargee under this Charge and the Agreement.

**“Specified Price Proportion Debt”** means any debt or receivable owing or payable to the Chargor by any person in respect of the Specified Price Proportion.

**“Taxes”** means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including, without limitation, stamp and transaction duties) (together with any related interest,

SCHEDULE 2 (continued)

penalties, fines and expenses in connection with them), except if imposed on the overall net income of the Chargee, and except an amount payable under a covenant or stipulation which is void under section 261 of the *Income Tax Assessment Act 1936* (Cwth).

**1.2** In this charge unless the contrary intention appears—

- (a) a reference to this charge or another instrument includes any variation of replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word ‘person’ includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of 2 or more persons binds them jointly and severally;
- (h) a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the Corporations Law, Schedule 5 to the Corporations Regulations and, if not inconsistent with those accounting standards and that schedule, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;
- (i) a reference to any thing (including, without limitation, the Secured Money, any other amount and the Secured Property) is a reference to the whole and each part of it and a reference to a group of persons (including, without limitation, the Chargor) is a reference to all of them collectively, to any two or more of them

SCHEDULE 2 (continued)

collectively and to each of them individually;

- (j) references in this deed to the Chargor include references to the Queensland Dairy Authority to be established under the Act.

**1.3** Headings are inserted for convenience and do not affect the interpretation of this charge.

**1.4** If a provision of this charge is inconsistent with a provision of another agreement between the Chargor and the Chargee the provision of this charge prevails.

## **2. CONSIDERATION**

The Chargor acknowledges giving this charge and incurring obligations and giving rights under this charge for valuable consideration received from the Chargee.

## **3. CHARGE AND AGREEMENT TO MORTGAGE**

**3.1** The Chargor, as beneficial owner, charges all of the Secured Property to the Chargee as security for payment of the Secured Money.

**3.2** Without affecting the charge set out in clause 3.1, the Chargor, as beneficial owner, agrees to absolutely assign all of the Secured Property to the Chargee as security for payment of the Secured Money immediately on being requested by the Chargee to do so.

## **4. NATURE AND OPERATION OF FIXED CHARGE**

### **Nature of Charge**

**4.1** This Charge is a fixed charge over the Secured Property.

SCHEDULE 2 (continued)

**4.2** The Chargor and the Chargee agree to immediately on execution of this charge open the Sinking Fund Account. The Chargor and the Chargee agree to operate the Sinking Fund Account in the manner set out in clauses 4.3 and 4.4.

**Sinking Fund Account**

**4.3** The Chargor acknowledges that—

- (a) the signatories to the Sinking Fund Account are to comprise—
  - (i) a Nominated Signatory; and
  - (ii) a person nominated by the Chargor; and
- (b) the Nominated Signatory must be a signatory to any requested withdrawal from the Sinking Fund Account.

**Rights of Chargee**

**4.4** At any time the Chargee (without giving any notice under any statute or otherwise) may—

- (a) exercise all rights in connection with the Secured Property; and
- (b) operate the Sinking Fund Account by the signature only of the Nominated Signatory.

**Collection of Specified Price Proportion Debts**

**4.5** The Chargor agrees to—

- (a) collect the Specified Price Proportion Debts as agent for the Chargee; and
- (b) deposit anything referred to in paragraph (b) of the definition of Secured Property to the credit of the Sinking Fund Account.

**4.6** The Chargee may notify the Chargor at any time that—

- (a) the Chargor is prohibited from collecting Specified Price

SCHEDULE 2 (continued)

Proportion Debts; and

- (b) the Chargee intends to collect the Specified Price Proportion Debts.

**4.7** If a notice is given under clause 4.6 then the Chargor agrees to—

- (a) the Chargee collecting the Specified Price Proportion Debts and notifying debtors of the Chargee's interest in the Specified Price Proportion Debts; and
- (b) use its best endeavours in assisting the Chargee to collect the Specified Price Proportion Debts.

## **5. RESTRICTIONS ON DEALING WITH SECURED PROPERTY**

**5.1** The Chargor may not, without the consent of the Chargee—

- (a) dispose of, deal with or part with possession of any interest in the Secured Property; or
- (b) create or allow to come into existence an Encumbrance or Security Interest which affects the Secured Property.

**5.2** If the Chargor creates or allows to exist a Security Interest over the Secured Property without the consent of the Chargee, then, despite anything contained in this charge, any Collateral Security, or any other agreement in connection with the provision of the Secured Money—

- (a) the Chargor must immediately procure that; and
- (b) the Chargee need not provide any further accommodation which would form part of the Secured Money until the Chargor procures that,

a priority agreement is entered into between the persons and in the form acceptable to the Chargee. The Chargee's other rights which arise if the Chargor so creates or allows to exist a Security Interest are not affected by this clause.

