
TERMS AND CONDITIONS for the trading of water Products on WaterMart

The following are the terms and conditions upon which WaterMart provides access to the Trading Platform. Users should note that the Terms and Conditions may be amended from time to time and should review them every time the Platform is used. In order to be able to access the Platform, Users must accept these Terms and Conditions by signing this Agreement and returning it to WaterMart.

DEFINITIONS

“Agreement” – means the agreement coming into effect by virtue of Clause 1.1.

“Buy Order” – means an offer by a User to buy a Product

“Buyer” – means any person whose Buy Order for a Product is successful

“Platform” – means the WaterMart electronic water trading system.

“Product” – means the water allocation or forward entitlement or delivery entitlement or any other market offered by WaterMart which is available for Trade or to be Traded by way of transfer for the current water year.

“Registration Form” – means the registration form of WaterMart to be completed by a person who wants to become a User.

“Regulating Authority” – means the Minister of the Crown or the State Government department or agency which processes, administers, determines upon or otherwise deals with the Application for Transfer of the Product.

“Sell Order” – means an offer by a User to sell a Product.

“Seller” – means any person whose Sell Order for a Product is successful.

“Services” – means the services provided by WaterMart via the Platform in connection with the Trading of a Product.

“Terms” – means these Terms and Conditions

“Trade” – means the sale or purchase of a Product via the Platform and **“Traded”**, **“Trading”** and **“Trader”** have corresponding meanings.

“User” – means any person who has been registered by WaterMart to place a Buy Order or a Sell Order.

“Water Year” – means the period of one year specified in the Water Sharing Plan governing the Trade or otherwise published from time to time by the Regulating Authority in either case as the accounting and delivery year for supply of water to holders or irrigation entitlements.

“You” – means the User bound by this Agreement.

1. ACKNOWLEDGEMENTS

You acknowledge and agree that:

- 1.1. You and WaterMart are bound at the time of your Trade by the Terms current at the time of your Trade;
- 1.2. The other party to your Trade will rely on You being bound by this Agreement;
- 1.3. WaterMart does not function as either buyer or seller of a Product and is merely a facilitator providing transactional facilities to Users.
- 1.4. As a Seller you have the Product available to sell.

2. ELIGIBILITY

You are permitted to use the Platform if:

- 2.1. You are over the age of eighteen (18) years and are otherwise legally entitled to enter into contracts;
- 2.2. All of the information provided by You in the Registration Form is true and accurate.

3. USER SECURITY

As a User who receives access to the electronic trading floor:

- 3.1. You are deemed to be responsible for any Buy Order or Sell Order submitted under your User ID and PIN;
- 3.2. You agree immediately to notify WaterMart of any unauthorised use of your account.

4. TRANSACTIONS

- 4.1. WaterMart retains the right at any time and without notice and without liability to remove access to the Platform from any User.
- 4.2. WaterMart does not investigate the ability of a User to complete any Trade and You use the service at your own risk.
- 4.3. You authorise WaterMart to sign and to forward to the Regulating Authority on your behalf the Application for the transfer of the Product in the form of the appropriate document(s) and supporting documents (if any) specified by the Regulating Authority. You acknowledge that WaterMart shall not take any further action in relation to the transfer.
- 4.4. Whether or not the transfer has been approved by the Regulating Authority, the Buyer will pay to WaterMart the purchase price for the Product within three (3) days of the Trade occurring (time being of the essence), but shall not take title to the Product until the Regulating Authority has approved the Application. The Buyer acknowledges that if he fails to pay the purchase price within the said three (3) day period, he will have committed a breach of a fundamental term of this Agreement which will thereupon be deemed to be at an end and the Product may be resold with the Buyer being liable to pay to the Seller any loss on resale plus any costs and expenses associated with the resale.
- 4.5. The purchase price paid by the Buyer pursuant to Clause 4.4 shall be held by WaterMart pending approval of the Application for transfer by the Regulating Authority at which time WaterMart shall account to the Seller for the purchase price. If the Application for transfer is refused by the Regulating Authority, WaterMart shall refund to the Buyer any purchase price paid pursuant to Clause 4.4.
- 4.6. You shall pay to WaterMart:
 - a) The fee payable to WaterMart by the User is specified in the Fees and Payments section of the Platform at the time of the Trade;
 - b) Any fee payable to the Regulating Authority in connection with the sale of a Product;
 - c) WaterMart's estimate of any taxes, levies, charges or like debits imposed on WaterMart by the State or Commonwealth governments on or in connection with the Trade;
 - d) You shall pay WaterMart the amounts referred to in Clauses 4.6, 4.7 and 4.8 within three (3) days (time being of the essence) after a Trade, provided that if the transfer is not completed for any reason other than your default, the amount paid pursuant to Clause 4.7 must be refunded by WaterMart to you.

5. WARRANTIES

The only warranties that WaterMart makes in relation to the Platform or Services are that:

- 5.1. The Services will be provided with reasonable skill and care; and
The Platform and the Services will operate substantially in the manner described in the Guidelines and Policies section of the Platform. For the avoidance of doubt and without limiting the generality of the above, WaterMart does not warrant that:-
 - a) The Platform or the Services will always be available, accessible, secure or operate without error;
 - b) The Seller has unencumbered title over any Product offered for sale;

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- c) Any Product is available for transfer or is liable to be transferred;
 - d) The sale or transfer of any Product does not infringe the rights of a third party;
 - e) Any Trade will be completed;

You warrant that you have satisfied yourself by enquiries of the Regulating Authority that there is no impediment in principle to the transfer of a Product.

6. INDEMNITY RELEASE AND LIMITATIONS OF LIABILITY

- 6.1. You indemnify WaterMart against all losses and damages and legal or other costs and expenses incurred by WaterMart resulting from any act of omission of yours or the breach by You of any warranty agreement or obligation.
- 6.2. You release WaterMart from all claims and actions which (in the absence of negligence or willful act or default or breach of duty or breach of warranty under Clause 5.1 by WaterMart) You may otherwise have had against WaterMart arising from the use of or inability to use the Platform of the Services or from the inability to transfer a Product or from inaccurate information provided by a User or from disputes between Users or from any unauthorised interference with the Platform or the Service or from any other reason in connection with the provision of the Services whether or not the same occurs in the course of performance of this Agreement or in circumstances which are foreseeable by WaterMart.
- 6.3. If the claim or action arises as a result of the negligence of wilful act or breach of duty or breach of warranty under Clause 6.1 by WaterMart, WaterMart's liability will be limited (at WaterMart's option and cost) to one of the following:-
 - a) The supply of the Services again; or
 - b) The payment of the costs of having the Services supplied again.

7. COMPLIANCE WITH LAWS

You must comply with all applicable laws relating to the matters governed by this Agreement.

8. INTELLECTUAL PROPERTY

You shall not do anything which would infringe or would likely infringe the intellectual property right of WaterMart or any other person on the Platform and the Services and material used in connection therewith including but without limiting the generality of the foregoing:-

- a) Copying material on the Platform;
- b) Using such material outside the provisions of this Agreement;
- c) Collecting and using information published on the Platform.

9. GOVERNING LAW

This Agreement shall be governed by and construed according to the laws of New South Wales regardless of where this agreement is made. You and WaterMart irrevocably submit to the exclusive jurisdiction of the Courts of New South Wales. Any proceedings in respect of any matter or thing relevant to this Agreement must be commenced in New South Wales within 12 months from the date on which the cause of action arose.