

## **9.6 GL SUSTAINABILITY PRODUCT TERMS AND CONDITIONS**

### **1. Definitions and interpretation**

1.1 Capitalised terms used in these Terms and Conditions have the following meanings, unless the contrary intention appears:

- (a) where a definition is given in the dictionary in clause 15.1 of these Terms and Conditions, that definition applies; and
- (b) where no definition is given in the dictionary in clause 15.1 of these Terms and Conditions, the definition in the Entitlements Contract applies.

1.2 The interpretation rules at the in clause 15.2 apply.

### **2. Expression of Interest**

2.1 A Participant may submit an Expression of Interest to the Company, which must specify the volume of Water Allocation the Participant wishes to purchase.

2.2 Expressions of Interest must be submitted via the Company's online customer portal using the online form the Company specifies for this purpose.

2.3 The Company will acknowledge receipt of valid Expressions of Interest.

2.4 The Company may elect to treat an Expression of Interest as invalid if any Charges presently due and payable by the Participant have not been paid on or before the date on which the Expression of Interest is received by the Company. If the Company elects to treat an Expression of Interest as invalid, the Company must notify the Participant.

2.5 A Participant may alter or withdraw their Expression of Interest at any time before the Company makes an Offer to the Participant.

2.6 An Expression of Interest is not, and is not intended to be, legally binding. It is merely a non-binding indication of the volume of Water Allocation a Participant wishes to purchase. The Company is under no obligation to make an Offer to a Participant in respect of:

- (a) the volume of Water Allocation specified in the Participant's Expression of Interest; or
- (b) any other volume of Water Allocation.

### **3. Offer to sell Water Allocation**

3.1 After receiving an Expression of Interest from a Participant, the Company may, at its absolute discretion, make an Offer to the Participant in respect of a Final Volume.

3.2 The Final Volume must not be more than the volume of Water Allocation specified in the Participant's Expression of Interest. The Company may, at its absolute discretion, determine a Final Volume which is less than the volume of Water Allocation specified in the Participant's Expression of Interest. In making such a determination, the Company must have regard to:

- (a) the process specified in clause 3.3; and
- (b) any other matters the Company considers relevant (acting reasonably).

- 3.3 If the aggregate volume of Water Allocation specified in all valid Expressions of Interest submitted to the Company exceeds the Aggregate Water Volume, the Company must make Offers in accordance with the following:
- (a) the Company must determine the Delivery Entitlements Pool;
  - (b) the Company must determine the proportion of the Delivery Entitlements Pool that belongs to each Participant based on the number of Delivery Entitlements each Participant holds;
  - (c) the Company must calculate, in respect of each Participant, a volume of Water Allocation, being a proportion of the Aggregate Water Volume equal to the proportion of the Delivery Entitlements Pool held by the Participant;
  - (d) if the volume of Water Allocation calculated under clause 3.3(c) in respect of any Participant is equal to or greater than the volume of Water Allocation specified in their Expression of interest, the Company may determine to make the Participant an Offer of a Final Volume equal to the volume of Water Allocation specified in the Participant's Expression of Interest;
  - (e) after the Company has determined the Offers it may make in accordance with clause 3.3(d), the Company must repeat the process in clauses 3.3(a) to (d) in respect of any remaining Participants to whom the Company has not yet determined it may make an Offer. In repeating this process:
    - (i) the Delivery Entitlements Pool must include the Delivery Entitlements held by the remaining Participants and exclude the Delivery Entitlements held by those Participants to whom the Company has already determined it may make an Offer; and
    - (ii) the volume of Water Allocation calculated under clause 3.3(c) must be a proportion of the Remaining Water Volume;
  - (f) the Company must repeat the process in accordance with clause 3.3(e) until the Company has determined all possible Offers that it may make under clause 3.3(d); and
  - (g) if, after applying the process in clauses 3.3(a) to (d) or repeating the process in accordance with clause 3.3(e), no volume of Water Allocation calculated under clause 3.3(c) in respect of any remaining Participant is equal to or greater than the volume of Water Allocation specified in their Expression of interest, then the Company may determine to make each remaining Participant an Offer of a Final Volume equal to the volume of Water Allocation calculated under clause 3.3(c).
- 3.4 Clause 3.3 is to be applied on a basis consistent with the worked example provided in Schedule 1.
- 3.5 The Company may:
- (a) at any stage of the application of clause 3.3; or
  - (b) when determining to make an Offer to a Participant in respect of a Final Volume;
- round any number of Megalitres up or down to the nearest whole Megalitre.