SCHEDULE 2 (continued)

## **6. PAYMENTS, INTEREST AND CURRENCY CONVERSION**

### **Payments**

**6.1** The Chargor agrees to pay that part of the Secured Money falling at any time within paragraph (a), (b), or (c) of the definition of “Secured Money” to the Chargee without set-off or counterclaim and without deduction for Taxes—

- (a) if an Event of Default has not occurred, then—
  - (i) in accordance with any agreement which imposes the obligation to pay it; or
  - (ii) in the absence of agreement, on demand and in the manner notified by the Chargee to the Chargor; or
- (b) after an Event of Default, on demand and in the manner notified by the Chargee to the Chargor.

### **Interest**

**6.2** If the Chargor need not otherwise pay interest on the Secured Money, then the Chargor agrees to pay interest on the Secured Money from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Chargee, calculated on daily balances. The rate to be applied to each daily balance is 2.5% per annum above the chargee’s base lending rate on that day. The Chargee may notify a different rate for each day during the period.

**6.3** Interest payable under clause 6.2 which is not paid when due for payment may be capitalised by the Chargee at intervals which the Chargee determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in clause 6.2.

**6.4** The Chargor’s obligation to pay the Secured Money on the date it becomes due for payment is not affected by clauses 6.2 and 6.3.

SCHEDULE 2 (continued)

**6.5** Unless otherwise agreed by the Chargor, the Chargor need not pay interest under clauses 6.2 or 6.3 in relation to a debt assigned to the Chargee which forms part of the Secured Money but this does not affect any other obligation of the Chargor to pay interest on that debt.

**6.6** If a liability under this charge becomes merged in a judgment or order, then the Chargor agrees to pay interest to the Chargee on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in clause 6.2.

**Currency Conversion**

**6.7** If an amount is due in a currency and the Chargee receives payment in another currency, then the Chargee may convert the amount received into the due currency at the spot rate at which the Chargee is able to purchase the due currency with the amount received at the time of its receipt. The Chargor satisfies its obligation to pay in the due currency only to the extent of the amount of the due currency purchased after deducting the costs of conversion. The Chargor acknowledges that it may be necessary for the Chargee to convert amounts received through a currency other than the due currency to ascertain the equivalent in the due currency of the amount received.

**7. OTHER COVENANTS BY CHARGOR**

**7.1** The Chargor agrees to—

- (a) pay on time all amounts payable now or in the future in connection with the Secured Property; and
- (b) keep the Relevant Documents in good condition; and
- (c) protect the Relevant Documents from theft, loss or damage; and
- (d) at the Chargee's request, promptly rectify defects in the condition of the Relevant Documents; and

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SCHEDULE 2 (continued)

- (e) comply on time with all its obligations in connection with the Secured Property including, without limitation, laws and requirements and orders of authorities; and
- (f) comply on time with all its obligations in connection with any agreement which imposes an obligation to pay the Secured Money; and
- (g) comply on time with its obligations in connection with any Encumbrance over the Secured Property other than this charge; and
- (h) deposit with the Chargee immediately or as soon as the Chargor receives them, copies of—
  - (i) anything evidencing a Security Interest and any document of title given to the Chargor to secure the payment of the Secured Property; and
  - (ii) any documents of title relating to the Secured Property; and
- (i) comply on time with terms attaching to any approval or consent given by the Chargee in connection with this charge; and
- (j) give promptly to the Chargee the information and documents which the Chargee requests from time to time in connections with—
  - (i) this charge; or
  - (ii) the property or financial condition of the Chargor including, without limitation, copies of the Relevant Documents; and
- (k) do everything necessary to ensure that no Event of Default occurs; and
- (l) whenever requested by the Chargee, promptly provide the Chargee with a certificate signed by an Authorised Officer of the Chargor which states whether an Event of Default or event which with the giving of a valid notice which is not fulfilled or lapse of time and non-fulfilment of any condition would be likely to become an Event of Default continues unremedied; and
- (m) notify the Chargee promptly after it occurs of full details of an



SCHEDULE 2 (continued)

Event of Default or an event which with the giving of a valid notice which is not fulfilled or lapse of time and non-fulfilment of any condition would be likely to become an Event of Default, and the steps taken to remedy it; and

- (n) obtain and renew on time and comply with the terms of each authorisation necessary to enter into this charge, observe obligations under it and allow it to be enforced; and
- (o) notify the Chargee promptly if any representation or warranty made or taken to be made by or on behalf of the Chargor in connection with this charge is found to be incorrect or misleading in any material respect when made or taken to be made.

**7.2** The Chargor may not—

- (a) increase or allow to be increased the amount secured by a Security Interest in the Secured Property other than this charge; and
- (b) do or omit to do anything or knowingly permit or cause anything to be done or omitted which could mean in the reasonable opinion of the Chargee that the Secured Property, this charge or a Collateral Security is or is likely to become materially lessened in value or prejudicially affected.

**Further assurances**

**7.3** The Chargor agrees to—

- (a) execute in favour of the Chargee, or as the Chargee directs, and in form stipulated by the Chargee, further documents, including, without limitation, Security Interests; and
- (b) do the things the Chargee reasonably stipulates,

to provide more effective security to the Chargee over the Secured Property for the payment of the Secured Money and to enable the chargee to exercise its rights in connection with the Secured Property.

