

FONTERRA SHARES CLAUSE 2013

For use with the ADLS-REINZ Agreement for Sale and Purchase of Real Estate (9th edition).

Warning: This clause is not suitable for:

- **A property with a contract milk supply, winter milk contract or any other speciality milk contract; or**
- **Mid season settlements; or**
- **A property sold without Fonterra shares.**

18. FONTERRA CO-OPERATIVE GROUP LIMITED

Definitions

18.1 In this clause:

“Asset Dividend” is a dividend specifically paid to allow the vendor to acquire an asset. The asset must be reasonably required by the purchaser to continue supplying milk from the property.

“Bonus” has the same meaning as in clause 18.24.

“Bonus Issue” means a distribution made by Fonterra pursuant to clause 21.3 of its constitution.

“Computershare” means Computershare Investor Services Limited.

“CSN” means Common Shareholder Number.

“Current Season” means the dairy season in which this agreement is signed.

Dates that include a day and month (or just a month), but not a year, will fall within the Current Season unless another year is specified.

“Dividends” means any dividends on the Shares included in this sale, declared by Fonterra for the Financial Year. However “Dividends” do not include an Asset Dividend.

Note: *Clause 18.27 must be completed by deleting the options that do not apply*

“Financial Year” means Fonterra’s financial year ending on the 31st July following the end of the Current Season.

“Fonterra” means Fonterra Co-operative Group Limited and its successors.

“**Fonterra Instruments**” means the Shares, payments, Items and Bonus referred to in clause 18.2

“**Items**” means anything required by Fonterra to be held by the purchaser (in addition to Shares) to enable the purchaser to supply milk from the property.

“**Measurement Statement**” has the same meaning as clause 3.13 of Fonterra’s constitution.

“**Retentions**” means the amount of Fonterra’s distributable profit that is not paid to farmer shareholders and is retained within Fonterra’s balance sheet at the end of the Financial Year.

“**Shares**” means Fonterra co-operative shares.

“**Supplier**” means the person now recorded by Fonterra as supplying milk from the property. The Supplier’s supply number is **#Complete** and its CSN Number is **#Complete**.

Fonterra Instruments Included in Sale

18.2 The following Fonterra Instruments are included in the sale.

- (a) **#Number, include all shares being sold** Shares;
- (b) all Items (if any);
- (c) the Bonus (if any);
- (d) the Dividends and Bonus Issue to which the purchaser is entitled (if any); and
- (e) the Asset Dividends (if any).

The cost of the Fonterra Instruments is included in the purchase price except to the extent that this agreement requires an additional payment by the purchaser. The purchaser must pay the vendor the amount (if any) paid by the vendor or the Supplier for the purchase of the Items.

Warning: The number of Shares (clause 18.2(a)) included in this clause should be checked against Fonterra’s official notification to the Supplier of the shares currently held by the Supplier.

Value of Fonterra Instruments

First choice*

18.3 The parties agree:

- (a) the value of each Share included in the sale will be the price of a Share on the Fonterra Shareholders Market at the close of trading on the fifth working day preceding the settlement date; and
- (b) the value of the Fonterra Instruments will be calculated by multiplying the total number of Shares sold by the price of a Share on the Fonterra Shareholders Market at the close of trading on the fifth working day preceding the settlement date.

Second choice*

The parties agree the Fonterra Instruments are valued in total at ~~\$complete~~.

**Delete one*

Fonterra Instruments – Transfer and Payment

- 18.4 The vendor must give the purchaser a registerable share transfer and anything else necessary for the transfer of the Fonterra Instruments when the purchaser has paid for them.
- 18.5 The purchaser may not submit the share transfer to Computershare for registration before the settlement date.
- 18.6 In clauses 18.7 and 18.8 “additional payment” means any payment that the purchaser must make for the Items and the Bonus.
- 18.7 The purchaser must pay the additional payment on the settlement date.
- 18.8 All additional payments payable by the purchaser will be part of the “purchase price” for the purposes of clause 3.12(1) – default interest.

