



Farm Sales – Checklist, draft provisions and commentary

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This document will be updated from time to time. The latest version of this document is available on www.fonterra.com

The checklist, draft provisions and commentary in this document are provided by Fonterra Co-operative Group Ltd to assist rural professionals advising farmers on the sale and purchase of dairy farms that supply milk to Fonterra.

Care has been taken to develop a checklist that is comprehensive (however it may not be exhaustive) and to suggest provisions which are consistent with Fonterra's constitution. However, nothing in this document constitutes legal advice and no person should use the information set out in this document without first obtaining specific professional advice.

The draft provisions set out below sometimes contain alternatives and will, in all cases, need to be amended to reflect the Vendor's supply arrangements with Fonterra (i.e. Fully Shared Supply, Standard or Growth Contract Supply, Winter Milk Contract, other Specialty Milk Contract and extent of Unshared Supply and Additional Shares held) and the specific commercial agreement reached between the Vendor and the Purchaser.

Fonterra does not have, and does not accept, any responsibility or liability in connection with the use of the information set out in this document.

Checklist	Draft provisions	Commentary
<p>Does the agreement clearly state the number of Shares the Vendor is selling?</p> <p>This could be:</p> <ul style="list-style-type: none"> • All Shares currently held by the Vendor, reflecting production in the last season or expected production this season (see OPTION A) <i>or</i> • A number of Shares to enable the supply of a specified quantity of milksolids (see OPTION B) <i>or</i> • Shares to match the Vendor's production this 	<p>OPTION A</p> <p>1. Included in the purchase price are the following Shares, which are legally and beneficially owned by the Vendor at the date of this agreement, which the Vendor agrees to transfer to the Purchaser on settlement:</p> <p>(a) [insert number] Minimum Required Shares; and</p> <p>(b) [insert number] Additional Shares.</p> <p>OPTION B</p> <p>1. Included in the purchase price are the minimum number of Shares required to be held under Fonterra's constitution to enable the Purchaser to supply as a Fully Shared Supply [specify quantity] kgMs in the [2010/11] season, which the Vendor agrees to transfer to the Purchaser on settlement.</p> <p>OPTION C</p>	<p>For the 2010/2011 season the Purchaser needs to hold Shares and Contract (Standard or Growth) to support the level of production on the farm in the 2009/2010 season (there will not be an Unshared Supply election available for the 2009/2010 season), otherwise Fonterra will issue the shortfall number of Shares to the Purchaser at the 2010/2011 season share price. Vendors and Purchasers, and their advisers, should note that at settlement of the farm sale the actual number of Minimum Required Shares and Additional Shares are likely to differ from the number of Minimum Required Shares and Additional Shares held by the Vendor at the date the sale and purchase agreement was signed as a result of the end of season adjustment process.</p> <p>Any of the Minimum Required Shares that are not transferred by the Vendor to the Purchaser cannot</p>