**7.4** The Chargee or an Authorised Officer of the Chargee may fill in any

SCHEDULE 2 (continued)

blanks in this charge and complete in favour of the Chargee or anyone purchasing under the powers given by this charge any instrument executed by or on behalf of the Chargor in blank and deposited with the Chargee in connection with this charge.

**7.5** The Chargee may register this charge at the Chargor's expense as a charge on any appropriate register and the Chargor agrees to obtain all requisite consents under any security Interest over property of the Chargor created prior to this charge. The Chargor agrees to procure execution of all documents required by the Chargee which are necessary to register this charge.

**8. CHARGEES RIGHT TO RECTIFY**

The Chargee may do anything which should have been done by the Chargor under this charge but which has not been done or which the Chargee considers has not been done properly.

**9. CHARGEES RIGHT TO ENTER**

**9.1** A person authorised by the Chargee may enter at all times on land or buildings owned or occupied by the Chargor to—

- (a) inspect the Secured Property; or
- (b) determine whether the terms of this charge are being complied with; or
- (c) inspect and take copies of records relating to the Secured Property including, without limitation, the Relevant Documents; or
- (d) investigate the affairs and financial position of the Chargor; or
- (e) exercise the rights of the Chargee under clause 8.

**9.2** The Chargee agrees to give the Chargor reasonable notice of entry. The Chargor agrees to give the person authorised to enter reasonable assistance including, without limitation, obtaining any necessary consent.

SCHEDULE 2 (continued)

**10. REPRESENTATIONS AND WARRANTIES**

**10.1** The Chargor represents and warrants that—

- (a) it has good title to the Secured Property free of Encumbrances; and
- (b) it has fully disclosed in writing to the Chargee all facts relating to the Chargor, this charge, the Secured Property and anything in connection with them which are material to the assessment of the nature and amount of the risk undertaken by the Chargee in entering into this charge and doing anything in connection with it; and
- (c) no Event of Default or event which with the giving of a valid notice which is not fulfilled or lapse of time and non-fulfilment of any condition would be likely to become an Event of Default continues unremedied; and
- (d) it does not hold any interest in the Secured Property as a trustee.

**10.2** These representations and warranties are taken to be also made on each Drawdown Date and each Rollover Date (as defined in the Agreement).

**11. DEFAULT**

**11.1** An Event of Default occurs if—

- (a) an Event of Default (as defined in the Agreement) occurs; or
- (b) this charge—
  - (i) is or becomes wholly or partly void, voidable or unenforceable; or
  - (ii) loses the priority which it has at or after the date of this charge (other than by an act or omission of the Chargee),in either case, by the Chargor, by anyone on its behalf or by anyone who claims to have an interest in the Secured Property; or
- (c) the Chargor attempts to create or allows to exist an Encumbrance

SCHEDULE 2 (continued)

over the Secured Property otherwise than in accordance with this charge.

**12. APPOINTMENT OF RECEIVER**

**12.1** At any time after an Event of Default the Chargee may appoint a person or persons as receiver or receiver and manager of the Secured Property.

**12.2** The Chargee may remove a Receiver.

**12.3** If a Receiver is removed, retires or dies then the Chargee may appoint a new Receiver.

**12.4** A Receiver is the agent of the Chargor unless the Chargee notifies the Chargor that the Receiver is to act as the agent of the Chargee. The Chargor is solely responsible for anything done or not done by the Receiver, and for the Receiver's remuneration.

**12.5** The Chargee may fix the remuneration of a Receiver at an amount or rate of commission agreed between the Chargee and the Receiver or, in the absence of agreement, at an amount or rate determined by the Chargee.

**12.6** If two or more persons are appointed as Receiver of the same part of the Secured Property, then the Chargee may provide that their rights, powers and remedies vest in them jointly and severally or jointly.

**12.7** The power to appoint a receiver or receiver and manager over all of the Secured Property may be exercised whether or not a Receiver has already been appointed over part of it.

SCHEDULE 2 (continued)

**13. POWERS OF RECEIVER**

In addition to powers conferred by other provisions of this charge, by statute or by the terms of appointment, the Receiver may do one or more of the following unless they are specifically excluded by the terms of appointment at the time, in the manner and on terms (in addition to any terms expressly specified below) which the Receiver thinks fit (and the Chargee may vary these powers at any time by notice given to the Chargor and the Receiver)—

- (a) to terminate the Chargor's authority to collect the Secured Property;
- (b) to serve notice of this fixed charge on each and every debtor in relation to a Specified Price Proportion Debt and to collect, recover and sue for the Secured Property;
- (c) subject to the Receiver having first consulted with the Chargor, exercise the rights, powers and remedies of the Chargor over, in connection with or comprising part of the Secured Property (including, without limitation, the power and discretion of QDIA to amend, alter or adjust any aspect of the Specified Price Proportion or a Price Order);
- (d) subject to the Receiver having first consulted with the Chargor, manage the Secured Property;
- (e) sell, factor or discount or agree to do any of them in respect of the Secured Property on any terms, including, without limitation, the following—
  - (i) the sale, factoring or discounting may take place whether or not the Receiver has taken possession of the Secured Property;
  - (ii) the sale, factoring or discounting may be by public auction, private treaty or by tender;
  - (iii) the sale factoring or discounting may be in one lot or in parcels, and with or without special provisions about title, or time, or mode of payment of purchase money, or otherwise;
  - (iv) allow the purchase money to remain secured by a mortgage