Purchaser’s Rights if Fonterra Instruments not Fully Paid For

- 18.9 The Fonterra Instruments must be paid for in full by the vendor and free of any security interests (Personal Property Securities Act 1999) or other encumbrances on settlement.
- 18.10 In this clause 18.10 to “pay for them” means to make all payments necessary to comply with the vendor’s obligations in the clause.

If, for any reason, the Fonterra Instruments are not paid for by the vendor on the due date for payment, then:

- (a) the vendor’s lawyers must pay for them immediately from the sale proceeds; and
- (b) the purchaser may require, as a condition of settlement, that the vendor’s lawyer gives appropriate undertakings in relation to the lawyer’s obligations in this clause 18.10.

Vendor Holds Shares and Other Items on Trust After Settlement

- 18.11 Any Fonterra Instruments included in this sale and held, received or acquired by the vendor or the Supplier after the settlement date must be held on the following basis:
- (a) the Fonterra Instruments must be held on trust as from (and including) the settlement date by the vendor or the Supplier for the purchaser; and
 - (b) neither the vendor nor the Supplier may, after the settlement date, exercise any rights in respect of the Fonterra Instruments held on trust, other than in accordance with clause 18.11(c); and
 - (c) the vendor or the Supplier must exercise the rights either as required by this agreement or in accordance with the reasonable written instructions of the purchaser where no requirement is specified.

Measurement Statement

- 18.12 The vendor must give the purchaser a copy of Fonterra's most recent Measurement Statement for the property as soon as possible after this agreement is signed.
- 18.13 If this agreement is unconditional, the vendor and the Supplier must comply with the purchaser's reasonable written instructions in relation to the exercise of any power or right by the vendor in respect of the Shares included in the sale.

Transfer of Supply and Ongoing Supply

- 18.14 The purchaser must complete Fonterra's application for supply (existing farm) for the property and lodge it with Fonterra as soon as reasonably possible after this agreement is signed.
- 18.15 If the application will be received by Fonterra between 28th February and 15 December (both days exclusive) this agreement will be conditional upon Fonterra accepting the purchaser's application for supply, and this condition must be satisfied by the earlier of:
- (a) the 25th working day after the date of this agreement; and
 - (b) the working day before the settlement date.

This clause is inserted for the benefit of both parties.

Note: *Fonterra must accept compliant applications made between 15 December and 28 February in the next year.*

- 18.16 The vendor and the Supplier must:
- (a) until settlement, comply with all of Fonterra's terms and conditions of supply; and
 - (b) before settlement, remedy all outstanding Fonterra requirements (if any) in relation to the milk supply from the property.

Clause 18.10 with any necessary alterations will apply if all outstanding Fonterra requirements have not been remedied on settlement.

- (c) To the extent that the amount required to remedy all outstanding Fonterra requirements is not known on settlement, the purchaser may require the vendor's lawyer to:
 - (i) keep a reasonable amount, fixed by the purchaser, in trust to pay for all outstanding Fonterra requirements that are not paid for on settlement; and
 - (ii) use that money to pay for them (as far as possible) as soon as the amount required is known .

The vendor must prove the amount fixed by the purchaser is not reasonable if there is any dispute over the amount. Proof may be given at any time and from time to time.

- 18.17 The Supplier must continue to supply Fonterra with milk from the property, in accordance with the Supplier's past supply practice (if any), until the settlement date.

18.18 However clause 18.17 will not apply to the extent that the Supplier cannot do what is required because of:

- (a) something that is beyond the Supplier's reasonable control (e.g. adverse climatic conditions), or
- (b) some other requirement in this agreement.

18.19 Neither the vendor nor the Supplier may do anything to prejudice the future supply of milk from the property.

18.20 The vendor warrants that it has no knowledge of anything likely to result in Fonterra, in the future:

- (a) not accepting milk supply from the property, or
- (b) reducing any of its standard payments for that supply.

Details of Vendor's Supply

18.21 The vendor must upon request give the purchaser, in writing, all milk production information (including any necessary estimates) that the purchaser reasonably requires.

