



Leasing dairy assets resource pack

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Contents

1. The principles of leasing	1	7. Tool A Farm scorecard for due diligence	15
2. Leasing a dairy property	3	8. Tool B Leasing fairness and affordability calculator	19
Introduction	3	9. Tool C Checklist for arranging a lease for dairy property	23
Tool A – Farm scorecard for due diligence	6	10. Tool D Model property lease agreement for a dairy farm	31
Tool B – Leasing fairness and affordability calculator	6	11. Tool E Cows scorecard for due diligence	49
Tool C – Checklist for arranging a lease for dairy property	6	12. Tool F Cows checklist for setting up a lease of dairy stock	53
Tool D – Model property lease agreement for a dairy farm	6	13. Tool G Model cows lease agreement for dairy stock	57
3. Leasing dairy cows	7		
Introduction	7		
Tool E – Cows scorecard for due diligence	9		
Tool F – Cows checklist for setting up a lease of dairy stock	9		
Tool G – Model cows lease agreement for dairy stock	9		
4. Leasing mobile plant	10		
5. Acknowledgements	11		
6. Appendices: The tools	13		

For more information and to download the latest version of the individual tools visit www.thepeopleindairy.org.au/leasing

The principles of leasing

Leasing is a term which is used to describe a financial arrangement between two parties where one party owns capital (the Lessor) and another party rents the capital from the owner (the Lessee). Leases are applied to plant and equipment, land, water and livestock within the dairy industry. There are various reasons why Lessors rent their capital and Lessees pay rental.

These include:

- › A sound business decision by the Lessee that even after paying rental to the Lessor there is an adequate return for the Lessee for effort, risk and return on any other assets invested. In some cases, there may be a higher return on investment than actually owning the asset. In this sense, it is a form of leveraging by using someone else's assets to assist in wealth creation.
- › In situations where equity and hence borrowing ability is low, a Lessee may be able to rent a critical asset for the business and generate a profit, but cannot raise the capital to purchase the asset.
- › The owner of an asset may want to retain ownership of an asset, but not be exposed to the risks of operating a dairy business in which their assets may be utilised by a Lessee.
- › In some cases the term 'lease' will be used, but in actual fact the understanding is that ownership of the asset will eventually be transferred from the Lessor to the Lessee after the last (residual) payment is made by the Lessee. This is described as a lease-purchase.
- › Leasing is also used for effective tax planning, particularly in succession planning and the use of self-managed superannuation funds. However as with all other business activities, the critical factor is that the decisions are based on good business practice not just tax management.

A successful lease arrangement involves mutual respect and trust but should always be based on a written document which clearly states the expectations and the responsibilities of each party. In successful leasing arrangements, both parties have an appreciation of each other's position and are very clear about expectations during the period of the lease. This is particularly important when asset ownership is transferred via a lease arrangement, for example with cows, or machinery.

Expert advice is required regarding leases which enable the transfer of assets because the Australian Taxation Office has very clear guidelines of a 'lease' arrangement rather than a 'capital purchase'.

Issues to consider

As with all other business arrangements involving two parties there must be mutual benefit, and awareness of the outcomes of committing to a lease arrangement.

- › **Fairness:** The rental rate must reflect the risks involved for each party and the nature of the asset. For example, for the Lessor – land tends to appreciate which is part of a long term return on capital (growth) and the rental needs to reflect the reduced risk of not being a dairy farmer. Rental income is generally secure and not dependent upon a range of external and internal business factors. Equally the return after rental payment for the Lessee has to reflect their additional risk exposure. With cows

or plant and equipment, depreciation of the capital value of the asset has to be considered in addition to the risk profile of investing in the asset. Cows can die or not get in calf, which has dramatic impacts on their value. There are various methods to determine a 'fair' rental rate for an asset. In essence, the Lessee can only rent at a value which will still enable adequate profit to be generated, and a Lessor's rental needs to be comparable to the return possible elsewhere with a similar risk profile. Ultimately, the market will determine the rental rate between two parties.

- › **Affordability:** The fact that potential returns may be fair and generate profit is a different issue to the affordability of rental. The affordability relates to the individual expenditure profile of each party rather than the potential return on capital. Total financing and leasing costs are often limitations when a budget is completed at average milk price and seasonal conditions. Equally, a Lessor must ensure that the cash income received as a result of the rental of capital is adequate to cover requirements.
- › **Control:** When capital is leased, the Lessor has no management control over the leased capital. Monitoring and inspections of the leased capital generally form part of the terms and conditions, but there is no Lessor involvement beyond what is agreed to in the terms of the lease.

Activities to increase the chance of a successful lease arrangement: due diligence

- › Alignment of the people who are to be involved in a lease arrangement is important. The effort in conducting background research in addition to the formal references provided is always well worthwhile.
- › Like other forms of finance, machinery leases (lease–purchase) generally require a credit search by the Lessor in regard to the Lessee. Consideration should be given for all parties to provide a VEDA Credit Score to each other – see www.veda.com.au
- › Use of the Scorecard and Checklist tools included in these resources form part of due diligence. The importance of recording the condition of the capital at commencement cannot be overemphasised. In many cases, it is commencement and termination which are the most perilous stages. Photographic records are very valuable in both land and stock leases.
- › Rental rates can always be cross-checked with industry experts and local service providers. Rental rates need to be considered in relation to the relative risk that may arise for both parties.
- › If at the end of a rental period, there is a transfer of ownership then this must be openly discussed and incorporated into the formal agreement. It has significant impact in that the Lessee cannot use the capital as equity until the last (residual) payment.
- › It is recommended that the parties work with a dairy adviser or other third party to assist in openly discussing any potential areas of contention.
- › Where appropriate, details of security interests in personal property should be included on the **Personal property security register** – see www.ppsr.gov.au
- › Completing the tools in this resource pack is also likely to increase the chance of success if a Lessee applies for bank finance for their business.

Leasing a dairy property

Leasing out the farm may be an option for landowners who want to retire from active farming but are not yet ready to sell the property. In this situation, leasing frees up time and energy for other pursuits and generates an income without having to sell the property. It may also be an option for investors who are mainly interested in capital growth of the land and receiving a reasonable rental for the asset.

Leasing a farm may be an option for farmers who seek full control over their dairy business without borrowing heavily to purchase land. They are likely to already own all or part of the herd and mobile plant. Dairy operators can grow wealth while leasing a property. They may use the profits to increase equity in their dairy asset, expand their business or to invest in non-farming assets.

Successful property lease arrangements are built on a clear understanding of the assets involved (due diligence on the farm) and an appreciation of both parties' responsibilities over the period of the lease. They are based on a written document which clearly states the expectations of each party.

Due diligence: Being across the details

There are many issues to consider and discuss and history has shown that some are common 'hot spots' of contention unless they are set out clearly.

The **Farm scorecard (Tool A)** and **Property checklist for (Tool C)** tools assist potential Lessees and Lessors to cover the key factors – which include:

- › **Titled area** being rented, preferably with title details, and actual grazing area being rented – these can be very different.
- › **Annual rental charge**, inclusive of GST if applicable, method of payment, annual increments if any during the period of the lease. Any adjustments in the event of drought or changes to milk price should also be discussed and included.

- › **Term of the lease**, including a designated date prior to the end of the lease when each party indicates their intentions in regard to the potential uptake of another lease period. (Note: the term of the lease and possible extensions is also an important consideration for banks if the Lessee is looking for finance).
- › **Production records**. The milk production history may or may not be available, but should be requested by an intending Lessee, as an indication of the previous production levels the farm actually achieved.
- › **Farm pastures, cropping, and pasture renovation** are important aspects of the future productivity of the lease farm. It is critical that the intending Lessee walk all paddocks of the farm, to assess the productivity of the pastures prior to entering into the lease, (and at the same time check the operation and state of the water supply, and the condition of fencing). Some leases will specify maximum areas that can be cultivated and cropped and the re-sowing requirements. A digital photographic record of the pastures can be very useful when comparing at a later date.
- › **Infrastructure capacity**. A landowner may be concerned about excessive cow numbers being milked and the subsequent demand for new capital infrastructure such as vats, yards, new dairies, and water supplies. In this case, the Lessor can indicate that the farm is set up to milk a certain number of cows and if the Lessee decides to milk more cows, then changes to the infrastructure will be at the Lessee's cost. In some situations, the lease will simply state an

agreed maximum number of cows. This discussion clarifies a Lessor's intentions (which a Lessee may consider too restrictive). It is the Lessee's responsibility to determine how many cows they will need to milk to fulfil all financial requirements and then assess whether the farm can actually milk that number.

- › **Condition report**. Joint inspection before commencement of the lease, recording (even with photos/video) the state of the farm, including tracks, dairy and non-dairy infrastructure, fixed plant and equipment, weed burden and general state of the pastures. Both parties can sign the joint inspection report. This is critical as memories are not reliable! It is important in particular to highlight any OHandS issues on this joint inspection and who is responsible to correct any problems. Both parties need to be clear about the legal responsibilities they each have in relation to workplace safety. If there is a house supplied with the farm lease, then the internal and external condition of the house needs to be noted and agreed upon.
- › **Agreed capital improvements prior to and during a lease period** should be discussed. Details, including dates by which these improvements are completed, can be stipulated in a separate agreement. This avoids the landowner (Lessor) feeling under constant demand from the Lessee for capital improvements during the lease period and the Lessee being disappointed with capital progress.

- › **Plant and equipment.** A list of the age and condition of any fixed plant and equipment at the start provides a future guide to the need for replacement versus repair. This is a major source of potential conflict and must be clear. Before the start of the lease period, it is often worthwhile for a Lessor to have fixed plant and equipment serviced by a technician and a condition report provided and general farm maintenance completed. This clarifies the ‘starting’ status of the assets being leased.
- › **Repairs and maintenance** are normally undertaken by the Lessee and capital improvements and replacement by the landowner (Lessor) – but this depends on what both parties desire. There have been situations where capital improvements and replacements have been paid for by Lessees when the lease is very long term and a lower rental rate is charged.
- › **Repair vs replacement.** There needs to be a clear method of deciding capital replacement of an item versus repair. For example, a vat may repeatedly require repair (Lessee’s cost) and it should be replaced (Lessor’s cost). Some leases have a ‘trigger’ amount for the replacement of any one item and above this amount, it becomes a capital item and payable by the Lessor.
- › **Water supplies** need to be investigated carefully by the Lessee at commencement. To be considered: water sources, condition of pumps and in particular position of water lines and the state of fill around troughs.
- › **Effluent disposal systems** can be a source of conflict, particularly if more cows are milked on the farm. The state, level of ponds and general level of adequacy of the effluent disposal system needs to be recorded at the start of the agreement plus the agreed cow capacity for the system.
- › **Fertiliser requirements** should be agreed and specified – in units of PKS or kg/ha of traditional fertilisers (and hence tonnes/year). Maintenance calculations are available from agronomic sources. It is fair and reasonable for the landowner to receive documentation of tonnages applied to the rental area each year of the lease, to ensure adequate amounts of nutrient have been applied. It is also prudent for a Lessee to receive any soil test results and fertiliser histories for the rental property beforehand. If there are capital amounts of fertiliser required, this needs to be discussed and incorporated into the lease. Some lease arrangements require pre- and post-lease soil testing to ensure that nutrient levels are maintained. This is fine in theory, but variability in sampling techniques, laboratories and seasonal conditions can lead to problems in practice. In some cases, parties will differ in their approach to fertilisers. For example, in the situation of a Lessee preferring biological sprays to the conventional fertilisers preferred by the landowner (Lessor), they may in fact not be able to agree and hence should not proceed to enter into a lease arrangement. Some lease arrangements will limit the level of nitrogen per hectare per year.
- › **Weeds.** The current state must be noted. Annual weed control is usually the responsibility of the Lessee.
- › **Fodder reserves** can be a source of conflict when there are casual arrangements such as ‘leave the same amount of hay or silage as there was at the start’. It is preferable for the Lessee to purchase any fodder at an agreed price at commencement; at termination, any fodder remains the property of the Lessee and any sale can be negotiated. Some landowners will stipulate limitations on the amount of fodder that can be made and removed from the farm per year. This is sometimes made too restrictive; instead, offsetting the loss of nutrients as a result of exporting forage with adequate fertiliser applications can negate the issue.
- › **Pasture cover at the end of the lease.** Rather than try to measure pasture cover, it can be more practical to agree that a designated proportion of the farm will not be grazed or harvested in the last 30 days of the lease. This enables the next tenant to have some pasture available.
- › **Licence fees.** The Dairy Licence and the associated fees payable to Dairy Food Safety are normally paid by the Lessee. The milk supply arrangement is in the name of the Lessee and unless specified by the landowner (Lessor), the selection of factory to be supplied is decided by the Lessee.
- › **Insurance.** There are a number of types of insurance relevant on dairy farms, including:
 - Farm home and contents
 - Farm buildings
 - Mobile and fixed machinery
 - Farm vehicles
 - Fencing (internal, shared and boundary)
 - Livestock
 - Hay/grain/silage
 - Removal of debris
 - Business interruption
 - Machinery breakdown, deterioration of milk
 - Theft
 - Public Liability
 - Tax audit.

The type of insurance and sum insured by each party should be discussed. In general, both parties need to have public liability insurance to an agreed amount. In regard to property insurance, generally each has their own. Most insurers have a requirement to be notified if a property is being rented to another party.
- › **Rates.** Shire rates are usually the responsibility of the landowner (Lessor), and water rates particularly those related to quantities of water used are payable by the Lessee.
- › **Inspection access.** The landowner’s (Lessor’s) inspection rights need to be discussed and formalised. One inspection per year is usually adequate. (Note: banks may also require the Lessor to sign a ‘Right of Entry’ document so that they are able to inspect stock held as collateral/security for a Lessee’s loan).

Determining the value of the lease – Market value vs productive capacity

The methods used to determine a fair rental for land may include return on market value and/or potential productivity of the land. Whichever methods are used, it should be fair and also affordable for both parties.

With regard to return on market value, a commonly quoted range is from 3% to 9% of the capital value of the asset, although percentages outside these ranges may be appropriate, depending on the state of infrastructure and pastures on the farm. The quoted range may be lower in areas or regions where capital gain is likely to occur and higher in regions where there is little or no capital gain. In irrigation districts, this would include a capital value for any water included in the lease, but the Lessee would generally be required to pay the costs associated with water, particularly water delivery costs.

While the market value approach takes into account the likely total return that the asset might make (lease return and capital gain), it takes no account of the actual ability of the asset to produce a return.

There are two commonly used methods that consider the productive capacity of the land to be leased:

1. Productive capacity – pasture and milk
2. Gross income approach.

The productive capacity of a dairy farm is related to many variables but in regard to the capital assets of land and facilities, the key factors are the potential pasture that can be utilised given good management and the number of cows that can be milked on the infrastructure of shed, yards, tracks, water supply etc. It is only after these variables are assessed that fair and reasonable rental rate can be determined, relative to the rest of the land rental market.

The gross income or gross milk approach can be misleading in that some farms import very high levels of supplement which has little to do with the infrastructure provided by the Lessor unless it is a purpose built feed lot. This approach takes no account of the risks and likely profitability of the farming system implemented.

It is reasonable to investigate the return via a percentage of the market value and also via the productive capacity, and to compromise to a rental that falls between these two indicators. If an owner believes they can achieve a higher return on their asset with lower risk and still have

capital growth in another investment, then they perhaps should not lease but sell their farm. Equally, the amount which a Lessee is willing to pay will ultimately be determined via an assessment of potential business profitability and affordability.