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SCHEDULE 2 (continued)

- or charge of the property sold, or secured by other security, or without security, and on any other terms, without being responsible for any resultant loss;
- (v) enter into, rescind or vary a contract for sale, and resell without being responsible for loss, and execute assurances of the Secured Property in the name and on behalf of the Chargor or otherwise;
  - (vi) do anything to complete any sale, factoring or discounting which the Receiver considers desirable, and set aside from the proceeds of sale, factoring or discounting the amount which the Receiver considers desirable to meet future claims until the possibility of claims being made is ended;
  - (f) obtain the benefit of any agreement entered into by the Chargor (including, without limitation, by specific performance), whether or not the agreement is entered into in the exercise of the rights, powers and remedies conferred by this charge;
  - (g) institute, conduct, defend, submit to arbitration, settle, compromise or defer in the name of the Chargor or otherwise on any terms, any proceeding, claim, question or dispute in connection with the Secured Property or this charge and execute releases or other discharges in connection with them;
  - (h) delegate the Receiver's powers including this power of delegation to any person for any period;
  - (i) exchange the Secured Property with a person for an interest in other property of any tenure (with or without giving or receiving other consideration). The property so acquired may be dealt with by the Receiver as if it were part of the Secured Property and the Receiver may grant a Security Interest over that property for the payment of the Secured Money;
  - (j) do anything which should have been done by the Chargor under this charge but which has not been done or which the Receiver considers has not been done properly;
  - (k) borrow or raise from the Chargee or from another person in the name and on behalf of the Chargor or otherwise money required

SCHEDULE 2 (continued)

from time to time for any of the purposes mentioned in this clause 13 and do any ancillary act (including, without limitation, draw, accept or endorse bills of exchange), (Neither the Chargee nor any other person providing accommodation to the Receiver need enquire about the necessity or propriety of a borrowing or raising or is to be responsible for the misapplication or non-application of money borrowed or raised);

- (l) secure money borrowed or raised by Security Interest over the Secured Property so that the Security Interest ranks in priority to, equally with, or after this charge;
- (m) employ or engage persons (including, without limitation, employees of the Receiver and consultants and professional advisers) in connection with the powers conferred on the Receiver by this clause 13;
- (n) do or cause to be done anything to protect the priority of this charge, to protect the Chargor's or the Chargee's estate or interest in the Secured Property, to enforce this charge, to recover the Secured Money or to protect or enhance the Secured Property;
- (o) expend money or incur liabilities in exercising the powers conferred on the Receiver by this clause 13.

#### **14. POWERS OF CHARGE AND EXCLUSION OF STATUTORY NOTICES**

**14.1** At any time after an Event of Default the Chargee, in addition to powers conferred by other provisions of this charge or by law, may exercise any of the powers set out or referred to in clause 13 each of which is to be construed as if the reference to the Receiver were a reference to the Chargee and whether or not a receiver has been or could be appointed under this charge.

**14.2** If either the Chargee or a Receiver exercises its rights under this charge (including, without limitation, under clauses 8 or 9), exercises its rights conferred by law or takes possession of the Secured Property, then neither of them is liable to account as mortgagee in possession.

SCHEDULE 2 (continued)

**14.3** The Chargee may give up possession of the Secured Property at any time.

**14.4** The Chargee or a Receiver need not give notice or a demand to the Chargor or allow time to elapse before exercising a right, power or remedy under this charge or conferred by law, unless notice or demand or a lapse of time is required by a law which cannot be excluded. If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right, power or remedy under this charge or conferred by law may be exercised, then—

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must be permitted by the Chargee; or
- (b) when the law provides that a period of notice or lapse of time may be stipulated or fixed by this charge, one day is stipulated and fixed as that period of notice or lapse of time and, without limitation, where applicable, one day is stipulated and fixed as the period of notice or lapse of time during which—
  - (i) default must continue before a notice is given or requirement otherwise made for payment of the Secured Money or the observance of obligations under this charge; and
  - (ii) a notice or requirement for payment of the Secured Money or the observance of obligations under this charge must remain not complied with before the Chargee's rights, powers or remedies may be exercised.