18.22 The vendor authorises Fonterra to disclose to the purchaser:

- (a) full particulars of the vendor's existing and required Shares and other Items, but only as they relate to the property; and
- (b) any other information which in Fonterra's reasonable opinion is relevant to the purchaser as a future owner of, and supplier from, the property.

Vendor not Supplier

18.23 If the vendor is not the Supplier the vendor must make sure:

- (a) the Supplier carries out the Supplier's obligations under this clause;
- (b) the Supplier, where necessary, allows the vendor to carry out the vendor's obligations under this clause; and
- (c) the Supplier receives any payments or other benefits arising from this clause that the Supplier is legally entitled to.

The vendor indemnifies the purchaser against all losses, including costs, incurred by the purchaser as the result of the vendor failing to comply with this clause.

Warning. The vendor might need written confirmation from the Supplier that the Supplier will comply with clause 18.23.

Bonus and Capacity Adjustment

18.24 In this clause "Bonus" means any Fonterra benefits, rights, or payments, in relation to the property that become available to the vendor or the Supplier after the date of the agreement, excluding:

- (a) Dividends (see clause 18.27);
- (b) an Asset Dividend (see clause 18.28);
- (c) any Bonus Issue;
- (d) any payment made, or due, to the vendor for the supply of milk or colostrum including the final payouts; and
- (e) any capacity adjustment payment.

The vendor will be entitled to the items and payments referred to in clauses 18.24 (d) and (e).

18.25 The vendor will be responsible for any capacity adjustment deductions and entitled to any capacity adjustment payments.

First choice*

18.26 The purchaser will be entitled to the Bonus, but must pay the cost (if any) to the vendor of obtaining the Bonus.

Second choice*

The vendor will be entitled to the Bonus.

****Delete one***

Dividends and Bonus Issue

18.27 All Dividends and any Bonus Issue must:

First choice*

be paid and/or distributed to the vendor

Second choice*

be paid and/or distributed to the purchaser

Third choice*

be paid and/or distributed to the vendor (%) and the purchaser (%)

Fourth choice*

The Interim Dividend is paid to the _____

The Final Dividend is paid to the _____

The Bonus Issue is distributed to the _____

****Delete three***

A party that receives a Bonus Issue and/or a Dividend which it is not entitled to under this clause holds the Bonus Issue and/or Dividend in trust for the party entitled to them and must pay or distribute them to the other party on or before the later of settlement and the 5th working day after the receipt of the Dividend and/or Bonus Issue.

18.28 The purchaser is entitled to any Asset Dividend.

18.29 Any Retentions distributed to the purchaser for any Fonterra financial year after the Financial Year will belong to the purchaser.

Change in Capital Structure

18.30 This clause must be changed (if necessary) if Fonterra changes its capital structure before the settlement date, provided that:

- (a) the purchaser must always be entitled to whatever is required to allow the purchaser to continue supplying milk to Fonterra from the property; and
- (b) the ~~#purchaser/vendor~~ (***delete as appropriate***) must pay the cost (if any) of obtaining anything necessary for that purpose for which there is no equivalent already in this agreement; and
- (c) the changes must otherwise give the parties, as near as is reasonably possible, the same rights and obligations, that are now in this agreement.

This clause has priority to the extent that it conflicts with the “Fonterra Policy Changes” clause in this agreement.

Note the agreement should include a dispute resolution clause if this clause 18.30 is included.

Fonterra Policy Changes

18.31 Each party must, at the request of the other, co-operate with the other to enable the party making the request to:

- (a) take full advantage of any benefits or rights available from Fonterra; and
- (b) minimise the cost of any of Fonterra’s requirements.

The party making the request must specify what is required in reasonable detail by notice to the other party.

The party who benefits must pay the costs reasonably incurred by the other in co-operating. If both parties benefit, the costs must be shared in proportion to their respective benefits.

18.32 Nothing in clause 18.31:

- (a) requires the vendor to change the vendor’s normal or proposed farming practice;
- (b) requires a party to do anything that will unreasonably affect their best interests;
- (c) requires a party to do anything which conflicts with any specific term of this agreement;
or
- (d) permits the purchaser to delay any payments due by the purchaser to the vendor.