It can be challenging to ascertain a lease value for a run-down farm. In some cases, the effort put in by the Lessee in re-establishing pastures and soil fertility and the expenditure they make on capital, may improve the value of the farm. In this case, it could be reasonable to have set a lower rental rate at the commencement of the lease and minimise any increase in rent over time. Conversely if the landowner (Lessor) chooses to reinvest capital into the farm, for example in upgrading the dairy, then it is reasonable that this is reflected in the rental. There are many examples of Lessees with vision securing a long term lease on a farm requiring improvement and generating significant profits over a period of time after the initial investment stage.

The rental for a dry-stock block often reflects the equivalent cost of purchased feed or agistment.

Both the **Farm scorecard (Tool A)** and the **Leasing fairness and affordability calculator (Tool B)** can assist the parties in determining the rental.

Tool A – Farm scorecard for due diligence

The **Farm scorecard** tool addresses the more significant aspects of a dairy farm that make it **fit for purpose** for leasing, purchase or share farming (or even as a prospective workplace for an employee, especially if share farming is a future option).

It can be used to simply prompt observations, or to assess each factor on a scale to create an overall score for the farm. Always begin by identifying any ‘must have’ features of a farm from the Lessee’s perspective.

If you are going to use the scoring facility:

- › Start by reviewing the Weighting column (1 to 5 scale, where 1=*very little importance* to me and 5=*extremely important to me*). The requirements for each user are likely to be different. There are some suggested weightings pre-loaded, but users may want to change them.
- › Next consider the farm and enter your Assessment (1 to 4 scale, where 1=*is not present* and 4=*definitely present*). Notes to guide the assessment of each factor are available in the commentary.

The overall score may be used as a comparison across a number of farms or as a guide to determine how the property compares to the perfect farm (max score).

People who might use this **Farm scorecard** include farmers and those doing due diligence on behalf of a client, bankers or other investors, advisers, land owners, accountants and lawyers.

Tool B – Leasing fairness and affordability calculator

This **Calculator** provides a relatively quick way of determining if a lease arrangement is **fair** and is **affordable**. It is recommended that the parties work through this step with a dairy adviser.

The **Fairness** test reflects the returns relative to the value of the assets provided and the risk to each party. The Return on Assets will be different for each party and

needs to be acceptable for both the Lessor and for the Lessee. Arrangements that are unable to achieve this outcome are at risk of coming under pressure and ultimately being unsuccessful.

The **Affordability** test reflects whether the budgets work for each party. In relation to affordability, there needs to be some positive cash available for both the Lessor and the Lessee in an average year. Arrangements that are unable to achieve this outcome are at risk of coming under pressure and ultimately being unsuccessful.

It is important that the Lessor obtains professional advice about the potential risk and returns from other forms of investment rather than owning a dairy farm.

Tool C – Checklist for arranging a lease for dairy property

The **Property checklist** tool can be used as a starting point to discuss the detail of all the elements that should be considered when a lease agreement is being arranged. It can be used to review a current agreement or to build a new one.

The best arrangements are always the ones that are prepared specifically to suit each farm situation. This **Property checklist** is designed to guide discussion of each element by both parties until an agreement has been reached. The model **Property lease agreement (Tool D)** can then be populated.

It is recommended that the parties work with a dairy adviser to discuss the important factors in their lease agreement. If appropriate, the dairy adviser who is now familiar with the agreement can be engaged to conduct inspections at the agreed times.

Tool D – Model property lease agreement for a dairy farm

The **Model property lease agreement** has been prepared as a template which can be modified to suit individual circumstances. It has been drafted so that it will

stand up to legal analysis. It is recommended that the parties work with a dairy adviser to develop their agreement. Prior to signing, both parties should consider obtaining independent financial and legal advice.

This **Model property lease agreement** is made up of two distinct sections, each of which is needed to make up the complete document.

1. The property lease agreement – standard clauses

This section contains standard clauses which apply to every lease agreement. These clauses lay the foundation for the agreement. This part of the document does not require anything to be added (other than signatures, of course).

There are also some explanatory notes about the clauses in a separate **Information sheet**.

2. The schedules

All the details of the specific lease are set down in the schedules. For example, schedule 1, Item 4a describes the land, schedule 2 describes the buildings and other improvements which will be leased, and schedule 4 details the major assets and their condition at the start of the agreement. These must be filled out.

You should have three documents downloaded:

1. **The property lease agreement – standard clauses.** This is a pdf document to print.
 2. **The schedules.** This is a Word document, for you to fill out to complete the Agreement. The details for this section will have been worked out (and recorded) in the **Property checklist (Tool C)** if you have used that.
- Also
3. **The information sheet** giving explanatory notes on the standard clauses. This is a pdf document, for your information only (it does not need to be in the final document).

These 4 tools are available at www.thepeopleindairy.org.au/leasing

Leasing dairy cows

There are two major reasons why dairy farmers lease dairy cows:

- › They lack sufficient equity to purchase additional cows from either their own funds or a traditional lender
- › It assists in the transfer of stock between generations and is tax effective.

Financial institutions regard stock as high risk and the interest rates they charge for financing the purchase or lease of livestock will reflect this risk. This is also true for the return the owner of the dairy cow would expect in a rental situation. It will be significantly higher than the rental of land as a percentage of the value of land. That said, a highly skilled dairy farmer can still generate a reasonable return after paying the higher rental.

Given the risk profile (cows die, don't get in calf, and can lose condition), and the higher rate of return expected by the owner of the stock, it is critical that the terms and conditions of the lease and the type of lease are clearly understood. Cow leasing is less common than leasing of property.

Types of cow leases

There are three types of leases of dairy cows:

1. Ageless lease
2. Depreciating lease
3. Operate lease.

They have different principles and are used for different reasons.

1. 'Ageless lease'

This type of lease suits someone who has stock that they want to retain as an asset.

At the end of the lease period, the same number of animals, with the same age, breed, calving pattern and condition profile, which were provided by the Lessor at the start of the lease, have to be returned by the Lessee.

In an ageless lease, it is important to understand that depreciation (losses and ageing) are a cost that the Lessee incurs and must be taken into account when assessing the viability of the proposal.

There is no ownership of residual stock by the Lessee except any replacement stock above the number required to maintain the age profile of the rental group.

Example of a 'Ageless lease':

An employee owns 100 cows, of average age 4 and average value \$1,600, in an employer's herd. He/she rents the capital value of the stock to the employer.

The interest rate is normally at least that of a stock loan from a traditional lender plus an added risk factor. If stock loans were 9% then the rental rate could be 10% or \$160 per cow per year.

At the end of the lease the employer must return 100 cows of average age 4, with a similar calving pattern profile, breed and condition to the employee.

A Lessee who is confident of earning significantly above the 10% rental and who can rear excess replacement calves could be attracted to this type of lease arrangement.

2. 'Depreciating lease'

In a depreciating lease, as the name suggests, depreciation of the asset (ageing/loss of the stock) is taken into account. It is a common form of cow lease used to gradually change the ownership of the herd from the Lessor to the Lessee.

If stock are returned at the end of this type of lease, they will be older on average, but be of the same pregnancy status, condition and breed. In contrast to the ageless lease, all progeny produced during the term of the lease become owned by the Lessee.

The Lessee needs to assess if an adequate return on investment could be made at this rental rate.

Since it is a gradual process, it is tax effective for both parties. The lease payments are fully tax deductible for the Lessee and the owner gradually trades out of the herd, rather than conducting a whole herd sale in one year.

Example of a 'Depreciating lease':

An owner of stock leases 100 cows of average 4 years and average value \$1,600 to a Lessee.

In 5 years, the cows may be worth chopper value of \$800 so there has been depreciation of \$800/cow or \$160 per year/cow. The Lessor receives an agreed price for a cow which either dies or is culled from the herd.

As with the ageing lease, the base rental per cow would be \$160/yr, but to take into account the ageing of the herd another \$160/cow/yr would be added, bringing the total to \$320/cow/yr.

3. 'Operating lease'

This is a tax effective method of transferring stock between generations, and also of financing the lease-purchase of a herd when funds could not be obtained from a traditional lender.

An Operating lease is very similar to the lease purchase of a motor vehicle.

Rental payments are set to reflect interest and depreciation and a residual is agreed upon as the last rental payment. Only when the last or residual payment is made by the Lessee, are the stock owned by the Lessee. Normally, a residual payment would be about 30% of the total capital amount leased at the start.

Example of an 'Operating lease':

A farm owner wishes to transfer ownership of 100 cows, with average age 4 yrs and average value \$1,600/cow to the next generation. The period is 5 yrs.

The capital value of \$160,000 is split into a \$48,000 residual and \$112,000 balance.

The annual rental is made up of two parts.

- \$112,000 at 10% Principal and Interest (equivalent) over 5 yrs = \$28,560/yr

- \$48,000 at 10% interest only over 5 yrs = \$4,800/yr

Total annual rental = \$33,360 = \$336/head/yr

These leases have stringent requirements regarding the number and rearing of replacement stock. In the event of a breach of the lease, the owner will generally have the right to retain replacement stock.

The owner reduces the risk, in what could be regarded as a high risk activity, by always retaining ownership until the residual payment is made. A Lessee should always check the effective interest rate being charged; in many cases it has been found to be double the normal rates applied by traditional lenders. The Lessee must assess very carefully if it is affordable.

The 'cash' and ownership implications in three types of leases for dairy cows

Leasing 100 cows – three different ways and three different outcomes		
100 cows preg tested in calf, all to calve between 1/7 and 10/9 Average BMCC 210,000 Condition Score 4.8 Average age 4 yrs Capital value \$1,600/cow		
Ageless lease	Depreciating lease	Operating lease
\$160,000 capital value 10% annual rental = \$160/cow	\$160,000 capital value 10% annual rental = \$160/cow Depreciation = \$160/hd/yr Total rental = \$320/hd/yr and agreed payment for losses (with number of stock decreasing).	\$160,000 capital value divided into \$48,000 residual payment and \$112,000 balance. "Rental": \$112,000 at 10% P and I over 5 years = \$28,560/yr plus \$48,000 at 10% (int. only) = \$4,800/yr Total = \$33,360/yr or \$334/cow/yr
At the end of the lease:	At the end of a 5 yr lease:	At the end of 5 yrs:
<ul style="list-style-type: none"> > The Lessor receives 100 cows back with same age, breed, calving pattern profile and condition. > The Lessee has hopefully generated a profit but has no stock. 	<ul style="list-style-type: none"> > The Lessor owns 30 ageing milkers and has been paid for choppers and deaths at an agreed rate. > The Lessee owns 70 milkers and 50 replacements and has hopefully made a profit. 	<ul style="list-style-type: none"> > When the residual payment is made, the Lessor will no longer own the stock. > When the residual payment is made the Lessee will own 100 cows and replacements.

It is critical to seek professional financial advice in regard to the leasing of livestock.

- > The rental must be affordable for the Lessee and included with other finance costs.
- > There are taxation implications that need to be clearly identified. Lease payments are fully tax deductible, but capital payments for stock are not. If the ATO considers a lease is in fact a direct transfer of capital for a nominated price then it will not be tax deductible.
- > There are implications for the livestock inventories of both the Lessee and Lessor that need to be considered.
- > Third parties that facilitate cow leases normally include

their costs, either as administration fees or as part of the lease cost. This needs to be factored into the overall rental rate and affordability.

Details of security interests in personal property should be included on the Personal property security register – see www.ppsr.gov.au

Due diligence for leasing of cows

Disputes over cow leases generally arise in regard to the physical attributes of the cows being leased versus those being returned. These include:

- › Breed
- › Age distribution
- › Pregnancy status and calving date
- › Condition
- › Disease status (especially mastitis, mycoplasma and Johnne's).

Other issues to clarify are:

- › Lease payment amounts and methods
- › Who incurs the cost of cartage to and from the Lessee's Farm
- › Return of unsound cows early in the **Lease** (for example within the first *seven* days)
- › Ownership of progeny
- › The number of calves to be reared
- › Semen selection in an ageless lease
- › The right of inspection and access to cow records during the term of the lease
- › Payment rates for culls and deaths
- › Dispute resolution process
- › Breach clauses.

Rented land is likely to continue to increase in value, but the characteristics of the livestock will have a direct impact on their capital value. Therefore due diligence at commencement, and frequent monitoring, in addition to the normal reference checks are essential. A joint inspection with a photographic records at start and finish is highly recommended.

Tool E – Cows scorecard for due diligence

The **Cows scorecard** provides a list of the more significant characteristics of dairy stock that make them fit for purpose for leasing (or purchase).

Tool F – Cows checklist for setting up a lease of dairy stock

The **Cows checklist** assists the parties to discuss the elements that should be considered when a lease agreement for cows is being arranged.

Tool G – Model cows lease agreement for dairy stock

The **Model cows lease agreement** has been prepared as a template which can be modified to suit individual circumstances. It has been drafted so that it will stand up to legal analysis. It is recommended that the parties work with a dairy adviser to develop their agreement. Prior to signing, both parties should consider obtaining independent financial and legal advice.

This model cows lease agreement is made up of two distinct sections, each of which is needed to make up the complete document.

The cows lease agreement – standard clauses

This section contains standard clauses which apply to every lease agreement. These clauses lay the foundation for the agreement. This part of the document does not require anything to be added (other than signatures, of course).

There are also some explanatory notes about the clauses in a separate **Information sheet**.

The schedules

All the details of the specific lease are set down in the schedules. For example, schedule 1, item 4 sets the date of commencement of the lease, and schedule 2 describes the numbers and age and breed profile of the stock. These schedules must be filled out.

You should have three documents downloaded:

1. The **Cow lease agreement – standard clauses**. This is a pdf document to print.
2. **The schedules**. This is a Word document, for you to fill out to complete the Agreement. The details for this section will have been worked out (and recorded) in the **Cows checklist (Tool F)** if you have used that.

Also:

3. The **Information sheet** giving explanatory notes on the standard clauses. This is a pdf document, for your information only (it does not need to be in the final document).

These 3 tools are available at www.thepeopleindairy.org.au/leasing

Leasing mobile plant

Leasing is one method to obtain finance for mobile plant. Ownership of the leased goods remains with the 'Lessor' (the financier) until an 'Option to purchase' is exercised by the 'Lessee' (the farmer) at the end of the lease agreement. In this way, the equipment does not automatically become the property of the Lessee at the end of the term. Leases are often entered into with no deposit.

Security required – Leases differ from loans in that the leased item is still owned by the financier (the Lessor).

Term of lease – Generally, new equipment is leased for 3–5 years. At the end of the lease term, the finance company takes back the equipment unless the Lessee pays out the residual value. Alternatively, the Lessor may re-lease the equipment for a shorter period of perhaps two years. At the end of that period there is a nominal residual value.

Repayments/interest – Lease payments may be negotiated on a monthly, quarterly or seasonal basis but payments are made in advance. Repayments are fully tax deductible.

Fees – Leases require Stamp Duty on the finance arrangement, but there are usually no other fees.

The benefits of leasing mobile plant include:

- › Interest can be claimed as a tax deduction if the equipment is used for business purposes. You should discuss the tax implications with your accountant before entering any of these arrangements.
- › Working capital is preserved as 100% financing is provided in the case of a Hire Purchase or Operating Lease.

The risks of leasing mobile plant include:

- › A common fault of some businesses is to use short-term finance (lease, hire purchase, chattel mortgage) to purchase long-term assets. Lease, hire purchase and chattel mortgage equipment finance is short-term debt that can put a lot of pressure on cash flow. Equipment finance for the purchase of large capital acquisitions like dairy plant, vats or other fixed plant commit a business to large debt reductions over a short period (usually five years). Using equipment finance for such large purchases is usually a result of not having enough security or borrowing capacity to fully finance the capital needs of the business. Major capital acquisitions of plant that have a long useful life should be financed by loans over much longer periods than typical equipment finance contracts. Increasing the number of years over which a debt is paid off reduces the size of the repayments.
- › Lump sum balloon or residual payments can have a severe impact on the cash flow when they become due often leading to another short-term financial arrangement. It is advisable that lease payments are structured to at least be equal to or greater than depreciation.

