



# Terms and Conditions

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## PART 1 – DEFINITIONS AND LEGALS

### Application

Those Terms and Conditions (as varied from time to time and displayed on the Website)

- a) together with the Application to Register to Trade Water form constitute the agreement between Waterpool and You; and
- b) apply to all Transactions as and from 3 September 2015.

You agree and acknowledge that you are bound by those Terms and Conditions as varied from time to time and displayed on the Website as the time that a Transaction is concluded.

### Definitions

1. In these Terms and Conditions (including the schedules hereto) the following words have the following meanings:
  - Buyer means a person who submits an offer (whether or not that offer is accepted or matched to a Seller) to purchase a Water Entitlement.
  - Company means a corporation within the meaning of Section 57A(1) of the *Corporations Act 2011* (Cth).
  - Dollars or \$ means Australian Dollars and except as expressly provided in the Agreement or on the Website, all amounts referred to are exclusive of any GST.
  - Expenses mean any monies paid by Waterpool (or any liabilities incurred by Waterpool) to a third party including but not limited to:
    - Application fees, lodgement fees or any other fees or charges paid or payable to a Water Corporation, Victorian Water Register, the Water Registrar or any other regulatory body in respect of a water transaction;
    - Fees or commissions payable to a debt collection or mercantile agent;
    - Costs incurred by Waterpool in realising and security granted by you to it under these terms and conditions.
  - Fees and Charges means any amount payable to Waterpool by way of commission or fees under these terms and conditions.
  - Goulburn-Murray Water mean the Goulburn-Murray Rural Water Corporation incorporated pursuant to the *Water Act* or any successor in title hereto.
  - Legal Representative means an Australian Legal Practitioner, conveyancer or other such qualified representative acting on behalf of another person.
  - Login Details mean the Users ID and password or similar codes for online use.
  - Minister means the Minister of Crown in right of the State of Victoria responsible for the administration of the *Water Act*.
  - Offer means any communication by a User to Waterpool whereby the User offers to sell or purchase a Water Entitlement and includes a communication by a User attempting to accept an offer by another User.
  - Online Account means an account a User has with Waterpool enabling the User, via the internet, to enter into water transactions using the Waterpool facilities.
  - Person means and includes any natural person, entity, body corporate or body politic.

- Permanent Transfer means the sale, assignment or conveyance of any Water Share, other Permanent Water Entitlement or Section 51 license (or part thereof) to another person not being the sale, assignment or conveyance of only Water Allocation.
- Pooled Exchange means the pooled water trading exchange operated by Waterpool.
- Section 51 License mean a license to take and use water held by (or deemed to be held by) a person pursuant to Section 51 of the *Water Act* or its equivalent.
- Seller means a person who submits an offer (whether or not that offer is accepted or matched to a Buyer) to sell Water Entitlement.
- Transaction means any transaction for the sale, exchange, assignment or trade of a Water Entitlement.
- Temporary Transfer means the sale, assignment or conveyance of the whole or any part of:
  - a Water Allocation in Victoria or other temporary seasonal allocation entitlement; or
  - the seasonal Water Allocation associated with or attached to a Section 51 license.
- Trust Account means a holding account maintained by Waterpool into which monies referred to in these terms and conditions, as being held by Waterpool in its trust account will be deposited.
- User means a person or persons registered (including their partners at law and principals) to use the Waterpool facilities.
- Water has the same meaning as defined in the *Water Act*.
- Water Act mean the *Water Act 1989* (Vic) as amended or in force from time to time and any legislation enacted to replace that Act.
- Water Allocation means a water allocation as defined in the *Water Act*.
- Water Corporation means a Water Corporation as defined in the *Water Act* or the equivalent regulatory authority of body pursuant to an Act of parliament of another State of the Commonwealth of Australia.
- Waterpool means Waterpool Trading Ltd trading as Waterpool Co-op
- Waterpool information technology system means the internet facility operated by Waterpool (or its agents) for the online operation of its exchange and trading rooms (and any other internet transaction methods introduced from time to time) and includes and extends to all infrastructure, software, hardware and other devices used in or associated with the operation or maintenance of that internet facility.
- Waterpool Facilities means the Website, the Waterpool Exchanges, the Online Trading Rooms, Waterpool information technology system and any other method or means from time to time offered by Waterpool to facilitate or engage in the sale, purchase or trade of any Water Entitlement.
- Water Share means a water share as defined in the *Water Act*.
- Water Entitlement means and includes a Water Share, Water Allocation or Section 51 license or any other right or entitlement relating to water that is now or in the future able to be traded via the Waterpool facilities.
- Website means [www.waterpoolcoop.com.au](http://www.waterpoolcoop.com.au) and any Website maintained by Waterpool that is ancillary thereto.
- You means the User named on the Registration Form accepted by Waterpool.