**15. COSTS, CHARGES, EXPENSES AND INDEMNITIES**

**15.1** The Chargor agrees to pay or reimburse the Chargee on demand for—

- (a) the costs, charges and expenses of the Chargee in connection with the negotiation, preparation, execution, stamping, registration and completion of this charge; and
- (b) the costs, charges and expenses of the Chargee or any Receiver or



SCHEDULE 2 (continued)

attorney appointed under this charge in connection with any consent, exercise or non-exercise of rights, (including, without limitation, in connection with the contemplated or actual enforcement or preservation of any rights under this charge), waiver, variation, release, discharge or production of title documents in connection with this charge or the Secured Property; and

- (c) taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees, which may be payable or determined to be payable in connection with this charge or a payment or receipt or any other transaction contemplated by this charge; and
- (d) the costs, charges and expenses of the Chargee in connection with any enquiry by any authority involving the Chargor or any of its related entities,

including in each case, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

**15.2** The Chargor agrees that the costs, charges and expenses referred to in clause 15.1(b) and (d) include, without limitation, those payable to any independent consultant or other person appointed to evaluate any matter of concern, any agent of the Chargee, any Receiver or any attorney appointed under this charge, and, in the case of the Chargee, its administration costs in connection with any event referred to in clause 15.1(b) or (d).

**15.3** The Chargor indemnifies the Chargee against any liability or loss arising from, and any costs, charges and expenses incurred in connection with—

- (a) the payment, omission to make payment or delay in making payment of an amount referred to in clause 15.1; or
- (b) an Event of Default; or
- (c) actions, proceedings, costs, claims and demands in connection with the Secured Property (including, without limitation, those

SCHEDULE 2 (continued)

arising from the use or occupation of or presence of any person on the Secured Property),

including in each case, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

**15.4** The Chargor agrees to pay to the Chargee an amount equal to any liability, loss, costs, charges or expenses of the kind referred to in clause 15.3 suffered or incurred by any Receiver, any attorney appointed under this charge or any employee, officer, agent or contractor of the Chargee or any Receiver or attorney appointed under this charge.

**15.5** If a judgment, order or proof of debt in connection with the Secured Money is expressed in a currency other than the currency in which the Secured Money is due, then the Chargor indemnifies the Chargee against—

- (a) any difference arising from converting the other currency if the spot rate of exchange for converting the other currency into the due currency available to the Chargee when the Chargee receives a payment in the other currency is less favourable to the Chargee than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the costs of conversion.

The Chargor acknowledges that it may be necessary to convert the other currency through more than one currency to ascertain the spot rate of exchange available to the Chargee.

**15.6** Anything which the Chargor is required to do under this charge must be done at the Chargor's cost.

**15.7** The amounts referred to in clause 15.1 are not payable to the extent that they are due to the wilful misconduct or negligence of the Chargee, receiver or attorney appointed under this Deed. It is not negligence or wilful misconduct if any of the stamp duty is not paid in connection with this Charge unless the Chargor instructs any of them to pay the stamp duty,

SCHEDULE 2 (continued)

places it in cleared funds to make payment and the person placed in funds then fails to make the payment.

**16. APPLICATION OF MONEY**

**16.1** Subject to clause 16.4 and to the extent permitted by law, money received in connection with this charge is to be applied (after satisfaction of claims taking priority over this charge) as follows—

- (a) first, towards satisfaction of amounts which become owing or payable under clauses 15.1, 15.2, 15.3, 15.4 or 15.5 (except the Receiver's remuneration);
- (b) secondly, towards satisfaction of the Receiver's remuneration;
- (c) thirdly, towards satisfaction of the balance of the Secured Money in the manner and order which the Chargee determines in its absolute discretion; and
- (d) fourthly, to the extent not otherwise applied, to the Chargor or any other person entitled to it. (In particular, the Chargee may pay the balance of the money to a person with a subsequent Security Interest in the Secured Property whether registered or not, or may pay it into court by way of interpleader without incurring liability to the Chargor.)

**16.2** Money available for application under clause 16.1(d) will not bear interest. The Chargee may discharge its liability to account for it by crediting it to an account in its books in the name of the person to whom it is payable, or by paying it into court.

**16.3** In an application of money under clause 16.1 the Chargor is to be credited only with so much of that money as is actually received by the Chargee. The credit dates from the time of receipt. This provision applies even if in exercising a power of sale the Chargee or a Receiver transfers the Secured Property and takes a Security Interest to secure the unpaid balance of purchase money.

SCHEDULE 2 (continued)

**16.4** If the Chargee receives money in connection with this charge when part of the Secured Money is contingently owing or falls within paragraph (d) of the definition of “Secured Money”, then the Chargee may deposit an amount not exceeding that part in an interest-bearing deposit account on terms which the Chargee thinks fit with any person (including, without limitation, the Chargee and any of its Related Entities) until that part becomes actually payable or no longer falls within the definition of “Secured Money”. At that time the Chargee may retain for its own account the amount which is then actually payable to it. The balance is to be paid in accordance with clause 16.1.

**16.5** If during the currency of a notice under clause 14.4—

- (a) an instalment of principal or interest forming part of the Secured Money falls due for payment by the Chargor; and
- (b) the Chargee receives money or allows a credit under this charge;

then the Chargee may apply that money or credit first in satisfaction of the instalment, and secondly towards satisfaction of money specified in the notice.