<p>season (see OPTION C) or</p> <ul style="list-style-type: none"> • Something else ... 	<p>1. Included in the purchase price are the minimum number of Shares required to be held under Fonterra's constitution to enable the Purchaser to supply in the [2010/11] season, as a Fully Shared Supply, a quantity of kg ms equal to the Vendor's production for the [2009/10] season, which the Vendor agrees to transfer to the Purchaser on settlement.</p> <p>Consider including a representation by the Vendor to the Purchaser, or acknowledgement by the Purchaser in favour of the Vendor, as to whether any shares being transferred include shares purchased during the 2009 Capital Structure Transition Period.</p>	<p>be surrendered by the Vendor for payment in July 2010 unless the Vendor applies to cease or decrease supply during the 2010/2011 season Application Period (15 December 2009 - 28 February 2010). Note however, the restrictions on applying to cease or decrease if any Shares were purchased during the 2009 Capital Structure Transition Period (see summary below).</p> <p>If the Vendor holds Additional Shares they can be transferred to the Purchaser. Except where the Vendor bought Shares during the Transition Period, any Additional Shares that are not going to be transferred to the Purchaser can be surrendered by the Vendor for payment in July 2010 by the Vendor notifying it will be ceasing supply during the 2010/2011 season Application Period or making an end of season election (which will need to be received by 21 June 2010).</p> <p>As a result of the changes to Fonterra's capital structure approved by shareholders at the annual meeting on 18 November 2009, between 7 December 2009 and 21 January 2010 (the Transition Period) shareholders had the opportunity to buy Shares to take their shareholding up to 120% of their recent or expected production. There was no requirement for any shareholder to buy Shares. Rather, the purchase of Shares was at each shareholder's discretion. Shareholders who did elect to buy Shares could buy any number of Shares to take their shareholding to between 100%</p>
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		<p>and 120% of their recent or expected production.</p> <p>Shareholders who purchased Shares during the Transition Period are subject to special terms and conditions of milk supply. These special terms and conditions of milk supply also apply to shareholders who have transferred to them any Shares that were purchased during the Transition Period (for example, as part of a farm sale). Specifically, these shareholders cannot surrender any Shares until 1 June 2011, with the result they must continue to supply all their milk to Fonterra until that date (subject to limited exceptions).</p> <p>If a shareholder buys Shares during the Transition Period and sells the farm before 1 June 2011:</p> <ul style="list-style-type: none">(a) The shareholder can transfer all, some or none of the Shares acquired in the Transition Period to the Purchaser so long as the Purchaser does not end up holding Shares over 120% of the expected production from the farm. However, the Purchaser will be subject to special terms and conditions of milk supply (as discussed above) and cannot surrender any shares before 1 June 2011. This means that a purchaser in this situation cannot apply during the Application Period to reduce their shareholding from the commencement of the 2010/2011 season.(b) If all the Shares are not transferred to the Purchaser, Fonterra will be required to
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		<p>surrender the Shares retained by the Vendor (as they are no longer a supplier to Fonterra) and the surrender proceeds will be paid in July 2011 (or later in accordance with the Constitution). As no Shares will be held, no dividend will be paid for the 2010/2011 season.</p> <p>Transfers received between 1 and 30 June 2010 will be registered in early July 2010, AFTER the end of season adjustments and elections have been made and all Shareholder payments due to Fonterra have been paid.</p> <p>The person on the Fonterra Share Register at 5pm on 31 May 2010 will go through end of season adjustments.</p>
<p>Does the Vendor supply milk under Contract?</p> <p>If so, are any Contracts to be assigned to the Purchaser? Contracts can only be assigned with Fonterra's consent.</p> <p>If milk is currently supplied by the Vendor under Contract and a Contract is going to be terminated then there will be a</p>	<p>2. Included in the purchase price are the following Contracts held by the Vendor at the date of this agreement (copies of which are annexed to this agreement) which, subject to Fonterra's consent, the Vendor agrees to assign to the Purchaser on settlement:</p> <p><i>[List details]</i></p> <p>2A If Fonterra does not consent to the assignment of [the/any] Contract[s] then:</p> <p>(a) the Purchaser acknowledges that the Vendor will terminate the Contract at or prior to</p>	<p>Contracts are transferable from the Vendor to the Purchaser in the case of a farm sale with Fonterra's prior written consent.</p> <p>Under Standard and Growth Contract supply (i.e. not Specialty Milk contract, Winter Milk or Tactical Price contracts), Vendors can also terminate or reduce their Contracts by reverting to share-backed supply for the following season. If there are Contracts that the Vendor will terminate at or prior to settlement, the Vendor will have to "Share up" as part of end of season adjustments (prior to transfer to the Purchaser) at the new season's price.</p>