## **Rules of Construction**

2. In these terms and conditions:
  - 2.1. where there is any doubt as to the meaning of any word or phrase, any meaning prescribed by or implied by the Water Act shall apply;
  - 2.2. where a word or phrase is defined, such definition shall apply to that word whether it is used in the singular or the plural;
  - 2.3. where a word or phrase is defined within these terms and conditions that definition only applies to that word or phrase within the part in which it is defined;
  - 2.4. where a word or phrase is defined both of part 1 hereof and in another part hereof the later definition shall prevail within that part but not otherwise;
  - 2.5. a reference to any gender shall include all genders.

## **Inaction not to constitute a waiver**

3. A failure of a person or party to exercise any right or take any action granted or permitted by these terms shall not constitute a waiver of that right or obligation and that person or party's rights shall be preserved.

## **Applicable Law**

4. These terms and conditions and any contract formed hereunder are governed by the laws of the State of Victoria.

## **Severability**

5. Notwithstanding that any provision of these terms and conditions may prove to be illegal or unenforceable, the remaining provisions of those terms and conditions shall continue in full force and effect.

## PART 2 – WATERPOOL AGENCY – TERMS & CONDITIONS

### Agency

1. You appoint Waterpool to act as your agent for the purpose of buying or selling Water Entitlement.

### Commissions and other fees and charges

2. In exchange for the services of Waterpool, you must pay or reimburse:
  - 2.1. any disbursements of Expenses incurred by Waterpool to enable the Transaction including and not limited to any fees associated with obtaining Ministers consent or the consent of any Water Corporation to the Transaction;
  - 2.2. penalty interest on any amount outstanding and not paid as of the due date at the rate fixed from time to time pursuant to Section 2 of *Penalty Interest Rate Act 1983 (Vic)*;
  - 2.3. for a Permanent Entitlement Trade (Water Share) – if you are the Seller, commission as outlined in the Commission Schedule (as varied from time to time and displayed on the Website) or as otherwise agreed between You and Waterpool from time to time;
  - 2.4. For a Allocation Trade – if you are the Seller or Buyer, commission as outlined in the Commission Schedule (as varied from time to time and displayed on the Website) or as otherwise agreed between You and Waterpool from time to time.
3. The commission shall be due and payable upon the earlier occurrence of any of the following (“the events”):
  - 3.1. the contract being signed, water transfer(s) being completed and settlement taking place;  
or
  - 3.2. the contract being unconditional, and the parties to the contract not proceeding to settlement for whatever reason and the contract being cancelled or abandoned as a result;  
or
  - 3.3. 90 days have passed from the date of the contract and no settlement being completed and the failure to settle has been caused by the action or inaction of the parties to the contract. This failure to settle may be caused by the failure of either party to provide information, documentation or take some action required to obtain the Ministers consent to the Transaction; or
  - 3.4. Both parties authorising Waterpool to be paid the commission.
4. Upon Waterpool becoming entitled to be paid the commission, you agree and hereby irrevocably authorise Waterpool to withdraw the amount of the commission from any deposit held in its trust account relating to the Transaction.
5. Waterpool reserves their right to claim the commission from the Buyer of any Water Entitlement where any of the events outlined in clause 3.2 or 3.3 are as a result of the actions or omissions of the Buyer.
6. No commission will be payable by You in the event that the trade is refused by the Minister unless in accordance with clause 3 herein.