- 3.6 The Company must give notice of Offers to those Participants to whom the Company makes Offers.
- 3.7 Each Offer will remain open for Acceptance until the Acceptance Deadline, unless:
- (a) it is withdrawn by the Company giving notice to the Participant; or
  - (b) it is rejected by the Participant giving notice to the Company.
- 3.8 If there is no withdrawal, Acceptance or rejection of an Offer by the Acceptance Deadline:
- (a) the Offer lapses immediately after the Acceptance Deadline, is automatically withdrawn and becomes incapable of Acceptance; and
  - (b) the Company may or may not offer the Final Volume in respect of the Offer, or part of it, to any person.
- 4. Acceptance of an Offer**
- 4.1 After receiving an Offer from the Company, a Participant may, at its absolute discretion, at any time while the Offer remains open for Acceptance:
- (a) give an Acceptance to the Company in respect of the Offer; or
  - (b) reject the Offer by giving notice to the Company.
- 4.2 An Acceptance must be given via the Company's online customer portal using the online form the Company specifies for this purpose.
- 4.3 An Acceptance communicated to the Company other than in accordance with clause 4.2 will be invalid, unless the Company has given prior written consent for the Acceptance to be communicated that way.
- 4.4 Any Acceptance which is not communicated to the Company in accordance with these Terms and Conditions and by the Acceptance Deadline is invalid.
- 4.5 The Company may elect to treat an Acceptance as invalid if any Charges presently due and payable by the Participant have not been paid on or before the date on which the Acceptance is received by the Company. If the Company elects to treat an Acceptance as invalid, the Company must notify the Participant.
- 4.6 If the Company's fees and prices schedule must be changed to include the Offer Price in order to comply with the *Water Charge (Infrastructure) Rules 2010 (Cth)*, an Acceptance is invalid unless the Company gave the Participant at least 10 Business Days' notice of the change to the Company's fees and prices schedule before the Acceptance was given.
- 4.7 A Participant's Acceptance is irrevocable and cannot be altered or withdrawn without the prior written consent of the Company.
- 4.8 When a valid Acceptance is received by the Company in accordance with these Terms and Conditions, a contract is formed between the Company and the Participant under which the Company agrees to sell, and the Participant agrees to purchase, the Final Volume for the Total Price on, and subject to, these Terms and Conditions.
- 4.9 The Company will acknowledge receipt of valid Acceptances.

**5. Total Price**

- 5.1 The Total Price must be calculated by multiplying the Offer Price by the Final Volume.
- 5.2 The Company must give the Participant an invoice in respect of the Total Price.
- 5.3 The Total Price is a Charge for the purposes of the Entitlements Contract.

**6. Payment of Total Price**

- 6.1 The Participant must pay the Total Price to the Company no later than the Payment Deadline.
- 6.2 The Participant must make payment of the Total Price using one of the following payment methods:

- (a) **Cheque:** Must be received by the Company via post before the Payment Deadline:

PO Box 528 Deniliquin NSW 2710

- (b) **B-Pay:** The payer must have facsimile or e-mail access so that a B-Pay invoice can be delivered electronically by the Company. Payment must be received by the Company before the Payment Deadline. The payer must ensure the Company receives a copy of the payment confirmation, for example by fax or email.

- (c) **Direct deposit:** Payment must be received by the Company before the Payment Deadline. If the direct deposit is done by electronic funds transfer, the payer must include the account number shown on the invoice as the reference number of the electronic funds transfer. The payer must fax or otherwise communicate to the Company a copy of the payment confirmation. The Company nominates the following bank account:

Commonwealth Bank of Australia

BSB No. 062 533

Account No. 10179312 - Murray Irrigation Limited

- (d) **Credit card:** The payer must contact the Company's finance department before the Payment Deadline and quote the details of the credit card to be used.