<p>requirement to purchase Shares to cover the production under the terminating Contract. Whether it is the Vendor or Purchaser who is issued the Shares will depend on when the Contract is terminated.</p>	<p>settlement and that the Vendor may, as a consequence of terminating the Contract, be required to purchase Shares. If the number of Additional Shares held by the Vendor is less than the number of Shares required to cover production represented by the terminated Contract[s] then the Purchaser shall, in addition to the purchase price specified on [the front page of] this agreement, pay to the Vendor on <i>[date]</i> the cost to the Vendor of any Shares required to be purchased; and</p> <p>(b) the purchase price will be reduced by the value of the Contract (if any) as set out in clause [6].</p> <p>OR</p> <p>2. The Purchaser acknowledges that the Vendor holds the following Contract[s] at the date of this agreement which will be terminated at or prior to settlement:</p> <p><i>[List details]</i></p> <p>The Purchaser acknowledges that the Vendor may, as a consequence of terminating the Contract[s], be required to purchase Shares. If the number of Additional Shares held by the Vendor is less than the number of Shares required to cover production represented by the terminated Contract[s] then the Purchaser shall, in addition to the purchase price specified on [the front page of] this agreement, pay</p>	<p>Alternatively the Vendor could transfer the Contract to the Purchaser (subject to Fonterra’s consent) and the Purchaser could terminate the Contract in which case the Purchaser would have to “Share up” after the share transfer has been registered.</p> <p>Purchasers can apply for Contracts (if, and to the extent, they are made available by Fonterra) even though a farm sale has yet to settle.</p> <p>It is up to the Purchaser to ensure that, at the commencement of supply, all supply is backed either by Shares or by Contract (or covered by an Unshared Supply election (if available)).</p> <p>Special care needs to be taken when advising Vendors and Purchasers where there are Contracts to ensure each party fully understands the terms of the Contract and the implications on shareholding.</p>
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	to the Vendor on <i>[date]</i> the cost to the Vendor of any Shares required to be purchased.	
If production increases during the current season requiring further Shares to be acquired, who pays the cost of these Shares?	<p><i>[Note: the inclusion, and appropriate content, of this clause 3 depends on which of the Options in clause 1 is used.]</i></p> <p>3. [OPTION A:] If production in the [2009/2010] season increases, the Vendor shall purchase all required Shares if the number of Additional Shares held by the Vendor is less than the number of Shares required to be held and the Purchaser shall, in addition to the purchase price specified on [the front page of] this agreement, pay to the Vendor on <i>[date]</i> the cost to the Vendor of such required Shares. Any payment due by the Purchaser under this clause [3] will be part of the “purchase price” for the purposes of clause <i>[insert default interest clause number]</i>.</p>	<p>When Unshared Supply is available, an alternative may be to make an end of season election for some or all of the additional production to be Unshared Supply (note: Unshared Supply entitlements are subject to limits and Unshared Supply may not be available in some seasons (it is not available for the 2009/2010 season)) – see notes on end of season elections below.</p> <p>If the Purchaser will be paying for the further Shares required, should the agreement provide for the purchase price for the new Shares to be paid by the Purchaser directly to Fonterra? Fonterra will not register a share transfer until all Shares covered by the share transfer are paid in full.</p>
Does the agreement address what should happen if production decreases during the current season and the Vendor is required to surrender Shares, such that the Vendor holds at settlement fewer Shares than the number agreed to be transferred under clause 1 above?	<p><i>[Note: the inclusion, and appropriate content, of this clause 4 depends on which of the Options in clause 1 is used.]</i></p> <p>4. If production in the [2009/2010] season decreases and the Vendor holds fewer Shares at settlement than the number set out in clause [1] then the number of Shares transferred by the Vendor to the Purchaser shall reduce by the number of Shares surrendered (“the Surrendered Shares”) as part of end of season adjustments and the Vendor shall pay</p>	<p>The Minimum Required Shares will reduce to reflect the lower actual production for the season. Shareholders may hold up to 120% of their recent or expected production. Shares in excess of this will be surrendered.</p>

	to the Purchaser on [date] as a reduction in the purchase price the surrender value of the Surrendered Shares.	
Does the agreement record the value attributable to Shares?	5. The value of each Share referred to in clause [1] is \$[].	
Does the agreement record the value (if any) attributable to any Contracts?	6. The value of the Contract[s] referred to in clause [2] is \$[].	
<p>Will the Vendor or the Purchaser be the shareholder recorded on the Fonterra Share Register at end of season?</p> <p>Should the Purchaser have any input into end of season elections? If so, has that been provided for in the agreement?</p>	<p>The parties acknowledge that the Vendor will be the shareholder on the Fonterra Share Register on the settlement date and that the End of Season Movements Statement will be issued by Fonterra in the name of the Vendor as supplier and holder of the shares referred to in clause [1]. As a result the parties agree:</p> <p>(a) the Vendor shall provide to the Purchaser a copy of the End of Season Movements Statement as soon as possible following its receipt by the Vendor; and</p> <p>(b) in relation to any end of season elections able to be made by the Vendor...</p> <p>OPTION A ...the Vendor may make those elections in its discretion entirely, provided however that the Vendor shall ensure that in making those elections it holds, following end of season adjustments, sufficient Shares</p>	

