



# MILK PURCHASE CONTRACT CHECKLIST

After over a decade of campaigning by NFU Scotland and fellow stakeholders, the Fair Dealing Obligations (Milk) Regulations 2024 was introduced on 9 July 2024.

From this date onwards, all new dairy contracts should be agreed under the new terms. Any existing contracts from before 9 July 2024 currently have a 12 month transition period to apply new regulations.

The following contract checklist will assist you in drafting your contract.



# Overview

Requirement to use a milk purchase contract		
Does your <i>written</i> contract...	Yes	No
Specify all express terms relating to the purchase?		
Specify a term that requires the business purchaser to act in good faith in relation to the contract?		
Where a milk purchase contract contains terms agreed to by a representative organisation on behalf of the producer, does it name the representative organisation?		
Format and duration of milk purchase contract		
Is/does your contract...	Yes	No
In writing and signed by all parties involved in the contract? (Electronic signature is sufficient).		
State whether it is a fixed-duration contract or an evergreen contract?  An evergreen contract is one which continues until terminated by one of the parties.		
Specify the date on which the obligation to supply milk commences if this is different from the date on which it is signed?		

# Pricing and payment

Method and frequency of payment		
Does your contract...	Yes	No
Set the first day when the business purchaser will pay the milk producer?		
Set out the method of payment by the business purchaser for milk?		
State the payment frequency from the business purchaser to the producer?		
Permitted pricing		
As per regulation requirements, does your contract use...	Yes	No
A fixed price?		
A variable price?		
A combination of fixed and variable pricing?		

# Pricing and payment

Use of a fixed price		
Does your contract...	Yes	No
Specify the period within the duration of the contract to which each price relates?		
Specify when each period begins and ends ?		
Set out a procedure by which the price may be reviewed in exceptional market conditions?  This includes provision for producers to request price review in exceptional conditions. In this case, purchasers must invite producers into discussion.		
Set out what constitutes exceptional market conditions for the purpose of above procedure?		

# Pricing and payment

Use of a variable price		
Does your contract...	Yes	No
Include what factors have been agreed between parties to calculate milk price?		
Outline time periods during the agreement that each set of factors will apply, including start and end dates?		
Include a statement by the business purchaser to have due regard, as far as reasonably possible, to agreed factors?		
State how often the price will be determined?  This must be no more than monthly but no less than three months.		
Include a third-party verification procedure in the case that one of the price calculation factors is confidential business information?		
Include provision for written notice by the business purchaser be given to the producer which states how the price was determined?  This written explanation must be provided within seven days of the request.		

# Pricing and payment

Referral of relevant variable price to independent third party		
If your contract uses a relevant variable price, does your contract...	Yes	No
Include a third-party verification procedure?		
State that the third-party engaged to verify business-sensitive data is to be agreed upon by both the purchaser and producer?		
Provide the costs of the third-party be apportioned between parties?  The contract must clarify that the producer will not be apportioned a greater share of the costs than the business purchaser for engaging the independent person.		

# Volumes

Fixed volume contracts		
Does your contract...	Yes	No
<p>Set out the period, of no longer than 12 months, in which the volume of milk is to be supplied?</p> <p>(NOTE: An exclusive milk purchase contract may not specify a fixed volume of milk).</p>		
<p>State acceptable upper and lower supply volumes applicable to the period?</p>		
<p>Include provision setting out available remedies to the business purchaser in the instance that the producer provides a volume of milk that is below the lower acceptable supply volume for the applicable period?</p>		

# Miscellaneous

Milk collection		
Does your contract...	Yes	No
Specify if milk supplied under the contract will be collected by the producer or on behalf of the business purchaser?		
Specify when, and how frequently, collections will occur?		
Force majeure (an event outside party control which impacts the ability of one party to comply)		
Does your contract...	Yes	No
Contain a provision that sets out the effect of a force majeure on the business purchaser and producer.		
Identify all specific acts, events or circumstances that constitute a force majeure event?		

# Miscellaneous

Notices under a milk purchase contract		
Does your contract...	Yes	No
Specify that any notice given under it will be in writing?		
Specify that any notice given under it will be sent by electronic mail or a method of post that requires the recipient to sign on receipt?		
Where the notice is given by post, it is specified that it must be properly addressed and pre-paid?		
Specify that where the notice complies with the provision required by the above, service is deemed to be effected at the time at which the notice would be delivered?		
State that the postal address for both parties is their ordinary business address, unless a party specifies an alternative?		

# Miscellaneous

Variation of terms		
Does your contract...	Yes	No
<p>Specify that terms may be varied only on agreement in writing between the business purchaser and the producer, or the producer's representative organisation?</p> <p>NOTE: This does not apply to a contract made between a business purchaser which has an internal democratic structure (a co-operative) when purchasing milk from a producer member.</p>		
Dispute resolution		
Does your contract...	Yes	No
Set a procedure for a producer to make a complaint relating to the contract to the business purchaser?		
Specify that the producer must make the complaint by giving a notice to the business purchaser?		
Specify contact details of a person to whom the producer may give the notice?		
Specify that upon receiving the notice, the business purchaser must investigate and take all reasonable steps to resolve the complaint?		

# Termination

Cooling-off period		
Does your contract...	Yes	No
Specify that the producer may, at any time before the expiry of the cooling-off period, terminate the contract without any penalty or liability?		
Specify that the termination will have immediate effect?		
Specify that a producer is not required to give reason for terminating a milk purchase contract before the expiry of the cooling off period?		
Clarify that the cooling-off period is a period of 21 days beginning with the date on which the contract was made.		

# Termination

Termination outside the cooling-off period		
Does your contract...	Yes	No
<p>Set out a process in which the contract can be terminated?</p> <p>NOTE: This does not apply if it is a fixed-duration contract with a duration of 12 months or less.</p>		
<p>State that the business purchaser will not give less than 12 months notice to terminate the contract without the consent of the producer, unless there is a material breach of the contract by the producer?</p> <p>NOTE: The termination procedure in the contract cannot operate in any way that requires a producer to give more than 12 months notice.</p>		
<p>Specify provision for the producer to immediately terminate the contract without the consent of the business purchaser through written notice under certain circumstances (<i>see regulation guidance for full list of circumstances</i>).</p>		
<p>Does not contain any provision that allows the purchaser to alter the pricing method as a consequence of notice having been given?</p>		