Acknowledgements

Thanks to the following people who contributed information about leasing dairy assets to the experience and research which underpins these resources:

- › Rod Banks (CowBank)
- › Brian Blair (Dairy farmer, South Gippsland)
- › Patten Bridge (Bridge Logic)
- › Pauline Brightling (Harris Park Group)
- › Ian Cobbedick (Dairy farmer, Nathalia)
- › Jennie Corkhill (IR solicitor)
- › Tom Farran (Farmanco)
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- › Neil Lane (Dairy Australia)
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- › John Mulvany (OMJ Agricultural Consulting)
- › Cameron Smith (Farmanco)
- › Jackie and Michael Thorn (Dairy farmers, Tinamba)
- › John Verstedden (Dairy farmer, Willow Grove)
- › Colin Wright (Phillipsons)
- › Bill Youl (Dairy Australia).

Appendices: The tools

Leasing a dairy property

Tool A – Farm scorecard for due diligence

Tool B – Leasing fairness and affordability calculator

Tool C – Checklist for arranging a lease for dairy property

Tool D – Model property lease agreement for a dairy farm

Leasing dairy cows

Tool E – Cows scorecard for due diligence

Tool F – Cows checklist for setting up a lease of dairy stock

Tool G – Model cows lease agreement for dairy stock

These 7 tools are available at www.thepeopleindairy.org.au/leasing



Tool A Farm scorecard for due diligence



This **Farm scorecard** addresses the more significant aspects of a dairy farm that make it fit for purpose for leasing, purchase or share farming (or even as a prospective workplace for an employee, especially if share farming is a future option).

You may use the list to prompt your observations, or you can also assign scores to each factor to create an overall score for the farm. You can input into the *white* and *mustard* boxes on the **Farm scorecard** tab – read the notes at the top of each column. Blue coloured boxes cannot be edited.

The first two columns are optional – they do not impact on your score. The **Check** column allows you to record against this factor – add text as you like. The **must haves** column lets you indicate if the factor is a must have in your situation and allows for quick reference – select from the drop down list.

If you are using the **Scoring facility**, start by reviewing the **Weighting** column. The requirements for each user are likely to be different. There are some suggested weightings pre-loaded, but you may want to change some or all of these weightings. Weighting uses a 1 to 5 scale, where *1 = very little importance to me and 5 = extremely important to me*. Select from the drop down list.

You may also identify some non-negotiables for your situation. Consider the farm and enter your **Assessment** in the **Assess** column (1 to 4 scale, where *1 = is not present and 4 = definitely present*). Select from the drop down list. Refer to the notes in the **Commentary** column to guide your assessment.

The overall score may be used as a comparison across a number of farms or as a guide for users to determine how the property compares with the perfect farm (max score).

Users of this **Farm scorecard** may include farmers and those doing due diligence on behalf of a client for purchase or use, bankers or other investors, advisers, land owners, accountants and lawyers.

An example of the **Farm scorecard** is shown on the next page.

The **Farm scorecard** (which includes instructions) can be downloaded from www.thepeopleindairy.org.au/leasing

Farm scorecard for due diligence

Farm: *Silverstream Dairy*

Date: *21st January*

Factor	Commentary	Check	Must have	Assess (1-4)	Weighting (1-5)	SCORE (A x W)	Max Score
The land							
Location	Within 20 km of rural town and 50 km of regional city that has dairy services			3	3	9	12
Soil type	Lighter, free draining more favoured			3	5	15	20
Area available	Carrying capacity relative to needs, opportunity for growth, dry stock area, useable area, irrigable area			3	3	9	12
Rainfall	>800 mm 80% of years for dry land farming (See BOM)		Yes	4	5	20	20
Soil fertility	High: Olsen P > 30, Colwell K > 300, S > 20, pH > 5.7 /Moderate: P 20-30, K 150-300, S 10-20, pH 5.4-5.7 /Low: P <20, K < 150, S < 10, pH < 5.40	?		1	3	3	12
Pastures	Pasture type (perennial or annual), species and density adequate (all paddocks inspected and rated).			1	3	3	12
Production records	Milk production history from milk factory if available, is an indication of the previous production levels the farm has actually achieved			2	4	8	16

Factor	Commentary	Check	Must have	Assess (1-4)	Weighting (1-5)	SCORE (A x W)	Max Score
Infrastructure							
Farm design	Tracks well placed, soft corners, minimal rises and dairy position central. No public road division or if there is then a tunnel should be in place.			2	5	10	20
OHS issues	Farm infrastructure is free of areas of OHS risk (eg power lines, obstructions, confined spaces requiring cleaning)			4	4	16	16
Track condition and width	Width relative to herd size, 5m for first 300 cows plus 1m per 100 extra cows, minimal corners or rises, material used in construction			3	3	9	12
Fence condition	Current fences are able to control your stock			4	3	12	12
NRM and environmental scorecard	Riparian zone management, shelter belts (% of area in vegetation 0% low, 10% high) fauna corridors, weed and pest control including rabbits and roos, effluent never in runoff water courses			2	2	4	8
Status of equipment and machinery	State of repair, fit for purpose, adequacy			4	2	8	8
Dairy feeding systems	Storage of all concentrates preferably 2 weeks supply, augers and mill in good repair, easy to unload, mixing automated, ability to selectively feed. Ability to safely unload from delivery truck.			3	2	6	8
Milk harvesting facility efficiency	Shed type, number milking points, yard size and washdown facilities adequate for number of cows. Shed fills/milking: 30 or more (score=1), 10 or less (score=4). OH&S considerations.		Yes	4	5	20	20
Vat size	Complies with processor requirements. Less than 10% of days on twice daily pick up			4	2	8	8
Shedding for machinery and hay	Adequacy based on reasonable demand			4	2	8	8
Effluent storage	Effluent capture at dairy and feed pad is well designed. Liquid effluent storage for minimum of 3 months. Method of disposal of effluent.			3	3	9	12
Ability to feed out in winter	Feed pad or soil type that allows machinery in paddocks in wet soil times			4	3	12	12
Calf rearing facilities	Shedding adequate for calves less than 4 weeks, shelters for unweaned calves, feeders for concentrates are weather proof, water available in all areas, suitable paddocks for calves less than 12 months of age that are used exclusively for young stock. Obtain current disease status information.			1	2	2	8

Factor	Commentary	Check	Must haves	Assess (1-4)	Weighting (1-5)	SCORE (A x W)	Max Score
Heat management facilities	Water, shade, feeding systems, cooling mechanisms			1	3	3	12
Quality of accommodation	Space relative to needs. Ideally 3 bedroom, location quiet and convenient, cooling in warmer climates, heating easy (not firewood dependent), internal fittings updated, garage or shedding available. Overall presentation. Safety for all family members and visitors.		Yes	4	4	16	16
Water							
Water reticulation and supply	Adequate reliable stock water supply (storage and flow) - large enough troughs, not shared across fences, 2" lines, pump capacity so that flow > peak demand. Backup system.			3	3	9	12
Irrigation Water infrastructure and supply	ML HRWS, ML Deep Lead Bore. History >90% years have > 100% allocation. Supply (Low < 1ML/cow, high > 3 ML/cow). Efficient delivery well maintained, modern technology such as automation			4	5	20	20
Farm Score						239	316
						76%	

Other issues noted on this farm

Version 1 January 2016

Tool B Leasing fairness and affordability calculator



This **Fairness and affordability** calculator can be used to assess a lease arrangement that is currently under review or being proposed.

It is recommended that the parties work with a dairy adviser to develop their lease, and then seek independent financial and legal advice.

For more background information and the latest version of this calculator, visit www.thepeopleindairy.org.au/leasing

Instructions: Fairness and affordability calculator

The fairness and affordability calculator is one of four tools developed as part of the resources for leasing dairy farms.

To complete the fairness and affordability calculator, read these instructions (you might like to print a copy) and fill in the *mustard* coloured input boxes.

There are notes on the *mustard* coloured input boxes that provide guidance on what should be entered. Blue coloured boxes cannot be edited.

The information used should be based on actual financial business performance that is adjusted to take account of agreed average terms of trade and average seasonal conditions.

All entries should be exclusive of GST.

Step 1: Basic details

Fill in the *mustard* coloured input boxes including a name for the farm, the anticipated number of cows and the anticipated level of production.

Step 2: Fairness test

The **Fairness** test reflects the returns relative to the value of the assets being provided and the risks to each party.

Fill in the *mustard* coloured input boxes for both the Lessor and the Lessee including a dollar figure for:

Operating surplus:	Is calculated as (milk income + other farm income) less (herd costs + shed costs + feed costs + overhead costs)
Livestock:	Is the increase in livestock inventory expected to occur under the arrangement
Depreciation:	Is the amount by which the value of an asset is considered to diminish over the period of a year.
Imputed labour:	As a guide, consider a total labour cost for the business relating to both paid labour and imputed labour of between \$1 and \$1.10/kg MS. Thus a business producing 150,000 kg MS would be considered to incur approximately \$150,000 in labour costs. If \$50,000 was spent on paid labour then this would leave \$100,000 of imputed labour to be apportioned between the Lessor and the Lessee. Figures higher than this can be used if deemed appropriate.
Asset provision:	Is an agreed reasonable value for the assets provided by both parties

Step 3: Affordability

The **Affordability** test reflects whether the budgets work for each party.

Fill in the *mustard* coloured input boxes for both the Lessor and the Lessee including a dollar figure for:

Personal costs:	Include household expenses including groceries, clothes, education expenses, personal insurance, non-farm related insurance and personal tax
Finance costs:	Include all interest (including overdraft interest), principal, hire purchase payments, chattel mortgage payments and lease payments
Other costs:	Include any other costs that might be incurred by the parties such as tax for the trading entity

Leasing fairness and affordability calculator example

Farm
 Cows milking cows
 Production kilograms of milk solids

Fairness		Lessor	Lessee	Total
Cash	Operating Surplus	\$56,500	\$157,500	\$214,000
Non cash	+ Livestock	\$ -	\$20,000	\$20,000
	- Depreciation	\$22,000	\$14,000	\$36,000
	- Imputed Labour	\$ -	\$105,000	\$105,000
	EBIT	\$34,500	\$58,500	\$93,000
	Asset Provision	\$1,300,000	\$500,000	\$1,800,000
	Return on Asset (RoA)	6.04%	11.70%	7.61%

Affordability		Lessor	Lessee	Total
	Operating Surplus	\$56,500	\$157,500	\$214,000
	- Personal Costs		\$40,000	\$40,000
	- Finance Costs	\$39,000	\$91,500	\$130,500
	- Other Costs	\$8,000	\$8,000	\$16,000
	Cash	\$9,500	\$18,000	\$27,500

Notes:

In relation to **fairness** the RoA will be different for each party. However the RoA needs to be acceptable for both the Lessor and for the Lessee and reflect the risks for each party. Arrangements that are unable to achieve this outcome are at risk of coming under pressure and ultimately being unsuccessful.

In relation to **affordability**, there needs to be some positive cash available for both the Lessor and the Lessee in an average year. Arrangements that are unable to achieve this outcome are at risk of coming under pressure and ultimately being unsuccessful.

Note: Blue coloured boxes cannot be edited.

Tool C Checklist for arranging a lease for dairy property



Use this **Checklist** to discuss the elements that should be considered when a lease agreement is being arranged. It can be used to review a current agreement or to build a new one.

The best arrangements are always the ones that are prepared specifically to suit each farm situation. This **Checklist** is designed to guide discussion of each element by both parties. It is recommended that the parties work with a dairy adviser to develop their agreement.

A template **Model property lease agreement** is available as **Leasing: Tool D**. Prior to signing, both parties should consider obtaining independent financial and legal advice.

For more information and the latest version of this **Checklist**, visit www.thepeopleindairy.org.au/leasing

ISSUE TO BE ADDRESSED	DETAILS/WHAT WE AGREE	REF IN TOOL D
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Parties to the lease

Lessor (landowner)

Schedule 1, Item 2

ABN

Lessee

Schedule 1, Item 3

ABN

1. Rental property

Description of land. Is there clear identification of the land in the lease agreement? Have you agreed on the availability of **farm buildings, structures and improvements** on the leased property?

Property name _____
 Location _____
 Land Titles identification numbers and areas:
 Total area is _____ hectares (or acres)
 Useable area is _____ hectares (or acres)
 The buildings, structures and improvements included _____
 Exclusions of land or structures from the property to be leased _____

Schedule 1, Item 4a
 Schedule 2
 Schedule 1, Item 5

2. Use of the property

Have you discussed the intended use of the property?

What will the property be used for during the lease? _____

Schedule 3

3. Water entitlements

Is there clear identification of the water entitlements in the lease agreement?

Note: Various water products are available in different regions. Discuss the products relevant to your region/situation.

Delivery Shares attached to the property are _____ML
 Annual Use Limit for the property (outlined in the Water Use Licence) is _____ML
 Annual Delivery Allowance (entitlement before incurring higher delivery charges) for the property is _____ML
 High Reliability Water Shares included in this arrangement are _____ML
 Low Reliability Water Shares included in this arrangement are _____ML
 River Diversion Water included in this arrangement is _____ML
 Deep Lead Bore Water included in this arrangement is _____ML
 Shallow Bore Water included in this arrangement is _____ML
 Drainage Diversion Water included in this arrangement is _____ML

Schedule 1, Item 4b

ISSUE TO BE ADDRESSED	DETAILS/WHAT WE AGREE	REF IN TOOL D
<p>4. Rental and other charges</p> <p>Have you agreed on an annual rental charge for the dairy area and support area?</p> <p>Have you agreed on the details of rental review?</p> <p>Who is responsible for shire rates, water rates?</p>	<p>Annual rent for the dairy area will be \$_____ (excl. GST)</p> <p>Annual rent for the support area will be \$_____ (excl. GST)</p> <p>Total annual payment will be \$_____ (excl. GST)</p> <p>Timing _____ and method _____ of rental review</p> <p>Annual shire rates \$ _____ approx. paid by _____</p> <p>Annual water rates \$ _____ approx. paid by _____</p>	<p>Schedule 1, Item 10</p>
<p>5. Method of payment</p> <p><i>Note: It is common for payments to be deducted from the milk cheque in advance via an automatic deduction on a nominated day each month</i></p>	<p>Rental payments will each be \$_____ (including GST)</p> <p>Frequency of payments _____</p> <p>Date of first payment _____</p> <p>Method of payment _____</p>	<p>Schedule 1, Items 12 and 13</p> <p>Schedule 1, Item 8</p> <p>Schedule 1, Item 9</p> <p>Schedule 1, Items 10 and 11</p>
<p>6. Term of the lease</p> <p>Have you fixed the term of the lease?</p> <p>Have you discussed options regarding renewal terms and conditions?</p> <p><i>Note: It is recommended that 6 months before the end of the Term, the Lessor and Lessee discuss renewal, with a final decision no later than 3 months before the end of the Term.</i></p>	<p>Starting date _____</p> <p>Termination date _____</p> <p>Date for each party to indicate their intentions re: a further lease period _____</p> <p>Renewal terms and conditions _____</p>	<p>Schedule 1, Item 6</p> <p>Schedule 1, Item 7</p> <p>Schedule 1, Item 15</p>