7. In addition to any commission and other disbursements or expenses, You may be liable for any fees payable in connection with the trading of water such as legal costs.

### **Acknowledgement**

8. You acknowledge that:
  - 8.1. Waterpool will not offer any Water Entitlement for sale or purchase until you have satisfied all requirements of Waterpool including but not limited to completing the particulars of this Agreement and accepting the terms and conditions contained herein; and
  - 8.2. Waterpool reserves, in its absolute discretion, and without giving any explanation or reasons, the right to refuse to offer any water for sale or to accept an offer to buy any Water Entitlement;
  - 8.3. Waterpool acts as a broker to facilitate the sale or purchase of Water Entitlements and does not offer any legal, financial or other advice relating to the sale of Water Entitlements;
  - 8.4. You must provide all information reasonably required by Waterpool including and not limited to evidence of ownership of Water Entitlements as and when required by Waterpool.

### **Authorities**

9. You authorise Waterpool to:
  - 9.1. have Fees and Charges, commission and Expenses paid from any amounts being held by Waterpool or your Legal Representative;
  - 9.2. instruct your Legal Representative to complete water contracts and other documents necessary to give effect to any Transactions;
  - 9.3. disclose any personal information regarding You and your Water Entitlement to any third body where such disclosure of information will assist the trade of water and any Transaction including and not limited to the other party to any transaction entered into and/or their lawful agents (i.e. Legal Representative);
  - 9.4. act as your authorised agent to complete and lodge any relevant forms with a relevant Water Corporation, the Victorian Water Register, the Water Registrar, the Minister or any other relevant person or regulatory body to complete any water transaction entered into by you using the Waterpool facilities;
  - 9.5. obtain from and disclose to a relevant Water Corporation, the Victorian Water Register, the Water Registrar or any other person or regulatory body any information or documents that may reasonably be required to be obtained or disclosed to enable Waterpool to facilitate, process or conclude any water transaction entered into by you using the Waterpool facilities.
10. You authorise any Water Corporation, Legal Representative, financial institution or any other third party to provide information to Waterpool as required to enable them to complete any water trade contemplated by this agreement.

### **Charge, Mortgage or Sale**

11. You agree to charge any and all interest you have now or in the future in any real property (eg. Freehold or leasehold ownership of land) or any Water Entitlement in favour of Waterpool to secure payment of any monies owed to Waterpool from time to time such as to entitle Waterpool to lodge a caveat or other notice of interest with the Registrar of Titles or the Water Registrar held in respect of such interest in real property or Water Entitlement.
12. You hereby agree to execute, within 7 days of a request in writing by Waterpool a mortgage in registrable form in favour of Waterpool of any Water Entitlement you hold at the time of such request to secure monies owed by you to Waterpool at the time of such request. Such mortgage is to be a mortgage in the form of as the Water Act of any such applicable legislation and/or any documents necessary to sell, transfer or assign (for example a contract of sale, auction or transfer of land) and real property so as to enable Waterpool to realise any security granted herein.
13. You agree, that should Waterpool take steps to sell or otherwise realise its security interest in such real property or Water Entitlement, it shall be entitled to be paid its reasonable expenses incurred in doing so from the proceeds received therefrom (in addition to any other monies, Expenses or Fees and Charges owed by you to Waterpool). In the event of any surplus arising from such sale after payment of all monies due to Waterpool, such surplus will be paid to you.
14. You agree, that in the event that you default under any of your obligations under any terms and conditions to Waterpool, you will pay any expenses and any legal costs incurred by Waterpool in consequence of such default.