	<p>to enable the Vendor to transfer to the Purchaser the number of Shares referred to in clause [1].</p> <p>OPTION B ... the Vendor shall give effect to any written direction by the Purchaser made to the Vendor in sufficient time for the Vendor to deliver the completed end of season forms to Fonterra no later than the due date set by Fonterra (usually on or about 21 June).</p> <p>OPTION C <i>...set out specific elections in relation to, for example:</i></p> <ul style="list-style-type: none"> - Unshared Supply (note: not available for the 2010/2011 season) - Surrender of Additional Shares <p>Note: Shares may not be surrendered at the shareholder's election before 1 June 2011 if the shareholding includes shares purchased during the 2009 Capital Structure Transition Period (see notes to clause 1 above)</p>	
<p>Will the Vendor or Purchaser be the shareholder recorded on Fonterra's Share Register on any Dividend record date? Should there be any adjustment to the purchase price given the timing differences between dividend</p>		<p>The Value Return (less any retentions) is now paid as a dividend on Shares held during a season (including Additional Shares), and is no longer paid on the basis of milk production during a season. There is no assurance or guarantee as to the level of dividend that may be paid.</p> <p>Shareholders will receive any dividend on all</p>

<p>record dates, dividend payment dates and the farm sale settlement and possession dates?</p>		<p>shares held on a dividend record date. The proposed record date for Fonterra's interim dividend each financial year is 31 March with any dividend paid by 20 April. The proposed record date for each final dividend is 31 May (consistent with end of season) with any dividend paid by 20 October.</p>
<p>Does the agreement contain suitable warranties regarding the Shares being sold?</p>	<p>The Vendor warrants to the Purchaser that, on transfer to the Purchaser:</p> <ul style="list-style-type: none"> (a) the Shares are legally and beneficially owned by the Vendor; (b) the Shares are fully paid up; and (c) the Shares will pass to the Purchaser free of all liens, mortgages, charges, encumbrances, security interests, rights of pre-emption or other adverse interests of any nature whatsoever. 	<p>Note the restrictions applying to surrender of Shares if any part of the shareholding was acquired during the 2009 Capital Structure Transition Period (see notes to clause 1 above)</p>
<p>Does the agreement contain suitable warranties about any Contracts being assigned?</p>	<p>The Vendor undertakes and warrants to the Purchaser that:</p> <ul style="list-style-type: none"> (a) it holds the Contract[s] referred to in clause [] ; (b) it will immediately following [execution of this agreement] request Fonterra's consent to the assignment of the Contract[s] to the Purchaser, and in due course advise the Purchaser immediately on receipt of advice from Fonterra of whether or not it consents to the assignment; 	

	<p>(c) it will notify the Purchaser immediately on receipt of, and provide copies of, any notice received from Fonterra varying or terminating [the/any] Contract;</p> <p>(d) the Contract[s] will not be terminated by the Vendor prior to settlement; and</p> <p>(e) [other].</p>	
When will the Vendor hand over the share transfer form?	The Vendor shall [on the settlement date / immediately following receipt by the Vendor of the Statement of Holding form issued by Fonterra] provide to the Purchaser a signed share transfer form in respect of the Shares referred to in clause [1].	<p>Will depend on timing of settlement date and when exact number of Shares to be transferred is known.</p> <p>Should the agreement provide for the retention of part of the sale proceeds to pay for any Shares to be issued to (and paid for by) the Vendor, with monies retained paid direct to Fonterra for the new Shares?</p>
Does the agreement contain suitable provisions to address any delay in registration of the transfer following settlement?	Following settlement the Vendor shall hold the Shares transferred to the Purchaser (or its nominee) pursuant to this agreement on trust until the date the Purchaser (or its nominee) is registered in Fonterra's Share Register as the holder of those Shares. Whilst held on trust, the Vendor shall not exercise any rights in respect of those Shares other than as authorised or directed in writing by the Purchaser.	The Purchaser will not be registered as shareholder until a correctly completed Share Transfer form is received, any lender's interest noted against the vendor's shareholding is released, all Shareholder payments due to Fonterra have been paid in full and it is after the date stated on the Application to Supply – Existing Farm form as the Farm Possession Date.
Does the agreement record	The Purchaser acknowledges that, notwithstanding any	Note: Value Return is now paid as a dividend on