ISSUE TO BE ADDRESSED	DETAILS/WHAT WE AGREE	REF IN TOOL D
<p>7. Asset register and condition reports</p> <p>Have you conducted a joint inspection of the property and infrastructure?</p> <p>What is the condition of the land assets, including roads, tracks, fences, water, all infrastructure, shelterbelts, weeds and general state of pastures?</p> <p>Note: Take photographs for record and list any OH&S issues</p> <p>Have you reached agreement on adequate water supply and reticulation for household, stock and dairy use, including all necessary motors, pumps, piping and ball floats?</p> <p>Has the milking plant been recently tested and approved by a competent technician? Have you checked the hot water supply, effluent system, feeding system, computer system and the capacity of the refrigerated vat(s)?</p> <p>Are any capital works or improvements required?</p> <p><i>Note: These to be the subject of a separate agreement between the parties.</i></p>	<p>Date first inspected _____</p> <p>Date for final inspection (prior to signing lease) _____</p> <p>Land assets and infrastructure condition report/photos (date) _____</p> <p>Major plant items, age and condition: complete list below (date) _____</p> <p>_____</p> <p>Water sources report completed (date) _____</p> <p>Milking plant report sighted (date) _____</p> <p>Hot water supply details _____</p> <p>Refrigerated vat capacity _____</p> <p>Capital works and/or improvements to be undertaken by Lessor prior to the lease period _____</p> <p>Capital works and/or improvements to be undertaken by Lessee during the lease period _____</p>	<p>Schedule 4</p> <p>Clause 23</p>

ISSUE TO BE ADDRESSED	DETAILS/WHAT WE AGREE	REF IN TOOL D
<p>8. House Does the agreement provide a house? <i>Note: Condition report and photographs important. In some States, residential tenancy laws will apply.</i></p>	<p>Date of residential tenancy agreement _____ or Date house inspected _____ Condition report agreed and completed _____</p>	
<p>9. Repairs and maintenance Have you agreed on responsibility for general repairs and maintenance? Who's responsible for repairs to major plant and equipment? Have you reached agreement for repair and/or replacement of major plant and equipment? <i>(See Major Assets Register)</i></p>	<p>Who will be responsible for general repairs and maintenance to infrastructure _____ Milking equipment, plant, utensils, appliances, dairy and yards _____ Channels, drains and irrigation structures (including all motors, pumps, piping, troughs and ball floats) _____ Roads, tracks, fences _____ Effluent storage and disposal system, particularly with regard to avoiding overflow of effluent into streams _____ Buildings and structure _____ Major plant and equipment _____</p>	Schedule 5
<p>10. Nutrient balance Have you reached agreement on fertiliser type and minimum spread? What evidence does the Lessor require of fertiliser application? Are there agreed limits to export of feed from the leased area?</p>	<p>The Lessee will apply a minimum application of fertiliser annually as follows: Milking area (___ ha): ___P ___K ___S (or equivalent of approved super potash mix) Support area (___ ha): ___P ___K ___S (or equivalent of approved super potash mix) Evidence to be provided _____ Limits to exported feed _____</p>	Schedule 5

ISSUE TO BE ADDRESSED	DETAILS/WHAT WE AGREE	REF IN TOOL D
<p>11. Pasture and fodder reserves</p> <p>What pasture cover is agreed for start and finish? Have you negotiated terms for stored supplementary feed? <i>It is often advisable for the Lessee to purchase all fodder at commencement.</i></p>	<p>Pasture cover: a designated area _____ (eg 30% farm) will not be grazed or harvested for 30 days prior to the end of the lease or Agree to measure pasture cover at start and finish and reconcile</p> <p>At the commencement date, Lessee to pay \$_____ for _____ stored fodder or At the commencement date, Lessor is providing _____ stored fodder. At the termination of the lease, the Lessee will leave _____ stored fodder of equivalent quality.</p>	<p>Schedule 5</p>
<p>12. Cropping and sowing</p> <p>Have you agreed the maximum areas that can be cultivated and cropped and the re-sowing program?</p>	<p>Maximum area to be cultivated _____ ha. What is the requirement to re-sow pasture base?</p>	<p>Schedule 3 Schedule 5</p>
<p>13. Access by Lessor</p> <p>Have you discussed inspection access for the Lessor?</p>	<p>Access rights for Lessor _____ Lessor or their representative will conduct _____ inspection/s per year.</p>	<p>Clause 16</p>
<p>14. Insurances</p> <p>Are you aware of each party's responsibility for insurance?</p>	<p>Type of insurance and sums insured to consider:</p> <ul style="list-style-type: none"> > Farm home and contents > Farm buildings > Mobile and fixed machinery > Farm vehicles > Fencing (internal, shared and boundary) > Livestock > Hay/grain/silage > Removal of debris > Business interruption > Machinery breakdown, deterioration of milk > Theft > Tax audit > Public Liability <p>How much public liability insurance will both parties need to keep current? _____</p>	<p>Clauses 10,11,12 Schedule 1, Item 14</p>

ISSUE TO BE ADDRESSED	DETAILS/WHAT WE AGREE	REF IN TOOL D
<p>15. Dispute resolution Are you aware of the dispute resolution procedure in the lease agreement?</p>	<p>The Model lease agreement outlines the dispute resolution procedure to be: discussion between the parties, and if no agreement then mediation, and if no agreement then arbitration.</p>	<p>Clause 24</p>
<p>16. Provisions for termination by breach Should the lease be terminated (for breach by either party) before the completion date, have you agreed on the consequences with respect to crops, pasture, conserved forage, water, and time to relocate?</p>	<p>If the lease is terminated before the termination date, the arrangements for dealing with the following factors will be:</p> <p>Crops _____</p> <p>Pasture _____</p> <p>Conserved forage _____</p> <p>Water _____</p> <p>Time to relocate _____</p>	<p>Schedule 6</p>
<p>17. Preparation of agreement and payment of stamp duty Have you discussed how the lease agreement will be drawn up and who will pay the stamp duty?</p>	<p>The lease agreement will be prepared by _____</p> <p>The stamp duty on this lease will be paid by _____</p>	<p>Clauses 27, 28 Schedule 1, Item 17</p>
<p>18. Other terms and conditions</p>	<p>Any other matters _____</p> <p>_____</p> <p>_____</p>	<p>Schedule 7</p>

Tool D Model property lease agreement for a dairy farm



The **Model property lease agreement** has been prepared as a template which can be modified to suit individual circumstances. It has been drafted so that it will stand up to legal analysis.

It is recommended that the parties work with a dairy adviser to develop their agreement. Prior to signing, both parties should consider obtaining independent financial and legal advice.

This **Model property lease agreement** is made up of two distinct sections, each of which is needed to make up the complete document:

1. The Property lease agreement – standard clauses

- › This section contains standard clauses which apply to every lease agreement. These clauses lay the foundation for the agreement.
- › This part of the document does not require anything to be added (other than signatures, of course).
- › There are also some explanatory notes about the clauses in a separate **Information sheet**.

2. The Schedules

- › All the details of the specific lease are set down in the schedules.
- › For example, schedule 1, Item 4(a) describes the land, schedule 2 describes the buildings and other improvements which will be leased, and Schedule 4 details the major assets and their condition at the start of the agreement.
- › These must be filled out.

You should have three documents downloaded:

1. The **Property lease agreement – standard clauses**. This is a PDF document to print and sign, included in this document.
2. The **Schedules**. This is a Word document, for you to fill out to complete the Agreement. The details for this section will have been worked out (and recorded) in the **Checklist for arranging a lease for dairy property (Tool C)** if you have used that.

Also

3. The **Information sheet** which explains the standard clauses. This is a PDF document for your information only (it does not need to be in the final document).

For more information and to access the latest version of this agreement, visit www.thepeopleindairy.org.au/leasing

Property lease agreement

LEASE OF REAL ESTATE made on the day set out in **Item 1** of **Schedule 1**

BETWEEN

The Lessor as stated in **Item 2** of **Schedule 1**.

and

The Lessee as stated in **Item 3** of **Schedule 1**.

The Guarantor as stated in **Item 3(a)** of **Schedule 1**.

RECITALS

A The Lessor is the legal owner of a freehold interest in land.

B The Lessee has agreed to lease the Land on the terms and conditions of this Lease.

THIS DEED NOW WITNESSETH as follows:

Interpretation

- 1 In this Lease unless a contrary intention appears:
 - (a) **Land** means all of the land as described in **Item 4(a)** of **Schedule 1**;
 - (b) **Property** means all of the Land as described in **Item 4(a)** of **Schedule 1** and water entitlements described in **Item 4(b)** of **Schedule 1** and the buildings, structures, fixtures, assets and improvements as described in **Schedule 2**;
 - (c) **Purpose** means the use of the land as described in **Schedule 3**;
 - (d) **Termination date** means the last day of the term as stated in **Item 7** of **Schedule 1**;
 - (e) **Water Entitlement** means water entitlements, licences, authorities, and approvals relating to the Land current at the commencement date as described in **Item 4(b)** of **Schedule 1**.

Lease

- 2 The Lessor agrees to lease the Property to the Lessee on the terms and conditions of this Lease.

Commencement date

- 3 This Lease commences on the date stated in **Item 6** of **Schedule 1**.

The Term

- 4 This Lease will be in force for the term stated in **Item 7** of **Schedule 1**.

Exclusions

- 5 The Property specifically does not include the land, buildings, structures, fixtures, assets and improvements specified in **Item 5** of **Schedule 1**.

The Rental

- 6 The Lessee agrees to pay the Lessor the rental stated in **Item 10** of **Schedule 1** to be paid at the times and in the manner specified at **Item 11** of **Schedule 1**.
- 7 The rental will be reviewed and may be adjusted in the manner stated in **Item 12** of **Schedule 1** at the times stated in **Item 13** of **Schedule 1**.

Condition and maintenance of the Property

- 8 The condition of the Property will be recorded in **Schedule 4** prior to the commencement of this Lease.
- 9 Maintenance of the Property will be in accordance with the specifications contained in **Schedule 5**.

Insurance and Indemnity

- 10 The Lessee at the Lessee's sole cost and expense, will keep current and be responsible for at all times a policy of:
 - (a) public risk insurance applicable to the Property for an amount not less than the amount stated in **Item 14** of **Schedule 1**; and
 - (b) other operational insurancestaken with a reputable insurer noting the Lessor's interest in the policies.
- 11 The Lessor will maintain insurance applicable to the Property and public risk insurance applicable to the Property for an amount not less than the amount stated in **Item 14** of **Schedule 1** at all times during the term of the Lease.
- 12 Each party will present evidence of these insurances to the other party within 2 weeks of the commencement date.

Lessor's Obligations

- 13 The lessor will at all times during the term of the Lease and any extension of the Lease:
- (a) give the Lessee quiet possession and enjoyment of the Property without any interruption so long as the Lessee complies with the terms of this Lease;
 - (b) pay rates to the local authority in respect of the Land if required to do so in **Item 8 of Schedule 1**;
 - (c) pay water rates to the appropriate authority if required to do so in **Item 9 of Schedule 1**;
 - (d) at its own expense, obtain the written consent from all mortgagees or debenture holders to enter into this Lease;
 - (e) take out and keep current all Water Entitlements required for the Lessee to carry out the Purpose of the Lease;
 - (f) permit the Lessee to use water from any dam located on the Land in their absolute discretion;
 - (g) take out and maintain insurances in accordance with clause 11 of this Lease.

Lessee's Obligations

- 14 The Lessee will at all times during the term of the Lease and any extension of the Lease:
- (a) pay the rental as stated in **Item 10 of Schedule 1** in the manner laid down in **Item 11 of Schedule 1** or as amended under clause 7 of this Lease provided that in the event of damage by fire, lightning, flood or tempest rent will abate until the Property is restored;
 - (b) pay rates to the local authority in respect of the Land if required to do so in **Item 8 of Schedule 1**;
 - (c) pay water rates to the appropriate authority if required to do so in **Item 9 of Schedule 1**;
 - (d) only use the Property for the Purpose or Purposes described in **Schedule 3**.
 - (e) use the Land in a good and husband-like manner;
 - (f) carry out any cultivation and stocking of the Land in accordance with good farm management and animal welfare practices;
 - (g) maintain and leave the Property in good and tenable repair (having regard to the condition at the commencement of this Lease) except for damage from flood, storm, tempest and reasonable wear and tear;
 - (h) maintain the Property in accordance with the specifications contained in **Schedule 5**;
 - (i) comply with all laws relating to the use or occupation of the Property;
 - (j) at the end of the Lease return the Property to the Lessor;
 - (k) at or prior to the expiration of the Lease remove any fixtures installed by the Lessee;
 - (l) promptly give notice to the Lessor of service by any authority of a notice or order affecting the Property;

- (m) not do anything or permit anything to be done on the Property which may become a nuisance or annoyance or cause damage or inconvenience to the Lessor or tenants or occupiers of neighbouring properties;
- (n) take out and maintain insurances in accordance with clause 10 of this Lease;
- (o) not do anything or permit anything to be done which may render any insurance void or voidable;
- (p) upon termination of this Lease deliver up to the Lessor all access keys and devices.

Guarantee

- 15 If the Lessee is a company, then in consideration of the Lessor entering into the lease at the request of the directors of the Lessee, the directors named in **Item 3(a) of Schedule 1**:
- (a) guarantee to the Lessor that the Lessee will punctually pay the rent and other money payable under the lease;
 - (b) guarantee to the Lessor that the Lessee will perform its obligations; and
 - (c) undertake to the Lessor that, with the Lessee, they will be liable separately and together to the Lessor for the payment of rent and other money and the performance of the Lessee's obligations.

Entry by the Lessor

- 16 The Lessor or its authorised agent may during the term at a reasonable time of the day upon giving the Lessee 2 days notice in writing (or at any time without notice in the case of an emergency) enter for the following reasons:
- (a) to view the state of repair of the Property;
 - (b) to carry out repairs or agreed alterations;
 - (c) to do anything necessary to comply with notices or orders of any authority,
- provided that in exercising these rights the Lessor must use its best endeavours to minimise any disturbance to the Lessee in its occupation and use of the Property.
- 17 The Lessor may serve the Lessee a notice in writing specifying any defects and requiring the Lessee to effect repairs within a reasonable time.

Termination by Lessee

- 18 The Lessee may terminate this Lease immediately by notice in writing:
- (a) if the Lessor breaches any of the obligations in clause 13 of this Lease;
 - (b) any rights or entitlements attaching to or connected with the Land (for example, Water Entitlements) to which the Lessee is entitled to enjoy under the Lease are cancelled, revoked or withdrawn;
 - (c) upon the Lessor breaching any other condition of this Lease and failing to rectify such a breach within 30 days of receiving notice in writing from the Lessee of such breach.

Termination by Lessor

19 The Lessor may terminate this Lease and re-enter the Property if:

- (a) the rental is unpaid;
- (b) the Lessee fails to meet its obligations under this Lease;
- (c) the Lessee is wound up or has an administrator, receiver or manager appointed to it or is placed under official management;

provided that the Lessor has first served a notice on the Lessee specifying the nature of the breach and if the breach is capable of remedy requiring the Lessee to remedy the breach and/or make compensation in money for the breach and the Lessee has failed to make good the breach within 30 days of receipt of the notice.

Renewal of this Lease

20 Renewal of this Lease will be in accordance with the procedure outlined in **Item 15 of Schedule 1**.

21 Unless the parties agree otherwise, the new Lease will be subject to the same terms and conditions, including any variations made during the term of this Lease, as are contained in this Lease except:

- (a) the commencement date will be the day after the Termination Date under this Lease and the termination date will be the last day of the further term;
- (b) the rental will be as determined by the parties.

Consequences of breach

22 Should this Lease be terminated under clause 18 or 19 prior to the expiry of the term and the Lessor retake possession of the Property, then without limitation to any other remedy the Lessee may have under this Lease or at law, the consequences outlined in **Schedule 6** will apply.