**7. Access to the Final Volume before payment of the Total Price**

- 7.1 The Final Volume will not be credited to a Participant's Water Allocation Account until the Participant has paid the Total Price.
- 7.2 Two Business Days after a Participant gives a valid Acceptance, the Company will establish an overdraft facility in respect of the Water Allocation Account of the Participant. The overdraft facility limit will be equal to the Final Volume.
- 7.3 If a Participant places a water order in accordance with the Entitlements Contract and the Participant has no Water Allocation or has insufficient Water Allocation for the delivery of all of the water ordered, the Company may, at any time while the overdraft facility is available for use, elect to accept the water order and record a negative balance in the Participant's Water Allocation Account reflecting the extent to which the volume of water ordered exceeds the available Water Allocation.

7.4 The Company may elect to prohibit a Participant from using, or continuing to use, an overdraft facility if any Charges presently due and payable by the Participant have not been paid on or before the date on which the relevant water order is received by the Company. If the Company elects to prohibit a Participant from using, or continuing to use, an overdraft facility in respect of a water order, the Company must notify the Participant.

7.5 The Company is under no obligation to permit a Participant to overdraw their Water Allocation Account:

- (a) by more than the Final Volume; or
- (b) in connection with an Annual Transfer.

7.6 All Water Allocation credited to a Participant's Water Allocation Account (whether the Final Volume, Annual Allocation, or in connection with an Annual Transfer or resource distribution, or from any other source) at any time while the Participant's Water Allocation Account is overdrawn will be applied first to reduce the volume overdrawn.

7.7 A Participant cannot use, or continue to use, an overdraft facility in respect of their Water Allocation Account after the earlier of:

- (a) payment of the Total Price; and
- (b) the Payment Deadline;

and, without limiting clause 7.6, it will apply if the Participant's Water Allocation Account is overdrawn as at that date.

## **8. Crediting Final Volume upon receipt of payment**

8.1 The Company must, within three Business Days after receiving payment in full of the Total Price as cleared funds, credit the Final Volume to the Participant's Water Allocation Account.

8.2 Subject to clause 8.3, if the Participant fails to make payment in full of the Total Price by the Payment Deadline, any unpaid amount of the Total Price remains due and payable (together with any interest payable in accordance with clause 9.2) and the Company remains obligated, under clause 8.1, to credit the Final Volume after payment in full has been received.

8.3 If the Participant fails to make payment in full of the Total Price by the Termination Deadline:

- (a) if the Participant has not made any payment towards the Total Price:
  - (i) the contract formed between the parties under these Terms and Conditions is terminated;
  - (ii) the Company is not obligated to credit the Final Volume;
  - (iii) the Participant is not obligated to pay the Total Price; and
  - (iv) each party retains the rights, remedies and powers it has in connection with any past breach or any Claim (including a right to payment of interest in accordance with clause 9.2) that has arisen before termination.
- (b) if the Participant has made a partial payment towards the Total Price:

- (i) the contract formed between the parties under these Terms and Conditions is terminated;
- (ii) the Company must, within three Business Days after the Termination Deadline, credit the Partial Volume to the Participant's Water Allocation Account;
- (iii) the Company is not obligated to credit the remainder of the Final Volume;
- (iv) the Participant is not obligated to pay the remainder of the Total Price; and
- (v) each party retains the rights, remedies and powers it has in connection with any past breach or any Claim (including a right to payment of interest in accordance with clause 9.2) that has arisen before termination.

## **9. Default by the Participant**

9.1 The Participant is in breach of these Terms and Conditions if any money payable by the Participant to the Company under these Terms and Conditions remains unpaid after the due date for payment.