## **17. RELEASE**

The Chargee agrees to execute a release of the Secured Property from this charge at the request of the Chargor on payment of all of the Secured Money including, without limitation, Secured Money falling within paragraph (d) of the definition of “Secured Money”.

## **18. PRESERVATION OF CHARGEES RIGHTS**

**18.1** The liabilities under this charge of the Chargor and the rights under this charge of the Chargee, a Receiver or an attorney appointed under this charge are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person)—

- (a) the Chargee or another person granting time or other indulgence

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- (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing the Chargor or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Chargee or another person or both the Chargee and another person;
  - (c) any variation or novation of a right of the Chargee or another person, or material alteration of a document, in respect of the Chargor or another person including, without limitation, an increase in the limit of or other variation in connection with the Secured Money;
  - (d) the transaction of business, expressly or impliedly, with, for or at the request of the Chargor or another person;
  - (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise whether or not the Chargor or another person was a member;
  - (f) the loss or impairment of a Collateral Security or a negotiable instrument;
  - (g) a Security Interest being void, voidable or unenforceable;
  - (h) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
  - (i) the death of any person or an Insolvency Event occurring in respect of any person;
  - (j) a change in the legal capacity, rights or obligations of a person;
  - (k) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
  - (l) a judgment against the Chargor or another person;

SCHEDULE 2 (continued)

- (m) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Chargor or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (n) any part of the Secured Money being irrecoverable;
- (o) an assignment or rights in connection with the Secured Money;
- (p) the acceptance of repudiation or other termination in connection with the Secured Money;
- (q) the invalidity or unenforceability of an obligation or liability of a person other than the Chargor;
- (r) invalidity or irregularity in the execution of this charge by the Chargor or any deficiency in the powers of the Chargor to enter into or observe its obligations under this charge;
- (s) the opening of a new account by the Chargor with the Chargee or another person or the operation of a new account;
- (t) any obligation of the Chargor or any other person being discharged by operation of law or otherwise; or
- (u) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed, or determined.

**18.2** The Chargee's right to payment of the Secured Money arising in any way (including, without limitation, under a negotiable instrument or another contract with the Chargor) does not merge with the Chargor's undertaking to pay the Secured Money under this charge.

**18.3** This charge does not merge with, postpone, lessen or otherwise prejudicially affect any other Security Interest to which the Chargee is entitled.

**18.4** The Chargee will hold a judgment or order which the Chargee obtains against the Chargor in respect of the Secured Money collaterally with this charge, and this charge will not merge in the judgment or order.

SCHEDULE 2 (continued)

**18.5** The Chargee may demand payment of the Secured Money and exercise its rights, powers and remedies under this charge even if a negotiable instrument, security, contract or other obligation relating to the Secured Money is still current or has not fallen due.

**18.6** This charge is a continuing security despite any intervening payment, settlement of account or other thing until a release has been executed and given to the Chargor.

**18.7** This charge does not affect a Collateral Security or any other right, power or remedy of the Chargee at law or in equity.

**18.8** Until this charge is released in respect of the relevant Secured Property the Chargee may retain all instruments and documents of title deposited under clause 7.1(h).

**18.9** The Chargee need not resort to any other Security Interest it holds for payment of the Secured Money before it resorts to this charge.

**18.10** A purchaser from or other person dealing with the Chargee, or any Receiver, or any attorney appointed under this charge or a person to whom is tendered for registration an instrument duly executed by any of them need not inquire—

- (a) whether the Secured Money is in fact owing or payable; or
- (b) whether default has occurred; or
- (c) whether a right, power or remedy which they have exercised or purported to exercise has been properly exercised; or
- (d) whether a Receiver has been properly appointed; or
- (e) about any other thing in connection with the exercise or purported exercise of a right, power or remedy.

The title of any person relying on this clause is not affected by express or

SCHEDULE 2 (continued)

constructive notice of anything in connection with the matters referred to in clauses 18.10(a) to (e) (inclusive).

**18.11** The liability of the Chargor under this charge is not affected because—

- (a) any other person who was intended to become a co-surety or co-indemnifier for payment of the Secured Money has not done so or has not done so effectively; or
- (b) a person who is a co-surety or co-indemnifier for payment of the Secured Money is discharged under an agreement or under statute or a principle of law or equity.

**18.12** If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Secured Money is void or voidable under law relating to Insolvency Events or the protection of creditors, or for any other reason and the claim is upheld, conceded or compromised, then—

- (a) the Chargee is entitled immediately as against the Chargor to the rights in respect of the Secured Money to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) the Chargor agrees to do any act and sign any document promptly on request from the Chargee to restore to the Chargee any Security Interest or guarantee held by it from the Chargor immediately before that payment, obligation, settlement, transaction, conveyance or transfer.

## **19. POWER OF ATTORNEY**

**19.1** The Chargor irrevocably appoints the Chargee, each Authorised Officer of the Chargee, and each Receiver severally its attorneys.