Improvements

23 Improvements and any capital works carried out during the term of the Lease by either the Lessor or the Lessee, the ownership of these improvements, their removal at the end of the Term and any compensation to be paid for the making of these improvements will be in accordance with a separate written agreement between the parties.

Dispute Resolution

24 The Lessor and the Lessee agree that the following steps will take place in the event of a dispute arising during the term of this Agreement:

- (a) The Lessor and the Lessee will meet at a mutually convenient time and make a genuine attempt to resolve the dispute informally and quickly. If the dispute cannot be resolved after this meeting the parties agree that they will submit to a mediation to be conducted by a mutually acceptable mediator.

- (b) If the parties cannot agree on the mediator the parties agree to submit to mediation by a mediator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 16 of Schedule 1**.
- (c) If the dispute cannot be settled by agreement or mediation within 21 days of the dispute arising, the parties agree to submit to arbitration by an arbitrator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 16 of Schedule 1**.
- (d) The parties agree to bear their own costs and that the cost of any mediation or arbitration will be shared equally between them.
- (e) The parties agree that they will continue to perform their obligations under this Agreement while the dispute is being resolved.
- (f) Nothing in this clause prevents either party from exercising their legal rights to take action to enforce payment or seek urgent court relief to prevent detrimental action by either party.

OR – NSW only

The Lessor or the Lessee may make an application to the NSW Civil and Administrative Tribunal for a determination of any dispute not later than 3 months after the relevant dispute arises or the end of the tenancy

Assignment

25 The Lessee will not assign any rights, privileges or benefits under this Lease without the prior written consent of the Lessor which may be withheld by the Lessor at its absolute discretion.

OR - Queensland only

The Lessee will not assign any rights, privileges or benefits under this Lease without the prior written consent of the Lessor which will not be unreasonably withheld.

Additional terms and conditions

26 The parties agree that the additional terms and conditions contained in Schedule 7 form a part of this Lease.

Costs of the preparation of this Lease

- 27 Each party will bear their own costs of and incidental to this Lease.
- 28 The party specified in **Item 17 of Schedule 1** will pay any stamp duty in relation to this Lease.
- 29 The party specified in **Item 17 of Schedule 1** will pay any registration fee in relation to the registration of this lease.

Whole Agreement

30 This Lease contains the whole agreement between the parties and supersedes all prior representations, warranties, arrangements, understandings and agreements between them relating to the subject matter of this Lease.

Variation

31 No variation, modification or waiver of any provision of this Lease nor consent to any departure by any party therefrom will in any event be of any force unless it is confirmed in writing and signed by the parties and will only be effective to the extent for which it has been made or given.

GST

32 The following provisions apply with respect to GST:

- (a) expressions used in this clause have the same meanings as when used in the GST Act;
- (b) amounts payable and consideration provided under or in respect of this Lease (other than in sub-clause (c)) are GST exclusive;
- (c) the recipient of a taxable supply made under or in respect of this Lease must in addition pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply;
- (d) a party is not obliged, under sub-clause (c), to pay the GST on a taxable supply to it under this Lease until given a valid tax invoice for the supply.

Severability

33 Every provision or part of this Lease will be deemed to be severable as far as is possible from any other provision or part thereof and should any provision or part thereof be void or unenforceable for any reason the same will be deemed to be omitted therefrom and this Lease with such provision or part omitted will otherwise remain in full force and effect so far as is possible.

Applicable Law

34 This Lease will be construed in accordance with the laws of the state specified in **Item 16 of Schedule 1** and the parties submit to the jurisdiction of the appropriate courts of that state in respect of any matter or thing relating to this Lease.

Notices

35 Any notice required to be served under this Lease will be sufficiently served on a party in one of the following ways:

- (a) if left addressed to the party at the address stated in **Item 2, 3 or 3(a) of Schedule 1** for that party or such other address as may be notified to the sender by the recipient from time to time or forwarded to the recipient by post at such address;
- (b) by faxing to the party at the number shown at in **Item 2, 3 or 3(a) of Schedule 1**;

- (c) by email to the party at the email address shown at in **Item 2, 3 or 3(a) of Schedule 1**,

A notice sent by post is deemed to be given at the time when in a normal course of the post it would be delivered at the address to which it is sent.

General

36 In this Lease, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words importing one gender include other genders;
- (c) a reference to a document or instrument, including this Lease, includes that document or instrument as novated, altered or replaced from time to time;
- (d) a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- (e) a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- (f) other grammatical forms of defined words or expressions have corresponding meanings;
- (g) a covenant, undertaking, representation, warranty, indemnity or agreement made or given by two or more parties or a party comprised of two or more persons, is made or given and binds those parties or persons jointly and severally;
- (h) a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re enactments or replacements of any of them;
- (i) a recital, schedule, annexure or description of the parties forms part of this Lease;
- (j) if an act must be done on a specified day that is not a business day, the act must be done instead on the next business day;
- (k) if an act required to be done under this Lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- (l) all monetary amounts are in Australian dollars;
- (m) a party that is a trustee is bound both personally and in its capacity as trustee of the trust for which it is acting as trustee;
- (n) a reference to an authority, institution, association or body ("original entity") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- (o) headings are for convenience only and do not affect the interpretation of this Lease.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED

.....
SIGNED for and on behalf of the Lessor

.....
(full name)

in the presence of:

.....
(Signature of Witness)

.....
(Name of Witness)
Affix company seal if applicable

.....
SIGNED for and on behalf of the Lessor

.....
(full name)

in the presence of:

.....
(Signature of Witness)

.....
(Name of Witness)
Affix company seal if applicable

.....
SIGNED for and on behalf of the Lessor

.....
(full name)

in the presence of:

.....
(Signature of Witness)

.....
(Name of Witness)

Schedules The model property lease agreement

Schedule 1.

Item 1. Date	The date of this lease
Item 2. Lessor	The Lessor's name /ABN/telephone number /address/fax number and email address for service of documents
Item 3. Lessee	The Lessee's name/ABN/telephone number/address/fax number and email address for service
Item 3 (a). Guarantor (director of Lessee company)	The Guarantor's name / ABN / telephone number / address / fax number and email address for service
Item 4 (a). The land	The land – property name, address, description of the land, number of hectares/acres Land title numbers
Item 4 (b). Water entitlements	Detail water entitlements
Item 5. Exclusions	List all exclusions from the Property
Item 6. Commencement date	
Item 7. The term	Length of lease and termination date
Item 8. Local authority rates	Party to pay local authority rates
Item 9. Water rates	Party to pay water rates Party to pay for drainage Party to pay for irrigation water Party to pay for domestic/stock water
Item 10. Commencement rental	Commencement Rental amount
Item 11. Time and manner for payment of rental	

Schedule 1. continued

Item 12. Review and adjustment of rental	Timing and method of rental review
Item 13. Rent review date	
Item 14. Amount of Public Risk insurance and other agreed insurances	
Item 15. Renewal of Lease	Procedure (if any) for renewal of Lease Date for each party to indicate intentions for a further lease period. Any renewal terms and conditions
Item 16. Applicable law (state)	
Item 17. Stamp Duty and registration fee	Party responsible for paying stamp duty Party responsible for paying registration fee

Schedule 2.

Buildings structures assets and improvements

<insert details of the buildings, structures, fixtures, assets and improvements included in the lease of the Property – this information should be taken from the Checklist for arranging a lease for dairy property: Tool C>

Schedule 3.

Purpose of the use of the property

<insert detail of the intended use of the property during the term of the lease – this information should be taken from the Checklist for arranging a lease for dairy property: Tool C>

Schedule 4.

The condition of the property

<insert details of the current condition of the land, buildings, structures, fixtures, assets and improvements (the Property) – this information should be taken from the Asset Register and condition reports in the Checklist for arranging a lease for dairy property: Tool C.

You should also attach a copy of the Major Assets Register>

Schedule 5.

Maintenance and repair of the Land, Buildings Structures Fixtures Assets and Improvements (the property)

<insert details of agreed maintenance and repair – this includes maintenance and repair of buildings, structures, fixtures, assets and improvements, fertiliser application, exported feed, pasture and fodder reserves, cropping and sowing – this information should be taken from the Checklist for arranging a lease for dairy property: Tool C. >

Schedule 6.

Consequences if lease is terminated for breach

<insert details of what the parties have agreed should occur if the lease is terminated before the termination date – this information should be taken the Checklist for arranging a lease for dairy property: Tool C. >

Schedule 7.

Additional terms and conditions

<insert any other agreed terms and conditions – this information should be taken from the Checklist for arranging a lease for dairy property: Tool C. >

Information sheet The model property lease agreement

What do the lease clauses mean?

The date of the lease

The date of the lease must be written in **Item 1** of **Schedule 1**.

The date of the lease may be different from the commencement date.

The commencement date must be written in **Item 6** of **Schedule 1**.

The Lessor

The Lessor is the person who owns the land.

The name of the Lessor and ABN must be written in **Item 2** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address should also be written in **Item 2** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address.

The Lessee

The Lessee is the person who is leasing the land from the Lessor.

The name of the Lessee and ABN must be written in **Item 3** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address should also be written in **Item 3** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address.

The Guarantor

If the Lessee is a company the names of the directors and their contact details should be written in **Item 3(a)** of **Schedule 1**.

This is important because **Clause 15** specifies that the directors of the Lessee company agree to be liable for the rental payments and other obligations under the lease.

Each party has an obligation to make sure the other party has their current address.

The recitals

Clauses A and B explain the background to the Agreement.

Clause 1 – Interpretation

This clause provides specific definitions of terms as they apply in the lease.

Note that all of the definitions require further detail to be written into the Schedules at the end of the lease.

Clause 2 – Lease

This clause states that the terms and conditions in the lease document apply to the lease of the property.

See also **Clause 30** which states that the lease contains everything that the parties have agreed about.

Previous negotiations or correspondence are not a part of the lease.

It is therefore important that everything that you want to be included in the lease is written in the Schedules.

Clause 3 – Commencement date

The commencement date must be written in **Item 6 of Schedule 1**.

Note that the commencement date may be different to the date of the lease.

Clause 4 – The Term

This clause states the number of weeks, months or years of the lease and when the lease ends.

The termination date must be written in **Item 7 of Schedule 1**.

Clause 5 – Exclusions

This clause provides for land buildings, structures, fixtures, assets and improvements to be specifically excluded from the lease if the parties agree.

Any exclusions must be written in **Item 5 of Schedule 1**.

Clauses 6 and 7 – The rental

The rental must be determined before the lease is entered into and written in **Item 10 of Schedule 1**.

The time and manner of payment (eg deduction from the milk cheque) of the rental must be written in **Item 11 of Schedule 1**.

Clause 7 also provides for review and adjustment of the rental at times agreed to by the parties. This must be agreed before the lease is entered into.

Item 12 of Schedule 1 provides for the parties to agree on a process for the review and adjustment of rental.

Item 13 of Schedule 1 provides the date for the review of the rental.

Clauses 8 and 9 – Condition and maintenance of the property

These clauses require the parties to agree upon the condition of the land, buildings, structures, fixtures, assets and improvements and their maintenance before the lease is entered into.

A good record along with clear photographs can prevent disputes down the track.

As assessment should be made of all land, buildings, structures, fixtures, assets and improvements and comprehensive details should be written in **Schedules 4 and 5**.

The Major Assets Register (See the **Checklist for arranging a lease for dairy property: Tool C**) should also be included.

Clauses 10, 11 and 12 – Insurance and indemnity

These clauses require the Lessor and the Lessee insure their own interests in the lease as well as insuring for public risk.

The Lessee's policy should note the interest of the Lessor in the policy.

The amount of public risk insurance must be entered at **Item 14** of **Schedule 1**.

Note that **Clause 12** requires the parties to provide evidence to each other that the insurances have been taken out.

Clause 13 – Lessor's obligations

This clause specifies the Lessor's obligations which apply generally to the lease.

'Quiet enjoyment' means that the Lessor will allow the Lessee to get on with running the farm without disturbance by the Lessor except in particular circumstances which are detailed in **Clause 16**.

Responsibility to pay local authority and water rates must be decided before the Lease is entered into and the person responsible written in **Items 8** and **9** of **Schedule 1**.

Clause 14 – Lessee's Obligations

This clause specifies the Lessee's obligations which apply generally to the Lease.

Clause 15 – Guarantee

This clause provides that if the Lessee is a company, the directors agree to be liable for the rental payments and to ensure that the Lessee meets the other obligations under the lease.

Clauses 16 & 17 – Entry by the Lessor

These clauses specify particular circumstances when the Lessor is permitted to come onto the leased land to inspect the property or carry out repairs.

The Lessor must give the Lessee notice in writing 2 days before coming onto the land unless there is an emergency.

These clauses permit the Lessor to notify to Lessee in writing if repairs are necessary.

The Major Assets Register (See the **Checklist for arranging a lease for dairy property: Tool C**) will be a useful tool in such circumstances.

Clause 18 – Termination by the Lessee

This clause provides for termination by the Lessee before the end of the Lease.

This can only occur in the particular circumstances laid down in this clause.

Note that the Lessee has to give the Lessor 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessee cannot proceed to terminate the lease.

Any termination notice must be in writing and be delivered to the Lessor at one of the addresses listed in **Item 2** of **Schedule 1**.

See also **Clause 35** which specifies how notices should be delivered.

If the Lease is terminated before the due date there may be consequences for instance if crops have been sown, fodder conserved or water purchased (see **Clause 22**). These possible consequences should have been considered by the parties before the Lease was entered into and written in **Schedule 6**.

Clause 19 - Termination by Lessor

This clause provides for termination by the Lessor before the end of the Lease.

This can only occur in certain circumstances laid down in the clause.

Note that the Lessor has to give the Lessee 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessor cannot proceed to terminate the lease.

Any termination notice must be in writing and be delivered to the Lessee at one of the addresses listed in **Item 3 of Schedule 1**.

See also **Clause 35** which specifies how notices should be delivered.

If the Lease is terminated before the due date there may be consequences for instance if crops have been sown, fodder conserved or water purchased. (see **Clause 22**)

These possible consequences should have been considered by the parties before the Lease was entered into and written in **Schedule 6**.

Clauses 20 & 21 – Renewal of the Lease

These clauses provide for renewal of the Lease.

Note that the lease provides that the new lease will be on the same terms and conditions as the initial lease unless the parties agree otherwise and the rental is to be agreed to by the parties.

Any potential renewal should be considered before the parties enter into the Lease and a procedure adopted to enable a smooth transition.

There is a suggested clause in the (See the **Checklist for arranging a lease for dairy property: Tool C**).

Clause 22 – Consequences of breach

If the Lease is terminated before the termination date under **Clause 18** or **Clause 19** there may be consequences for instance if crops have been sown, fodder conserved or water purchased.

These possible consequences should have been considered by the parties before the Lease was entered into and written in **Schedule 6**.

Clause 23 – Improvements

This clause provides that a separate written agreement will be entered into for all improvements and capital works.

Lessors and Lessees in NSW should be aware that the Agricultural Tenancies Act 1990 provides specifically for improvements made both with and without consent.

For further information, visit www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Agricultural_tenancy.page

Clause 24 – Dispute Resolution

This clause provides a detailed dispute resolution procedure involving mediation of if that fails arbitration.

The main purpose of this clause is to encourage the parties to resolve disputes as they arise as quickly as possible in an informal manner.

If the land is in New South Wales, the Agricultural Tenancies Act 1990 allows for the parties to bring proceedings in the NSW Civil and Administrative Tribunal. For further information and relevant documents visit www.dpi.nsw.gov.au/aboutus/legislation-acts/agricultural-tenancies/help

Clause 25 – Assignment

Assignment is when a party transfers their rights and responsibilities under a contract to another party.