9.2 If any money payable by the Participant to the Company under these Terms and Conditions remains unpaid for after the due date for payment, the Company may charge interest from the date on which the amount fell due for payment until it is paid. The rate of interest to apply will be the rate of interest set by section 356 of the Act. Interest accrues daily and is compounded monthly.

## **10. Notices**

10.1 Each communication in connection with these Terms and Conditions (including a notice, agreement, authorisation, consent, request, waiver or demand) (**Notice**) has no legal effect unless it is in writing.

10.2 Subject to the provisions of these Terms and Conditions about communicating Expressions of Interest, Offers and Acceptances via the Company's online customer portal, the provisions of the Entitlements Contract regarding notices apply, with the necessary changes, to Notices.

## **11. Rights, powers and remedies**

11.1 The failure of a party to exercise or enforce, or a delay by a party in exercising or enforcing, a right, power or remedy does not operate as a waiver of the exercise or enforcement by that party of that or any other right, power or remedy.

11.2 The exercise or enforcement by a party of a right, power or remedy does not preclude the further exercise or enforcement by that party of that right, power or remedy or the exercise or enforcement by that party of any other right, power or remedy.

## **12. Goods and services tax**

12.1 In this clause 12:

- (a) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;

- (b) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
  - (c) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
  - (d) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
  - (e) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 12.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of these Terms and Conditions for any supply made under or in connection with these Terms and Conditions does not include GST.
- 12.3 To the extent that any supply made under or in connection with these Terms and Conditions is a taxable supply, the GST-exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.
- 12.4 To the extent that one party is required to reimburse or indemnify another party for a Loss incurred by that other party, that Loss does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- 13. Governing law**
- 13.1 The law of New South Wales governs these Terms and Conditions.
- 13.2 The Company and the Participant submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.
- 14. Entire agreement**
- 14.1 These Terms and Conditions:
- (a) are the entire agreement and understanding between the parties on everything connected with the subject matter of these Terms and Conditions; and
  - (b) supersedes any prior agreement or understanding on anything connected with that subject matter.
- 15. Dictionary and interpretation rules**
- 15.1 **Dictionary**

- (a) **Acceptance** means acceptance of an Offer on, and subject to, these Terms and Conditions.
- (b) **Acceptance Deadline** means 5:00 pm on the third Business Day after notice of an Offer is given to a Participant or any other time and date determined by the Company and notified to the Participant.
- (c) **Aggregate Water Volume** means 9,600 Megalitres of Water Allocation.
- (d) **Annual Transfer** has the meaning given to that term in the Transfer Rules Policy.
- (e) **Company** means Murray Irrigation Limited ABN 23 067 197 933.
- (f) **Delivery Entitlements Pool** means the aggregate number of Delivery Entitlements held by all Participants who submitted a valid Expression of Interest in accordance with these Terms and Conditions.
- (g) **Entitlements Contract** means the Entitlements Contract between the Participant and the Company.
- (h) **Expression of Interest** means an expression by a Participant that they wish to purchase a specified volume of Water Allocation (expressed as a whole number of Megalitres) from the Company on, and subject to, these Terms and Conditions.
- (i) **Final Volume** means a volume of Water Allocation (expressed as a whole number of Megalitres) determined in accordance with clause 3.3 and specified in an Offer.
- (j) **Offer** means an offer to sell a Final Volume to a Participant for a Total Price and otherwise on, and subject to, these Terms and Conditions.
- (k) **Offer Price** means \$216 per Megalitre of Water Allocation.
- (l) **Partial Volume** means a proportion of the Final Volume which is equal to the proportion of the Total Price which the Company has received from the Participant by the Termination Deadline (and rounded down to the nearest whole Megalitre).
- (m) **Participant** means a shareholder of the Company who is participating in the arrangements described in these Terms and Conditions.
- (n) **Payment Deadline** means 5:00 pm on 28 February 2021 or any later time and date determined by the Company and notified to the Participant.
- (o) **Remaining Water Volume** means the volume calculated by subtracting the aggregate of the Final Volumes in Offers the Company has already determined it may make under clause 3.3(d) from the Aggregate Water Volume.
- (p) **Termination Deadline** means 5:00 pm on 26 February 2022 or any later time and date determined by the Company and notified to the Participant.
- (q) **Terms and Conditions** means this document including its schedule.
- (r) **Total Price** means the amount payable for a Final Volume calculated in accordance with clause 5.1 and specified in an Offer.