SCHEDULE 2 (continued)

**19.2** Each attorney may—

- (a) in the name of the Chargor or the attorney do anything which the Chargor may lawfully authorise an attorney to do in connection with this charge or the Secured Property or which in the attorney's opinion is necessary or expedient to give effect to any right, power or remedy conferred on the Chargee or a Receiver by this charge, by law or otherwise, (including, without limitation, executing deeds and instituting, conducting and defending legal proceedings); and
- (b) delegate its powers (including, without limitation, this power of delegation) to any person for any period and may revoke a delegation; and
- (c) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers; and
- (d) not exercise its rights under this Power of Attorney until after—
  - (i) the Chargee has made demand on the Chargor for payment of the secured money; or
  - (ii) an event of default occurs.

**19.3** The Chargor agrees to ratify anything done by an attorney or its delegate in accordance with clause 19.2.

**19.4** Notwithstanding clause 19.2, an attorney or its delegate may not exercise any rights, powers and remedies of the Chargor over, in connection with or comprising part of the Secured Property or manage the Secured Property without first consulting with the Chargor.

**20. PRIORITY AMOUNT**

For the purpose only of fixing priorities in accordance with section 282 of the Corporations Law between this charge and any other charge given by

SCHEDULE 2 (continued)

the Chargor and without affecting any obligation of the Chargor under this charge, the prospective liabilities secured by this charge include, without limitation, the prospective liabilities of the nature specified below up to the maximum amount specified below—

Nature of Liabilities—

The obligations of the Chargor to—

- put the Chargee in funds to meet bills of exchange accepted by the Chargee under the Agreement;
- indemnify the Chargee against all liability in respect of those bills of exchange;
- pay interest on all amounts payable under the Agreement;
- pay or reimburse the Chargee for costs, charges and expenses incurred in connection with the Agreement or this deed.

Maximum Amount—\$90 000 000.00

## **21. NOTICES**

**21.1** A notice, approval, consent or other communication in connection with this charge—

- (a) may be given by an Authorised Officer of the relevant party; and
- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in item 3 of the schedule or if the addressee notifies another address or facsimile number then to that address or facsimile number.

**21.2** Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.

**21.3** A letter or facsimile is taken to be received—

SCHEDULE 2 (continued)

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause.

## **22. SECURITY INTERESTS AND ASSIGNMENT**

The Chargor may not, without the consent of the Chargee, create or allow to exist a Security Interest over or an interest in this charge or assign or otherwise dispose of or deal with its rights under this charge. The Chargee at any time may do any of those things as the Chargee sees fit.

## **23. MISCELLANEOUS**

### **Certificate**

**23.1** A certificate signed by the Chargee or its solicitors about a matter or about a sum payable to the Chargee in connection with this charge is prima facie evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

### **Exercise of rights**

**23.2** The Chargee, a Receiver or an attorney appointed under this charge may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by the person does not prevent a further exercise or that or an exercise of any other right, power or remedy. Failure by the person to exercise or delay in exercising a right, power or remedy does not prevent its exercise. The person with the right, power or remedy is not liable for any loss caused by its exercise, attempted exercise, failure to exercise or delay in exercising it whether by reason of its negligence or otherwise.

SCHEDULE 2 (continued)

**Waiver and variation**

**23.3** A provision of or a right created under this charge may not be waived or varied except in writing signed by the party or parties to be bound.

**Supervening legislation**

**23.4** Any present or future legislation which operates to vary the obligations of the Chargor in connection with this charge, the Secured Money or the Secured Property with the result that the Chargee's rights, powers or remedies are adversely affected (including, without limitation, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**Approvals and consent**

**23.5** The Chargee, a Receiver or an attorney appointed under this charge may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion, unless this charge expressly provides otherwise.

**Remedies cumulative**

**23.6** The rights, powers and remedies provided in this charge are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this charge.

**Set-off and withdrawal restriction**

**23.7** At its sole discretion the Chargee may apply (without notice) any credit balance in any currency in any account of the Chargor (including the Sinking Fund Account) with the Chargee towards satisfaction of any amount then payable by the Chargor to the Chargee under this charge or the Agreement. The Chargor authorises the Chargee in the name of the Chargor or the Chargee to do anything (including, without limitation, to execute any document) that is required for that purpose.

SCHEDULE 2 (continued)

Notwithstanding any other provision in this charge, the Agreement or any other agreement, if a creditor of the Chargor would or might be entitled to claim any interest in the Secured Property ranking ahead of the interest of the Chargee therein—

- (a) the Chargee shall be entitled to set-off the Sinking Fund Account against any amount then payable by the Chargor to the Chargee under this charge or the Agreement; and
- (b) the Chargee shall be under no legal or other obligation to repay all or any part of the moneys in the Sinking Fund Account to the Chargor or any creditor of the Chargor; and
- (c) the Chargee shall not be obliged to pay any interest to the Chargor in respect of the Sinking Fund Account.

The Chargor acknowledges to the Chargee that the amounts to be set-off under this clause 23.7 are mutual debts and credits and are closely interconnected, and arise as part of the one transaction between them.