This Lease does not allow the Lessee to transfer the Lease unless the Lessor agrees.

The law in Queensland provides that the Lessor cannot *unreasonably* prevent an assignment of the Lease.

Clause 26 – Additional Terms and Conditions

Because this agreement is a template agreement there may be specific matters which the parties want to add to the Lease.

This clause allows them to do so provided the terms and conditions are written in **Schedule 7**.

Clauses 27, 28 & 29- Costs of the preparation of this Lease

Each party is responsible for their own legal costs.

The parties need to decide who will pay any stamp duty and registration fees which may apply.

See the attached table: Registration Requirements and Stamp Duty for a state by state breakdown of registration and stamp duty requirements.

Note: the table only provides an indication of stamp duty payable on a standard lease agreement such as this template agreement.

Stamp duty may be payable if there is a premium (an additional amount on top of the rental) paid for the lease or in some cases the transfer of the lease. If any additional amounts are payable such as an amount paid for an option to purchase duty may also be payable.

Registration fees change so it is suggested that you approach your local land titles registration office for this information. See Table (below in this document) for contact details.

Clause 30 – Whole Agreement

This clause means that the Lease contains everything that the parties have agreed about.

Previous negotiations or correspondence are not a part of this Lease.

For this reason it is very important that all documents which have been created such as the **Checklist for arranging a lease for dairy property: Tool C** and the **Major Assets Register** are included in the Schedules to this Agreement and signed by the parties and dated at the bottom of each page.

Clause 31 – Variation

This clause confirms that the Lease cannot be changed unless all parties agree and put this agreement in writing.

Clause 32 - GST

This clause provides for the law about GST to apply.

Note that the rental is GST EXCLUSIVE.

Clause 33 – Severability

This clause means that if a clause in this Lease is found not to be valid or enforceable it can be taken out of the Lease leaving the remainder of the Lease intact and still applicable.

Clause 34 - Applicable Law

It is recommended that the law of the state where the property is located is the law which applies. The state should be written in **Item 16 of Schedule 1**.

Clause 35 - Notices

The purpose of this clause is to avoid disputes about whether a notice has in fact been given to the other party.

If a notice, such as a notice about a breach of the Lease, has to be given to the other party it must be in writing and be delivered in one of the ways laid down in this clause.

Each party has an obligation to make sure the other party has their current address if this changes from the addresses listed in **Items 2, 3 and 3(a) of Schedule 1**.

If notices are sent by email or fax a hard copy of the email or fax and the transmission receipt or notification should be kept.

Clause 36 – General

These are general interpretation clauses which apply to all leases.

Signing clauses

It is important that all parties sign the lease and if applicable that any company seals are attached.

In addition each party should sign and date at the bottom of every page including all of the Schedules and any attachments to the Schedules so that it is clear that these are included in the lease.

Schedules

The lease is designed to be a template agreement which applies generically.

Information and particulars which are specific to the individual leasing arrangement must be therefore be written into the relevant Schedules which are at the end of the lease.

The **Checklist for arranging a lease for dairy property: Tool C** cross references each Schedule in the right hand column.

Information written in the **Checklist for arranging a lease for dairy property: Tool C** should be copied into the relevant Schedule.

Registration requirements and stamp duty table

Registration of the lease with the state titles registration office provides the Lessor with 'indefeasibility' which means a guarantee that the lease is a recognised interest in the land. In practice, this means that if the land is sold the Lessee will be able to continue leasing the land until the termination date.

State	Registration	Stamp duty payable ¹
Queensland	<p>Leases for more than 3 years can be registered and if they are the Lessor will achieve indefeasibility. The manual contains the relevant form and is available at www.business.qld.gov.au/industry/titles-property-construction/titles-property/practice-manual</p> <p>Contact details: Queensland Titles Registry Phone: 1300 255 750 Fax: (07) 3225 1739 Online enquiry form on web page Mailing Address Brisbane Titles Registry Office GPO Box 1401, Brisbane QLD 4001 Office hours: 8:30 to 4:30 Monday to Friday</p>	No
NSW	<p>Leases for more than 3 years (including leases with an option to renew a lease for a shorter period which amounts to 3 years or more) are required to be registered. There is a formal document and checklist at: www.lpi.nsw.gov.au/land_titles/dealing_forms/land_title_dealing_forms</p> <p>Contact details: NSW Land and Property Information 1 Prince Albert Road Queens Square, Sydney NSW 2000 Phone 1300 052 637 Email: GeneralEnquiry@lpi.nsw.gov.au Office hours: 8:30 am to 4:30 pm business days.</p>	No
Victoria	<p>Leases for less than 3 years cannot be registered. The Land Titles Act provides indefeasibility even if the lease is not registered Leases for more than 3 years and one day can be registered visit: www.dtpli.vic.gov.au/property-and-land-titles/land-titles Customer Service Information Bulletin with references to the relevant documents.</p> <p>Contact details: Land Registration Service Level 27, 570 Bourke Street Melbourne VIC 3000 Phone: (03) 8636 2010 Fax: (03) 8636 2999 Office hours: 8:30 to 4:00 Monday to Friday</p>	No

State	Registration	Stamp duty payable ¹
Tasmania	<p>Leases for less than 3 years cannot be registered. Leases for more than 3 years can be registered. Visit www.thelist.tas.gov.au/told/faces/jsp/contents.jsp</p> <p>Contact details: Land Titles Office Level 1, 134 Macquarie Street, Hobart TAS 7000 Phone: 03 6165 4444 Fax: 03 6223 8089 Email: Titles.Enquiries@dpipwe.tas.gov.au</p>	No
South Australia	<p>Leases for more than 1 year must be registered to achieve indefeasibility. Online forms can be downloaded from www.sa.gov.au/topics/housing-property-and-land/land-services-industry/online-services/lto-forms-online#title0</p> <p>Contact details: Land Titles Office Ground Floor, 101 Grenfell Street, Adelaide Mailing Address: GPO Box 1354, Adelaide SA 5001 Phone: 08 8226 3983 (country callers 1800 648 176) Fax: 08 8226 3998 Email: LSCustomerSupport@sa.gov.au Office hours: 9.00 am to 5.00 pm Monday to Friday</p>	No
Western Australia	<p>Leases for less than 3 years cannot be registered. Leases more than 3 years should be registered to obtain indefeasibility. List of forms can be downloaded at www0.landgate.wa.gov.au/titles-and-surveys/forms-and-fees/land-titling-forms and www.landgate.wa.gov.au/docvault.nsf/web/PS_PM/\$file/LTPM.pdf (Manual)</p> <p>Contact details: Landgate 1 Midland Square, Midland WA 6056 Phone: (08) 9273 7373 Fax: (08) 9250 3187 Email: customerservice@landgate.wa.gov.au Office hours: 8:30 to 5:00 Monday to Friday. Document lodgement: 8:30 to 4:30 Monday to Friday</p>	No

¹ Note: This only refers to a stamp duty payable on a standard lease arrangement. Stamp duty may be payable if there is a premium (an additional amount on top of the rental) paid for the lease or in some cases transfer of the lease. If any additional amounts are payable such as an amount paid for an option to purchase, duty may also be payable.

Tool E Cows scorecard for due diligence



This **Cows scorecard** addresses the more significant characteristics of dairy stock that make them fit for purpose for leasing (or purchase).

You may use the list to prompt your observations, or you can also assign scores to each factor to create an overall score for the cows. You can input into the **white and mustard** boxes on the **Cows scorecard** tab – read the notes at the top of each column. **Blue coloured boxes** cannot be edited.

The first two columns are optional – they do not impact on your score. The **Check** column allows you to record against this factor – add text as you like. The **Must have** column lets you indicate if the factor is a 'must have' in your situation and allows for quick reference – select from the drop down list.

If you are using the **scoring facility**, start by reviewing the **Weighting** column. The requirements for each user are likely to be different. There are some suggested weightings pre-loaded, but you may want to change some or all of these weightings. **Weighting** uses a 1 to 5 scale, where 1 = *very little importance to me* and 5 = *extremely important to me*. Select from the drop down list.

You may also identify some non-negotiables for your situation. Consider the cows and enter your **Assessment** in the **Assess** column (1 to 4 scale, where 1 = *is not present* and 4 = *definitely present*). Select from the drop down list. Refer to the notes in the Commentary column to guide your assessment.

For more information and the latest version of the **Cows scorecard**, visit www.thepeopleindairy.org.au/leasing

Cows scorecard for due diligence

Lot: *Whole herd at Jackson's*

Date: *21st March*

Factor	Commentary	Check	Must have	Assess (1-4)	Weighting (1-5)	Score (A x W)	Max Score
Physical description							
Age	Records of birth dates available			4	4	16	16
Breed preferred	Lessee preference		Yes	4	3	12	12
Frame size required	This may be important for some dairies where mixed size or small or large are not suited. Lessee preference has role			4	3	12	12
Identification	NLIS tags present			4	5	20	20
Health and production							
Body condition score	Direct correlation of BCS with production and reproduction. Score >4.5 and <6			3	5	15	20
Reproductive status required	May be more important for seasonal herds. A veterinary pregnancy test immediately prior to lease is the only reliable method			4	4	16	16
Udder health	Individual Cow Cell Count data available. An ICCC > 1M at any time is poor. All ICCCs below 250,000 is strong preference			2	4	8	16
Feet and legs	Sound, good shape			4	3	12	12
General health status	This is a subjective assessment – an intuitive guide to whether these animals are holding, advancing or going backwards in overall health. Coat appearance, gut fill, energy, temperament can be assessed on observation in a paddock or in the dairy (or saleyard)			4	3	12	12
Production history	Milk recording data available			4	3	12	12

Biosecurity

Freedom from udder pathogens (<i>Strep ag</i> , <i>Mycoplasma</i>)	Vat sample from source herd for a PCR major pathogens test. Animals from herds positive to either of these pathogens should not be introduced	Not present	/	5	5	20
Pesti virus (BVD) vaccination status	Naïve animals are vulnerable if introduced to a herd with pestivirus (common) and require vaccination		/	2	2	8
Johnes Disease vaccination status	Vaccination between 3–12 weeks of age for protection		/	3	3	12
National Cattle Health Statement provided	National system for providing animal health information when buying, leasing or agisting stock		/	3	3	12
Cows Score					148	200
					74%	

Other issues noted for these stock

Note: Naïve animals should not be moved to a Theileria district.

Tool F Cows checklist for setting up a lease of dairy stock



Use this Checklist to discuss the elements that should be considered when a lease agreement for cows is being arranged. It can be used to review a current agreement or to build a new one (using Model Lease Agreement for Livestock – Tool G).

The best arrangements are always the ones that are prepared specifically to suit each situation. This **Checklist** is designed to guide discussion of each element by both parties. It is recommended that the parties work with a dairy adviser to develop their agreement.

Prior to signing, both parties should consider obtaining independent financial and legal advice.

For more information and the latest version of this **Checklist**, visit www.thepeopleindairy.org.au/leasing

Parties to the lease		Ref for Tool G
Lessor (owner):		Schedule 1, Item 2
Address: _____	ABN: _____	
Lessee: <i>If the Lessee is a company, details of Directors will also be required.</i>		Schedule 1, Item 3,3a
Address: _____	ABN: _____	
Referees for Lessor	Referees for Lessee	
Company _____	Company _____	
Name _____	Name _____	
Contact details _____	Contact details _____	
Company _____	Company _____	
Name _____	Name _____	
Contact details _____	Contact details _____	
Company _____	Company _____	
Name _____	Name _____	
Contact details _____	Contact details _____	

Note: Types of referees for lessees include: Dairy Adviser; Dairy, Feed or Fertiliser Supplier; Herd Improvement officer; Veterinarian; Stock Agent or other person with professional role.

Issue to be addressed	Details / what we agree	Ref for Tool G
<p>1. Type of lease Have you decided the type of lease required?</p>	<p><input type="checkbox"/> Ageless At the end of the lease period, the same number of animals, with the same age, breed, calving pattern and condition profile, which were provided by the Lessor at the start of the lease, have to be returned by the Lessee. Depreciation (losses and ageing) are a cost that the Lessee incurs. There is no ownership of residual stock by the Lessee except any replacement stock above the number required to maintain the age profile of the leased group.</p> <p><input type="checkbox"/> Depreciating Depreciation of the asset (ageing/loss of the stock) is taken into account in the lease costs. This is a common form of cow lease used to gradually change the ownership of the herd from the Lessor to the Lessee. If stock are returned at the end of this type of lease, they will be older on average, but be of the same pregnancy status, condition and breed. In contrast to the ageless lease, all progeny produced during the term of the lease become owned by the Lessee.</p> <p><input type="checkbox"/> Operating This is a tax effective method of transferring stock between generations, and also of financing the lease-purchase of a herd when funds could not be obtained from a traditional lender. Lease payments are set to reflect interest and depreciation and a residual is agreed upon as the last payment. Only when the last or residual payment is made by the Lessee, are the stock owned by the Lessee. Normally a residual payment would be about 30% of the total capital amount leased at the start. These leases have stringent requirements regarding the number and rearing of replacement stock. In the event of a breach of the lease, the owner will generally have the right to retain replacement stock.</p>	
<p>2. Number of cows</p>	<p>Number of cows to be leased _____</p>	<p>Schedule 2</p>
<p>3. Term of the lease</p>	<p>Commencement date _____ Termination date _____</p>	<p>Schedule 1, Item 4 Schedule 1, Item 5</p>
<p>4. Description of the cows How are individual cows identified? Is there a list of all cows? Is there a written record of ages? Is there a record of veterinary pregnancy test results within 4 weeks prior to the start of the lease? Is there a record of body condition scores at the start of the lease? Have you conducted a joint inspection of the cows?</p>	<p>Breed _____ ID _____ Age distribution at the start of the lease _____ Pregnancy status at start of lease _____ Body condition at start of lease _____ <i>Attach list of all cows if appropriate</i> Note: Take photographs for record.</p>	<p>Schedule 2</p>

5. Ownership of progeny and replacement numbers

What are the requirements for the Lessee to provide replacement animals?

The progeny will be owned by _____

Schedule 2

Replacements required = _____% of number of cows leased

6. Health status

General health _____

Mastitis – cell counts available for all cows? _____

Were all cows treated at last drying off? _____

Which drug? _____

7. Biosecurity

Do all cows come from herds with negative vat PCR tests for Mycoplasma?

National Cattle Health Statement provided _____ (date) _____

Result of vat test of source herd, PCR for Mycoplasma _____ (date) _____

8. Return of cows found unfit for purpose on delivery

Have you discussed the arrangements for cows to be returned if considered to be unfit for purpose within 7 days of delivery?

The arrangements for return of cows are _____

Guide to defining 'unfit for purpose': Cows which have developed clinical mastitis, are visibly lame, or are diagnosed as clinically ill by a veterinarian within 7 days of arrival are not fit for purpose as milking cows. Cows which were leased as 'in calf' but by 7 days of arrival are found to no longer be pregnant do not have a calving pattern which is fit for purpose.

9. Rental and other charges

Have you agreed on an annual rental charge for the cows?

Who is responsible for cartage to and from Lessee's property?