<p>the Vendor's entitlement to milk payments for the period up to settlement, no matter when paid?</p>	<p>provision to the contrary in this agreement, the Vendor is entitled to all consideration paid by Fonterra for milk supplied from the property [on or prior to the settlement date / in the [2008/09] season], including (for the avoidance of doubt) any Capacity Adjustment payment or deduction, irrespective of the time of payment, or form, of that consideration.</p>	<p>Shares. For further explanation refer above under "Will the Vendor or Purchaser be the shareholder recorded on Fonterra's Share Register on any Dividend record date?"</p>
<p>Should terms be included addressing compliance with Fonterra terms and conditions of supply?</p>	<p>12. The Vendor agrees:</p> <ul style="list-style-type: none"> (a) immediately following execution of this agreement, to provide the Purchaser with details of any Requested Corrective Action or conditional supply arrangements; and (b) to rectify, prior to settlement, at the Vendor's cost all outstanding Requested Corrective Actions notified by Fonterra to the Vendor at any time prior to settlement. <p>13. Should any Requested Corrective Action not have been met to Fonterra's satisfaction prior to settlement then [the Purchaser shall following settlement assume responsibility for rectifying those Requested Corrective Actions at the cost of the Vendor and may withhold a reasonable amount of the purchase price payable at settlement to meet the cost of rectifying those outstanding Requested Corrective Action upon usual solicitor's undertakings].</p>	<p>Refer to Fonterra's current Terms and Conditions of Supply. Fonterra does not check a property for 100% compliance with all Terms and Conditions of Supply as a matter of course. However, if Fonterra identifies any non-compliance it may require improvements by an agreed date. In some circumstances non-compliance is tolerated on a "conditional supply arrangement" basis. In such cases the non-compliance is noted but not required to be remedied at this stage (possibly subject to certain conditions). The non-compliance may be required to be remedied at a future time.</p> <p>The Purchaser will be advised if there are any current issues outstanding or conditions of supply on Fonterra's acceptance of the Application to Supply. (Note: the Purchaser will not be given details of those issues or conditions. That information is provided by Fonterra to the Vendor and the Purchaser must obtain it from the Vendor.) If there are no outstanding documented issues that impact on ongoing supply, this will also be</p>

	14. Other than in relation to Requested Corrective Actions notified by Fonterra to the Vendor in writing at any time prior to settlement the Vendor has no liability to remedy any non-compliance with, and gives no warranties as to compliance with, Fonterra's terms and conditions of supply.	acknowledged in the acceptance letter.
Should the agreement be conditional on Fonterra accepting the Purchaser's application to supply?		Subject to minimal exceptions (refer ss. 87, 94 and 95 of the DIRA), Fonterra must accept all applications made during the Application Period. Applications made outside the Application Period may be accepted at Fonterra's discretion.
Does the Purchaser require any other information about the supply – eg. milk production information between signing and end of season to enable the Purchaser to estimate shareholding requirements for the next season?	The Vendor must [<i>when?</i>] provide to the Purchaser in writing details of all milk production information in respect of the property reasonably requested by the Purchaser to enable the Purchaser to estimate Fonterra's shareholding requirements for the new season. The Vendor agrees, if requested by the Purchaser at any time prior to [settlement], to sign a direction authorising Fonterra to make available to the Purchaser details of all milk supplied from the property during the current season.	Under clause [8] the Vendor is required to provide the Purchaser with a copy of the End of Season Movements Statement.
Have all capitalised terms been defined?	"Additional Shares" means Shares held in excess of the share standard for the relevant season (up to the maximum permitted by Fonterra's Constitution).	

	<p>“Contract[s]” means the Contract[s] referred to in clause [2].</p> <p>“Fonterra” means Fonterra Co-operative Group Limited.</p> <p>“Fully Shared Supply” means all milk supplied to Fonterra is backed by Shares at the current season’s share standard of 1 Share per 1 kg ms, and no milk is supplied on an Unshared Supply basis or under Contract .</p> <p>“Minimum Required Shares” means the minimum number of Shares required to be held for a season, determined in accordance with Fonterra’s Constitution.</p> <p>“Requested Corrective Action” means a Fonterra requested improvement in respect of the property as notified by Fonterra to the vendor in writing for action within an agreed time frame.</p> <p>“Shares” means shares issued by Fonterra.</p> <p>“Unshared Supply” means milk supplied in any one season over and above the previous season that is not supported by Shares.</p>	
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Further information can be obtained from:

Your local Area Manager (contact details can be found listed in the back of Farmlink)

Fonterra Share Registry, contacted through the Fonterra Supplier Services on 0800 65 65 68

Fonterra website– www.fonterra.com

For more information on Shares in Fonterra, Unshared Supply and Contract supply refer to Fonterra's Investment Statement, available from the Fonterra Supplier Services on 0800 65 65 68 or on Fonterra's website www.fonterra.com