## 15.2 Interpretation



In these Terms and Conditions, unless the contrary intention appears:

- (a) reference to:
  - (i) the singular includes the plural and the plural include the singular;
  - (ii) money (including "\$", "AUD" or "dollars") is to Australian currency;
  - (iii) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) a person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
  - (v) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (vi) a group of persons is a reference to any two or more of them taken together and to each of them individually;
  - (vii) time is a reference to the time in Deniliquin, NSW; and
  - (viii) any thing (including any amount or any provision of these Terms and Conditions) is a reference to the whole and each part of it;
- (b) an obligation, representation or warranty on the part of or in favour of more than one person binds or is for the benefit of each of them separately and all of them jointly;
- (c) a party which is a trustee is bound both personally and in their capacity as a trustee;
- (d) the meaning of any general language is not restricted by any accompanying example, and the words "includes", "including", "such as", "for example" or similar words are not words of limitation;
- (e) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day; and
- (f) a provision of these Terms and Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms and Conditions or the inclusion of the provision in these Terms and Conditions.



**Schedule 1 – Worked example**

<b>1<sup>ST</sup> APPLICATION OF CLAUSE 3.3      2<sup>ND</sup> APPLICATION OF CLAUSE 3.3      3<sup>RD</sup> APPLICATION OF CLAUSE 3.3</b>								
<b>PARTICIPANT</b>	<b>VOLUME REQUESTED IN EOI</b>	<b>DELIVERY ENTITLEMENTS HELD</b>	<b>PROPORTIONATE ENTITLEMENT UNDER 3.3(c)</b>	<b>VOLUME OF WATER OFFERED UNDER 3.3(d)</b>	<b>NEW PROPORTIONATE ENTITLEMENT UNDER 3.3(c)</b>	<b>VOLUME OF WATER OFFERED UNDER 3.3(d)</b>	<b>NEW PROPORTIONATE ENTITLEMENT UNDER 3.3(c)</b>	<b>VOLUME OF WATER OFFERED UNDER 3.3(g)</b>
<b>A</b>	2,000	200	1,176	None <sup>2</sup>	1,500	None <sup>2</sup>	1,714 <sup>3</sup>	<b>1,714</b>
<b>B</b>	2,000	1,000	5,882 <sup>1</sup>	<b>2,000</b>	-	-	-	-
<b>C</b>	10,000	200	1,176	None <sup>2</sup>	1,500	None <sup>2</sup>	1,714 <sup>3</sup>	<b>1,714</b>
<b>D</b>	10,000	1,000	5,882	None <sup>2</sup>	7,500	None <sup>2</sup>	8,571 <sup>3</sup>	<b>8,571</b>
<b>E</b>	6,000	1,000	5,882	None <sup>2</sup>	7,500 <sup>1</sup>	<b>6,000</b>	-	-
<b>Delivery Entitlements Pool</b>			3,400		1,200		1,400	
<b>TOTAL</b>	<b>30,000 ML</b>	<b>3,400 DEs</b>	<b>20,000 ML</b>	<b>2,000 ML</b>	<b>18,000 ML</b>	<b>6,000 ML</b>	<b>12,000 ML</b>	<b>12,000 ML</b>

<sup>1</sup> The Participant's proportionate entitlement exceeds the volume requested in the EOI, resulting in an Offer being made for the volume requested in their EOI.

<sup>2</sup> No Offer is made to the Participant at this stage because their proportionate entitlement has not reached the volume requested in their EOI but, in this application of clause 3.3, at least one other Participant's proportionate entitlement exceeds the volume requested in their EOI.

<sup>3</sup> In this application of clause 3.3, no Participant's proportionate entitlement exceeds the volume requested in their EOI. This results in Offers being made to all remaining Participants in accordance with their proportionate entitlements.