Annual rent per head will be \$ _____ (excl. GST)

Schedule 1, Item 8

Total annual payment will be \$ _____ (excl. GST)

Cartage costs to be paid by _____

Schedule 1, Item 14

10. Method of payment

Note: Payments may be deducted from the milk cheque in advance via an automatic deduction on a nominated day each month

Rental payments will each be \$ _____ (including GST)

Schedule 1, Item 8

Frequency of payments _____

Schedule 1, Item 9

Date of first payment _____

Method of payment _____

11. Review of rental	Method of rental review _____ Date of review _____	Schedule 1, Item 10 Schedule 1, Item 11
Will there be a facility for a rental review, and if so, when will this occur?		
12. Renewal of lease	Method of lease renewal _____	Schedule 1, Item 12
Will there be a facility to renew the lease?		
13. Payment for deaths and culls	The agreed price for deaths and culls will be _____	Schedule 2
Note: this will be required if you are arranging a depreciating lease.		
14. Property where the cows are to be located	Property name is _____ Location is _____	Schedule 1, Item 7
15. Access by Lessor	Access rights for Lessor _____ Lessor or their representative will conduct _____ inspection/s per year Lessor will have access to the following records _____ in the following ways _____ _____	Schedule 1, Item 16 Schedule 1, Item 17
Have you discussed inspection rights for the Lessor for stock and stock records?	<i>Types of records to be agreed.</i> Records specified may include: stock register, calving records, mastitis records, breeding and reproductive records such as insemination details and pregnancy test results, animal husbandry records, and Milk Recording reports. Access may be in hard copy or electronically.	
16. Dispute resolution	The dispute resolution procedure recommended is: discussion between the parties , and if no agreement then mediation , and if no agreement then arbitration .	Clause 40
What dispute resolution procedure will be in the lease agreement?		
17. Preparation of agreement	The Lease Agreement will be prepared by _____	
Have you discussed how the Lease Agreement will drawn up?		
18. Other terms and conditions	Any other matters _____	Schedule 3

Tool G Model cows lease agreement for dairy stock



The **Model cows lease agreement** has been prepared as a template which can be modified to suit individual circumstances. It has been drafted so that it will stand up to legal analysis. It is recommended that the parties work with a dairy adviser to develop their agreement. Prior to signing, both parties should consider obtaining independent financial and legal advice.

This model cows lease agreement is made up of two distinct sections, each of which is needed to make up the complete document.

The Cows lease agreement – standard clauses

This section contains standard clauses which apply to every lease agreement. These clauses lay the foundation for the agreement. This part of the document does not require anything to be added (other than signatures, of course).

There are also some explanatory notes about the clauses in a separate **Information sheet**.

The Schedules

All the details of the specific lease are set down in the schedules. For example, Schedule 1, Item 4 sets the date of commencement of the lease, and Schedule 2 describes the numbers and age and breed profile of the stock. These schedules must be filled out.

You should have three documents downloaded:

1. The **Cow lease agreement – standard clauses**. This is a pdf document to print.
2. **The Schedules**. This is a Word document, for you to fill out to complete the Agreement. The details for this section will have been worked out (and recorded) in the **Cows checklist (Tool F)** if you have used that.

Also:

3. The **Information sheet** giving explanatory notes on the standard clauses. This is a pdf document, for your information only (it does not need to be in the final document).

Livestock lease agreement

LEASE OF LIVESTOCK made on the day set out in **Item 1** of **Schedule 1**.

BETWEEN

The Lessor as stated in **Item 2** of **Schedule 1**.

and

The Lessee as stated in **Item 3** of **Schedule 1**.

and

The Guarantor as stated in **Item 3(a)** of **Schedule 1**.

RECITALS

A The Lessor is the legal owner of livestock.

B The Lessee has agreed to lease the Lessor's livestock on the terms and conditions of this Lease.

THIS DEED NOW WITNESSETH as follows:

Interpretation

1 In this Lease unless a contrary intention appears:

- (a) **Inspector's Report** is a report prepared in accordance with **Clause 23**.
- (b) **NLIS Identification Number** means the identification number allocated to a particular animal under the National Livestock Identification Scheme.
- (c) **Livestock** means the livestock owned by the Lessor as configured in **Schedule 2** and includes any Replacement Animal(s) from time to time of the livestock.
- (d) **PPS Act** means the Personal Property Securities Act (2009) (Cwlth).
- (e) **Replacement Animal(s)** means an animal or animals replaced into the herd to maintain stock numbers at a constant age and genetic profile or as otherwise specified in **Schedule 2**.
- (f) **Termination date** means the last day of the Term as stated in **Item 5** of **Schedule 1**.
- (g) **Land** means the land specified in **Item 7** of **Schedule 1**.

Lease

2 The Lessor agrees to lease the Livestock to the Lessee on the terms and conditions of this Lease.

Commencement date

3 This Lease commences on the date stated in **Item 4** of **Schedule 1**.

The Term

4 This Lease will be in force for the term stated in **Item 5** of **Schedule 1**.

Delivery of Livestock

5 The Lessor must deliver the Livestock to the Lessee at the Property on the commencement date or the date specified in **Item 6** of **Schedule 1**.

6 The cost of delivery is to be met by the party stated in **Item 14** of **Schedule 1**.

Ownership of the Livestock

7 The Lessee acknowledges that:

- (a) the Livestock belongs to and is the property of the Lessor;
- (b) any calves from the Livestock belong to and are the property of the Lessee unless a Heifer calf becomes a Replacement Animal;
- (c) the Lessee must not, and must not threaten to, assign, transfer, sell, sublet, part with or share the possession of or grant any licence affecting any security interest, any mortgage or charge over or otherwise deal with or dispose of all or any of the Livestock other than as provided for in this Lease.

Warranties

- 8 The Lessor warrants that it is the owner of the Livestock which are free from any encumbrances and not subject to any claims of any other party or parties.
- 9 The Lessor warrants that the Livestock are in good condition and properly identified with a NLIS Identification Number and conform to the numbers, age and genetic profile specified in **Schedule 2**.
- 10 The Lessee acknowledges that as at the commencement date or the date specified in **Item 6** of **Schedule 1** all of the Livestock are identified with a NLIS Identification Number and are located on the Land.
- 11 The Lessor acknowledges that the Lessee may return to the Lessor at the Lessor's expense any Livestock which are found to be unfit for the purpose within 7 days of the commencement date or the date specified in **Item 6** of **Schedule 1**.

The Rental

12 The Lessee agrees to pay the Lessor the rental stated in **Item 8** of **Schedule 1** to be paid at the times and in the manner specified at **Item 9** of **Schedule 1**.

- 13 The rental may be reviewed and may be adjusted in the manner stated in **Item 10 of Schedule 1** at the times stated in **Item 11 of Schedule 1**.

Renewal of this Lease

- 14 Renewal of this Lease will be in accordance with the procedure outlined in **Item 12 of Schedule 1**.

Yield up

- 15 At the end of the Lease the Lessee must deliver and yield up the Livestock to the Lessor in excellent health and condition in all respects in accordance with the specifications contained in **Schedule 2**.
- 16 The party stated in **Item 14 of Schedule 1** will be responsible for transport of stock from the Land.

Management and care of the Livestock

- 17 The Lessee must supply at the Lessee's cost all water, pasture, feed, vitamins and minerals and necessary shelter and all labour for supervision and care for the wellbeing of the of the Livestock (including veterinary services) in accordance with recommended industry practice in order to maintain welfare, prevent disease and promote growth of the Livestock and its progeny.

Replacement Animals

- 18 On or before 30 June in each year of the Term the Lessee must, in consultation with the Lessor or the Lessor's consultant, ensure that the number, age and genetic profile of the Livestock is maintained to the Lessor's reasonable satisfaction in accordance with the specifications contained in **Schedule 2**.
- 19 The Lessee must provide the Lessor with an annual statement no later than 14 July in each year of the term setting out and certifying that the Replacement Animals for the preceding year ending 30 June have been procured and that all Livestock bear the appropriate NLIS Identification Number.

Lessee's Obligations

- 20 The Lessee will at all times during the term of the Lease and any extension of the Lease:
- (a) pay the rental as stated in **Item 8 of Schedule 1** in the manner laid down in **Item 9 of Schedule 1** or as amended under **Clause 13** of this Lease;
 - (b) comply with all laws relating to the management and rearing of the Livestock;
 - (c) take out and maintain insurances if required in **Clauses 38 and 39**;
 - (d) not do anything or permit anything to be done which may render any insurance void or voidable.

Guarantee

- 21 If the Lessee is a company, then in consideration of the Lessor entering into the lease at the request of the directors of the Lessee, the directors named in **Item 3(a) of Schedule 1**:
- (a) guarantee to the Lessor that the Lessee will punctually pay the rent and other money payable under the lease;

- (b) guarantee to the Lessor that the Lessee will perform its obligations; and
- (c) undertake to the Lessor that, with the Lessee, they will be liable separately and together to the Lessor for the payment of rent and other money and the performance of the Lessee's obligations.

Inspection of Livestock

- 22 The Lessor or its authorised agent may from time to time during the Term as specified in **Item 16 of Schedule 1**, upon giving the Lessee reasonable prior notice, inspect the Livestock and Livestock records as specified in **Item 17 of Schedule 1** and the Lessee hereby agrees to provide access to the Land for this purpose. The Lessor or its authorised agent must use its best endeavours to minimise any disturbance to the Lessee.
- 23 If the Lessor forms the view that any of the Livestock are in an unsatisfactory condition, the Lessor may appoint an inspector experienced in dairy cow management to inspect the Livestock and undertake a review for the purpose of:
- (a) preparing and submitting a report (the Inspector's Report) detailing the condition of the Livestock;
 - (b) setting out any necessary remedial action (if any) required to improve the condition of the Livestock to an acceptable standard.
- 24 If the Lessor forms the view that any of the Livestock are in an unsatisfactory condition, the Lessor may inspect the Livestock at 24-hour intervals until the Lessor is satisfied that appropriate remedial action has been taken.
- 25 The Lessee must as soon as practicable comply with all remedial action in accordance with all requirements and deadlines as prescribed by the Inspector's Report.
- 26 If the Lessee does not agree with the remedial action prescribed by the Inspector's Report the Dispute Resolution procedure in clause 40 applies.
- 27 All costs and expenses in relation to the preparation and submission of any Inspector's Report including any fees payable to the inspector and all expenses relating to necessary remedial action are payable by the Lessee or, if in the first instance paid by the Lessor, are repayable within 7 days of a request by the Lessor.

Security Interest

- 28 Expressions used in this clause and in the PPS Act have the same meanings as when used in the PPS Act.
- 29 The Lessee acknowledges this Lease constitutes a PPS lease of the Livestock.
- 30 The Lessee consents to the Lessor registering a purchase money security interest in the PPS register in respect of any arrangements that may constitute a PPS lease of the Livestock.
- 31 The Lessee must do all things required by the Lessor from time to time (including, without limitation, obtaining consents, signing or producing further documents and or providing any further information) to:

- (a) ensure that any security interest arising under or in connection with this Lease is enforceable, perfected and otherwise effective and has first ranking priority in respect of the Livestock;
 - (b) enable the Lessor to apply for registration, complete any financing statement, financing change statement or give any notification, in connection with a security interest; and/or
 - (c) allow the Lessor to exercise its rights in connection with a security interest.
- 32 For the purpose of section 115 of the PPS Act, the following sections of the PPS Act do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), and section 135.
- 33 The Lessee consents to the Lessor searching the Personal Properties Securities Register at any time for any information about the Lessee.

Termination by Lessee

- 34 The Lessee may terminate this Lease immediately by notice in writing upon the Lessor breaching any condition of this Lease and failing to rectify such a breach within 30 days of receiving notice in writing from the Lessee of such breach provided that the Lessee has first served a notice on the Lessor specifying the nature of the breach and if the breach is capable of remedy requiring the Lessor to remedy the breach and/or make compensation in money for the breach and the Lessor has failed to make good the breach within 30 days of receipt of the notice.

Termination by Lessor

- 35 The Lessor may terminate this Lease by notice in writing on the Lessee if:
- (a) the rental is unpaid for a period of 30 days after its due date for payment;
 - (b) the Lessee fails to meet its obligations under this Lease;
 - (c) the Lessee is wound up or has an administrator, receiver or manager appointed to it or is placed under official management,
- provided that the Lessor has first served a notice on the Lessee specifying the nature of the breach and if the breach is capable of remedy requiring the Lessee to remedy the breach and/or make compensation in money for the breach and the Lessee has failed to make good the breach within 30 days of receipt of the notice.
- 36 In the event that the Lessor terminates this lease the Lessor or its authorised agent may immediately enter the Land upon which the Livestock are located and take possession of the Livestock and for the purpose of such repossession may enter and break open any gate, door or fastening from any part of the Land.
- 37 In the event that the Lessor terminates this lease the Lessor must take reasonable steps to mitigate the Lessee's damages. Any action taken by the Lessor to mitigate damages will not by itself constitute acceptance by the Lessor of the Lessee's breach or repudiation or a surrender by operation of law.

Insurance and Indemnity

- 38 The Lessee at the Lessee's sole cost and expense, will keep current and be responsible for at all times a policy of:
- (a) public risk insurance for an amount not less than the amount stated in **Item 13 of Schedule 1**; and
 - (b) other operational insurances
- taken with reputable insurers noting the Lessor's interest in the policies.
- 39 The Lessee will present evidence of these insurances to the Lessor within 2 weeks of the commencement date.

Dispute Resolution

- 40 The Lessor and the Lessee agree that the following steps will take place in the event of a dispute arising during the term of this Agreement:
- (a) The Lessor and the Lessee will meet at a mutually convenient time and make a genuine attempt to resolve the dispute informally and quickly. If the dispute cannot be resolved after this meeting the parties agree that they will submit to a mediation to be conducted by a mutually acceptable mediator.
 - (b) If the parties cannot agree on the mediator the parties agree to submit to mediation by a mediator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 15 of Schedule 1**.
 - (c) If the dispute cannot be settled by agreement or mediation within 21 days of the dispute arising, the parties agree to submit to arbitration by an arbitrator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 15 of Schedule 1**.
 - (d) The parties agree to bear their own costs and that the cost of any mediation or arbitration will be shared equally between them.
 - (e) The parties agree that they will continue to perform their obligations under this Agreement while the dispute is being resolved.
 - (f) Nothing in this clause prevents either party from exercising their legal rights to take action to enforce payment or seek urgent court relief to prevent detrimental action by either party.

Assignment

- 41 The Lessee will not assign any rights, privileges or benefits under this Lease without the prior written consent of the Lessor which may be withheld by the Lessor at its absolute discretion.

Additional terms and conditions

- 42 The parties agree that the additional terms and conditions contained in **Schedule 3** form a part of this Lease.

Costs of the preparation of this Lease

43 Each party will bear their own costs of and incidental to this Lease.

Whole Agreement

44 This Lease contains the whole agreement between the parties and supersedes all prior representations, warranties, arrangements, understandings and agreements between them relating to the subject matter of this Lease.

Variation

45 No variation, modification or waiver of any provision of this Lease nor consent to any departure by and party therefrom will in any event be of any force unless it is confirmed in writing and signed by the parties and will only be effective to the extent for which it has been made or given.

GST

46 The following provisions apply with respect to GST:

- (a) expressions used in this clause have the same meanings as when used in the GST Act;
- (b) amounts payable and consideration provided under or in respect of this Lease (other than in sub-clause (c)) are GST exclusive;
- (c) the recipient of a taxable supply made under or in respect of this Lease must in addition pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply;
- (d) a party is not obliged, under sub-clause (c), to pay the GST on a taxable supply to it under this Lease until given a valid tax invoice for the supply.

Severability

47 Every provision or part of this Lease will be deemed to be severable as far as is possible from any other provision or part thereof and should any provision or part thereof be void or unenforceable for any reason the same will be deemed to be omitted therefrom and this Lease with such provision or part omitted will otherwise remain in full force and effect so far as is possible.

Applicable Law

48 This Lease will be construed in accordance with the laws of the state specified in **Item 15 of Schedule 1** and the parties submit to the jurisdiction of the appropriate courts of that state in respect of any matter or thing relating to this Lease.