The Chargor agrees that its right, title and interest in the Secured Property is incapable of being assigned, encumbered or otherwise dealt with by the Chargor.

### **Indemnities**

**23.8** Each indemnity in this charge is a continuing obligation, separate and independent from the other obligations of the Chargor and survives termination of this charge. It is not necessary for the Chargee to incur expense or make payment before enforcing a right of indemnity conferred by this charge.

### **Time of the essence**

**23.9** Time is of the essence of this charge in respect of an obligation of the Chargor to pay money.

SCHEDULE 2 (continued)

**Confidentiality**

**23.10** All information provided to the Chargee by the Chargor under this Charge is confidential to the Chargee, its employees, legal advisers, auditors and other consultants and may not be disclosed to any person except—

- (a) with the consent of the Chargor (which consent is not to be unreasonably withheld); or
- (b) if allowed or required by law or required by any stock exchange; or
- (c) in connection with legal proceedings relating to this charge; or
- (d) if the information is generally and publicly available; or
- (e) to a potential assignee, participant or sub-participant of the Chargee's interests under this charge or to any other person who is considering entering into contractual relations with the Chargee in connection with this charge; or
- (f) to any person if the Chargee considers it necessary to do so in order to exercise its power of sale without contravening the law.

**Receipts**

**23.11** The receipt of a Receiver or an Authorised Officer of the Chargee releases the person paying money to the Receiver or the Chargee in connection with this charge from—

- (a) liability to enquire whether the Secured Money has become payable; and
- (b) liability for the money paid or expressed to be received; and
- (c) being concerned to see to its application or being answerable or accountable for its loss or misapplication.

**24. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS**

**24.1** This Charge is governed by the law in force in Queensland.

SCHEDULE 2 (continued)

**24.2** Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**24.3** Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 21.

## **25. COUNTERPARTS**

This charge may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

SCHEDULE 2 (continued)

**SCHEDULE**

**Item 1**

(clause 1.1—definition of Collateral Security)

Specifically identified Collateral Securities—No Collateral Security is specifically identified.

**Item 2**

(clause 1.1—definition of Sinking Fund Account)

Sinking Fund Account—The interest bearing business management account No 525638816 ESB 084 055 held by the Chargor with the Chargee at its branch at 420 George Street, Brisbane.

**Item 3**

(clause 21)

Address for service—

**Chargor—**

Address: 231 North Quay  
Brisbane Qld 4001  
Attention: General Manager

Facsimile No: (07) 236 1212

**Chargee—**

Address: Corporate Banking &  
Finance—Queensland  
1st Floor  
255 Adelaide Street Brisbane Qld  
4000  
Attention: Mr T Smith/Mr E Radicke

Facsimile No: (07) 234 5862



## ENDNOTES

### 1 Index of Endnotes

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2	Date to which amendments incorporated . . . . .	55
3	List of legislation . . . . .	55
4	List of annotations . . . . .	56

### 2 Date to which amendments incorporated

This is the reprint date mentioned in section 5(c) of the Reprints Act 1992. Accordingly, this reprint includes all amendments that commenced operation on or before 24 December 1993. Future amendments of the Dairy Industry (Scheme for Restructuring Distribution) Order 1993 may be made in accordance with this reprint under section 49 of the Reprints Act 1992.

### 3 List of legislation

**Dairy Industry (Scheme for Restructuring Distribution) Order 1993 SL No. 206**  
 notfd Gaz 11 June 1993 pp 874–7  
 commenced on date of notification  
 as amended by—

**Dairy Industry (Scheme for Restructuring Distribution) Amendment Order  
 (No. 1) 1993 SL No. 290**  
 notfd Gaz 30 July 1993 pp 1594–6  
 commenced on date of notification

## 4 List of annotations

### Key to abbreviations in list of annotations

amd	=	amended
Chap	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

### Definitions

s 3 def “nonparticipating vendor” ins 1993 SL No. 290 s 3

### Regions

s 4 amd 1993 SL No. 290 s 4

### Reclassification and reissue of licences

s 18 amd 1993 SL No. 290 s 5

## PART 5—FINANCING OF RESTRUCTURING SCHEME

Pt hdg sub 1993 SL No. 290 s 6

### Division 1—General

Div hdg ins 1993 SL No. 290 s 6

### Financing of the restructuring scheme

s 19 sub 1993 SL No. 290 s 6

### Division 2—Borrowing from the National Australia Bank

Div hdg ins 1993 SL No. 290 s 6

### Raising of loan from NAB

s 20 prev s 20 renum as s 22 1993 SL No. 290 s 6  
pres s 20 ins 1993 SL No. 290 s 6

### Non-derogation

s 21 ins 1993 SL No. 290 s 6

### Obligation to provide information

s 22 (prev s 20) renum 1993 No. 290 s 7

*Dairy Industry (Scheme for Restructuring  
Distribution) Order 1993*

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**SCHEDULE 2—CHARGE OVER SPECIFIED PRICE PROPORTION DEBTS  
AND SINKING FUND ACCOUNT**

ins 1993 SL No. 290 s 8