Notices

49 Any notice required to be served under this Lease will be sufficiently served on a party in one of the following ways:

- (a) if left addressed to the party at the address stated in **Item 2, 3 or Item 3(a) of Schedule 1** for that party or such other address as may be notified to the sender by the recipient from time to time

or forwarded to the recipient by post at such address;

- (b) by faxing to the party at the number shown at in **Item 2, 3 or Item 3(a) of Schedule 1**;
- (c) by email to the party at the email address shown at in **Item 2, 3 or Item 3(a) of Schedule 1**.

A notice sent by post is deemed to be given at the time when in a normal course of the post it would be delivered at the address to which it is sent.

General

50 In this Lease, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words importing one gender include other genders;
- (c) a reference to a document or instrument, including this Lease, includes that document or instrument as novated, altered or replaced from time to time;
- (d) a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- (e) a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- (f) other grammatical forms of defined words or expressions have corresponding meanings;
- (g) a covenant, undertaking, representation, warranty, indemnity or agreement made or given by two or more parties or a party comprised of two or more persons, is made or given and binds those parties or persons jointly and severally;
- (h) a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re enactments or replacements of any of them;
- (i) a recital, schedule, annexure or description of the parties forms part of this Lease;
- (j) if an act must be done on a specified day that is not a business day, the act must be done instead on the next business day;
- (k) if an act required to be done under this Lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- (l) all monetary amounts are in Australian dollars;
- (m) a party that is a trustee is bound both personally and in its capacity as trustee of the trust for which it is acting as trustee;
- (n) a reference to an authority, institution, association or body ("original entity") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- (o) headings are for convenience only and do not affect the interpretation of this Lease.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED

.....
SIGNED for and on behalf of the Lessor

.....
(full name)

in the presence of:

.....
(Signature of Witness)

.....
(Name of Witness)
Affix company seal if applicable

.....
SIGNED for and on behalf of the Lessor

.....
(full name)

in the presence of:

.....
(Signature of Witness)

.....
(Name of Witness)
Affix company seal if applicable

.....
SIGNED for and on behalf of the Lessor

.....
(full name)

in the presence of:

.....
(Signature of Witness)

.....
(Name of Witness)

The cow lease agreement schedules

Schedule 1.

Item 1. Date	The date of this lease
Item 2. Lessor	The Lessor's name /ABN/telephone number /address/fax number and email address for service of documents
Item 3. Lessee	The Lessee's name/ABN/telephone number/address/fax number and email address for service
Item 3(a). Guarantor(s) (director(s) of Lessee company)	The Guarantor's name / ABN / telephone number / address / fax number and email address for service.
Item 4. Commencement Date	
Item 5. The Term	Length of lease and termination date
Item 6. Delivery date if different to the commencement date	
Item 7. The land	Property name, address, description of the land, number of hectares/acres Land title numbers
Item 8. Commencement rental	Commencement rental amount
Item 9. Time and manner for payment of rental	
Item 10. Review and adjustment of rental	Method of rental review
Item 11. Rent review date	Time for rental review
Item 12. Renewal of Lease	Procedure (if any) for renewal of Lease Date for each party to indicate intentions for a further lease period. Any renewal terms and conditions

Item 13. Amount of Public Risk insurance		
Item 14. Party to pay for cost of delivery and return of the Livestock		
Item 15. Applicable law (state)		
Item 16. Dates for inspection		
Item 17. Livestock records to be kept		

Schedule 2.

< insert details of the livestock – identification numbers, age, genetics and reproductive status – this information can be taken from **Tool F: Checklist for Arranging a Lease for Dairy Cows.**>

<insert details of the agreed policy for replacement (age and genetic profile) of the herd and payment for deaths and culls if relevant – this information can be taken from **Tool F: Checklist for Arranging a Lease for Dairy Cows.**>

Schedule 3.

< insert details of any additional terms and conditions agreed>

Information sheet Lease agreement for dairy livestock

What do the lease clauses mean?

The date of the Lease

The date of the Lease must be written in **Item 1** of **Schedule 1**.

The date of the Lease may be different from the commencement date.

The commencement date must be written in **Item 4** of **Schedule 1**.

The Lessor

The Lessor is the person who owns the livestock.

The name of the Lessor and ABN must be written in **Item 2** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address must also be written in **Item 2** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address.

The Lessee

The Lessee is the person who is leasing the livestock from the Lessor.

The name of the Lessee and ABN must be written in **Item 3** of **Schedule 1**.

Contact details including telephone numbers/address/fax number and email address must also be written in **Item 3** of **Schedule 1**.

Each party has an obligation to make sure the other party has their current address.

The Guarantor

If the Lessee is a company the names of the directors and their contact details must be written in **Item 3(a)** of **Schedule 1**. This is important because **Clause 21** specifies that the directors of the Lessee company agree to be liable for the rental payments and other obligations under the lease.

Each party has an obligation to make sure the other party has their current address.

The recitals.

Clauses A and B explain the background to the Agreement.

Clause 1 - Interpretation

This clause provides specific definitions of terms as they apply in the Lease.

Note that some of the definitions require further detail to be written into the Schedules at the end of the Lease.

In particular note that the definition of "Replacement Animals" must be clearly specified in **Schedule 2**. The intention is that the age and the genetic profile of the animals be maintained during the term of the lease.

Clause 2 – Lease

This clause states that the terms and conditions in the lease document apply to the lease of the livestock.

See also **Clause 44** which states that the Lease contains everything that the parties have agreed about. Previous negotiations or correspondence are not a part of the Lease. It is therefore important that everything that you want to be included in the Lease is written in the Schedules.

Clause 3 – Commencement date.

The commencement date must be written in **Item 4 of Schedule 1**.

Note that the commencement date may be different to the date of the Lease.

Clause 4 – The Term

This clause states the number of weeks, months or years of the Lease and when the Lease ends.

The termination date must be written in **Item 5 of Schedule 1**.

The lease must be longer than one year for the Personal Properties Securities laws to apply.

Clauses 5 & 6 – Delivery of Livestock

The livestock may be delivered either on the commencement date or at another time as specified in **Item 6 of Schedule 1**.

The party responsible for the cost of delivery should also be entered in **Item 14 of Schedule 1**.

Clause 7 – Ownership of the Livestock

This clause confirms that the livestock as defined in **Schedule 2** belongs to the Lessor and that the Lessee agrees not to dispose of any of the Lessor's livestock other than as provided for in the Lease.

The clause also confirms that any calves are the property of the Lessee unless they are required to become Replacement Animals as defined in **Schedule 2**.

Clauses 8 to 11 - Warranties

These clauses provide warranties or guarantees that the livestock is free from any encumbrances and that the livestock supplied by the Lessor meets the description in **Schedule 2**.

Clause 11 allows the Lessee to return any livestock that are deemed to be unfit for the purpose within 7 days of delivery.

'Unfit for purpose' could be defined as follows:

“Cows which have developed clinical mastitis, are visibly lame, or are diagnosed as clinically ill by a veterinarian within 7 days of arrival are not fit for purpose as milking cows.

Cows which were leased as ‘in calf’ but by 7 days of arrival are found to no longer be pregnant do not have a calving pattern which is fit for purpose.”

Clauses 12 & 13 – The Rental

The rental must be determined before the Lease is entered into and written in **Item 8 of Schedule 1**.

The time and manner of payment of the rental must be written in **Item 9 of Schedule 1**.

Item 10 of Schedule 1 provides for the parties to agree on a process for the review and adjustment of rental. This must be agreed before the Lease is entered into.

Item 11 of Schedule 1 specifies the rental review date.

Clause 14 – Renewal of the lease

Item 12 of Schedule 1 provides a procedure for the renewal of the lease.

Clauses 15 & 16 – Yield up

This clause confirms that there is no transfer of the livestock to the Lessee and ensures that the rental will be tax deductible.

If the parties agree that at the end of the lease the Lessee will purchase the stock for an agreed residual price then the parties need to agree on a price and enter into a formal separate Agency agreement which will enable the Lessee to sell the livestock after the expiry of the lease or to purchase the livestock from the Lessor.

Clause 16 provides for the parties to agree in **Item 14 of Schedule 1** about which party will transport the stock from the Lessee's property at the end of the lease.

Clause 17 – Management and care of the Livestock

This clause confirms that it is the Lessee's responsibility to care for the Livestock in accordance with industry practice during the term of the lease.

Clauses 18 & 19 – Replacement Animals

Schedule 2 should contain a detailed description of each animal, its age, genetics, and its reproductive status.

These clauses require the Lessee to ensure that the age and genetic profile of the livestock as detailed in **Schedule 2** is maintained to the Lessor's reasonable satisfaction throughout the term of the lease and for the Lessee to report this to the Lessor at the end of each financial year.

Clause 20 – Lessee's Obligations

This clause specifies the Lessee's obligations which apply generally to the Lease.

Clause 21 – Guarantee

This clause provides that if the Lessee is a company, the directors agree to be liable for the rental payments and to ensure that the Lessee meets the other obligations under the lease.

Clauses 22 to 27– Inspection of the Livestock

Clause 22 permits the Lessor or a person authorised by the Lessor to inspect the livestock and the livestock records from time to time during the term of the lease provided the Lessor has given the Lessee reasonable notice. Dates for inspection should be entered at **Item 16 of Schedule 1**.

More frequent inspection is permitted by Clause 24 if the livestock are found to be in an unsatisfactory condition.

Clause 23 provides for the Lessor to obtain an independent report detailing the condition of the livestock and any remedial action which needs to be taken and Clause 25 requires the Lessee to comply with any recommendations. Any expenses are to be paid by the Lessee within 7 days. (Clause 27)

If the Lessee does not agree with the recommended action the Dispute Resolution procedure in **Clause 40** should be adopted. (Clause 26)

The types of records to be available should be specified in **Item 17 of Schedule 1**. These may include: stock register, calving records, mastitis records, breeding and reproductive records such as insemination details and pregnancy test results, animal husbandry records, and Milk Recording reports. Access may be in hard copy or electronically.

Clauses 28 to 33 – Security Interest

These clauses confirm that the Personal Property Securities Act (2009) (the PPS Act) applies to the lease. The legislation applies to leases for a term of more than one year.

The PPS Act creates the PPS Register which is like a “noticeboard” where property owners can register their security interest in most forms of property owned by them. It does not apply to land or water.

Registration of a security interest provides notice of the Lessor’s interest in the livestock while it is in the possession of the Lessee.

Potential purchasers are able to search the Register to determine the ownership of the property.

Clause 30 provides that the Lessee consents to the registration of the Lessor’s interest in the livestock and that the Lessor ranks first in order of priority of the security interests.

Clause 31 requires the Lessee to assist the Lessor to register the Lessor’s interest in the livestock and to exercise any rights the Lessor may have.

Clause 33 provides for the Lessee to consent to the Lessor searching the Register at any time for information about the Lessee.

Clause 34 – Termination by the Lessee

This clause provides for termination by the Lessee before the end of the Lease.

The Lessee must give the Lessor notice of any breach and then provide the Lessor at least 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessee cannot proceed to terminate the lease.

Any termination notice must be in writing and be delivered to the Lessor at one of the addresses listed in **Item 2 of Schedule 1**.

See also **Clause 49** which specifies how notices should be delivered.

Clauses 35 to 37- Termination by Lessor

These clauses provide for termination by the Lessor before the end of the Lease.

This can only occur if the Lessee fails to meet the obligations contained in the lease, failure to pay the rental, or in circumstances where the Lessee is wound up or has an administrator, receiver or manager appointed to it or is placed under official management. (Clause 35)

Note that the Lessor has to give the Lessee 30 days to rectify any breach.

If the breach is rectified within this timeframe then the Lessor cannot proceed to terminate the lease.

Any termination notice must be in writing and be delivered to the Lessee at one of the addresses listed in **Item 3** and **3(a)** of **Schedule 1**.

See also **Clause 49** which specifies how notices should be delivered.

If the Lease is terminated before the due date the Lessor can enter onto the land and take possession of the livestock.

Clause 36 permits the Lessor to break open any lock or gate but such action should not be taken lightly. It is strongly recommended that this be a last resort when all other avenues have been exhausted. The Dispute Resolution procedure (**Clause 40**) should be considered.

Clause 37 requires the Lessor to take steps to ensure that any losses sustained by the Lessee are minimised. In this circumstance, any action taken by the Lessor cannot be taken to mean that the Lessor accepts the Lessor's default.

Clauses 38 & 39 – Insurance and Indemnity

These clauses require the Lessee to take out public risk and other operational insurances.

The amount of public risk insurance must be entered at **Item 13** of **Schedule 1**.

The Lessee's policy should note the interest of the Lessor in the policy.

Note that Clause 39 requires the Lessee to provide evidence to the Lessor that the insurances have been taken out.

Clause 40 – Dispute Resolution

This clause provides a detailed dispute resolution procedure involving mediation or if that fails arbitration.

The main purpose of this clause is to encourage the parties to resolve disputes as they arise as quickly as possible in an informal manner.

Clause 41 – Assignment

Assignment is when a party transfers their rights and responsibilities under a contract to another party.

This Lease does not allow the Lessee to transfer the Lease unless the Lessor agrees.

Clause 42– Other Terms and Conditions

Because this agreement is a template agreement there may be specific matters which the parties want to add to the Lease.

This clause allows them to do so provided the terms and conditions are written in Schedule 3.

Clauses 43 - Costs of the preparation of this Lease

Each party is responsible for their own legal costs.

Clause 44 – Whole Agreement

This clause means that the Lease contains everything that the parties have agreed about.

Previous negotiations or correspondence are not a part of the Lease.

For this reason it is very important that all documents which have been created such as the Checklist (Tool F) are included in the Schedules to this Agreement and signed by the parties at the bottom of each page.

Clause 45 – Variation

This clause confirms that the Lease cannot be changed unless all parties agree and put this agreement in writing.

Clause 46 - GST

This clause provides for the law about GST to apply.

Note that the rental is GST EXCLUSIVE.

Clause 47 – Severability

This clause means that if a clause in this Lease is found not to be valid or enforceable it can be taken out of the Lease leaving the remainder of the Lease intact and still applicable.

Clause 48 - Applicable Law

Animal welfare laws and property laws vary from state to state so it is recommended that the law of the state where the livestock are to be located apply. The state should be written in **Item 15 of Schedule 1**.

Clause 49 - Notices

The purpose of this clause is to avoid disputes about whether a notice has in fact been given to the other party.

If a notice, such as a notice about a breach of the Lease, has to be given to the other party it must be in writing and be delivered in one of the ways laid down in this clause.

Each party has an obligation to make sure the other party has their current address if this changes from the addresses listed in **Items 2, 3 and 3(a) of Schedule 1**.

If notices are sent by email or fax a hard copy of the email or fax and the transmission receipt or notification should be kept.

Clause 50 – General

These clauses are general interpretation clauses which apply to all leases.

Signing Clauses

It is important that all parties sign the Lease and if applicable that any company seals are attached.

In addition each party should sign and date at the bottom of every page including all of the Schedules and any attachments to the Schedules so that it is clear that these are included in the Lease.

Schedules

The Lease is designed to be a template agreement which applies generically.

Information and particulars which are specific to the individual leasing arrangement must be therefore be written into the relevant Schedules which are at the end of the Lease.

In the Leasing Resources Pack, Checklist (Tool F) has a cross reference to the appropriate Schedule and Item of this model agreement in the right hand column.

Information written in Checklist (Tool F) should be copied into the relevant Schedule.

The Checklist can be included as part of the lease if each page is signed and dated and it is attached to the Schedules.



Dairy Australia Limited ABN 60 105 227 987
Level 5, IBM Centre
60 City Road, Southbank VIC 3006 Australia
T + 61 3 9694 3777 F + 61 3 9694 3701
E enquiries@dairyaustralia.com.au
dairyaustralia.com.au