## PART 3 – INTERNET – TERMS & CONDITIONS

### Application

1. Those Internet Terms and Conditions (as varied from time to time) apply to any User or person using Waterpool facilities (whether registered or not)

### Acknowledgements

2. You acknowledge that:
  - 2.1. Waterpool is a facilitator of water transactions between Users;
  - 2.2. You are bound by the Internet Terms and Conditions current at the time of your respective Transaction;
  - 2.3. Waterpool and any other party to a Transaction involving you are entitled to rely on you being bound by the Internet Terms and Conditions;
  - 2.4. You use Waterpool facilities at your own risk and Waterpool does not guarantee the ability of any User to complete a Transaction;
  - 2.5. Waterpool may use electronic means to deliver documentation and information to You. The date of receipt of such documentation or information is the date that the electronic communication is sent by Waterpool.

### Warranties

3. You warrant that:
  - 3.1. All information provided by You to Waterpool is true and correct;
  - 3.2. You will not disclose your Login Details to any other person, and will keep those details confidential.

### Online Security

4. Each User will receive Login Details at the time of registration.
5. You are responsible for any action taken under your Login Details and agree that
  - 5.1. Waterpool and any other party to a Transaction is entitled to rely and act upon the entry of your Login Details as your authorisation and agreement to any Transaction entered into using your Login Details;
  - 5.2. You are bound to perform any Transaction entered into using your Login Details whether you performed or authorised such Transaction;
  - 5.3. You will notify Waterpool if you become aware of any other person having obtained access to your Login Details, upon which Waterpool will suspend your online account.

### No Guarantee or Warranty

6. Waterpool does not warrant or guarantee that:
  - 6.1. Waterpool Facilities will at all times be available for use, be functional or be free from errors;
  - 6.2. Waterpool Facilities are secure, free from any virus or malicious persons;
  - 6.3. it will be possible to facilitate any Transaction to buy or sell Water Entitlements;
  - 6.4. any Transactions will be completed.



7. Waterpool retains the right at any time and without notice to wholly or partly suspend any or all of Waterpool Facilities.
8. No User will be bound to a transaction apparently entered into by that User where it is provided to have originated solely by computer error or malfunction in which circumstances the water transaction will be voided and neither party shall be bound thereto.

### **Limitation of Liability and Indemnity**

9. You indemnify Waterpool against all losses and damages and legal or other costs and expenses incurred by Waterpool resulting from:
  - 9.1. any act or omission by You; or
  - 9.2. any breach of any obligation or warranty by You.
10. You release Waterpool from all and any claims and actions due to any error or omission by Waterpool (including its employees, agents or sub-contractors) of any kind (including negligence but excepting fraud and other criminal acts) in establishing operating maintaining or in any way concerning or connected with the Facilities that cause you loss damage or other costs and expenses of any kind (whether arising under the Trade Practices Act, the Fair Trading Act or otherwise).
11. This includes but is not limited to releasing Waterpool relating to:
  - 11.1. Any unauthorised use of your Login Details;
  - 11.2. Any unavailability or malfunction of Waterpool Facilities including where any transaction is unable to be processed in a timely fashion or at all;
  - 11.3. Any loss or damage suffered as a result of any virus or malicious persons or software.
12. In the event of any fraud or other criminal acts referred to in Clause 10 herein, Waterpool liability will be limited to:
  - 12.1. The cost of supplying the services again; or
  - 12.2. Payment of the cost of having the service supplied again.

### **Registration and Termination of Registration**

13. You acknowledge that:
  - 13.1. Waterpool is not obligated to register any person or entity, and can refuse to register any person or entity in its absolute discretion;
  - 13.2. Waterpool may in its absolute discretion cancel the registration of any person or entity without notice;
  - 13.3. Waterpool may decline to include any offer by any person or entity in Waterpool Facilities;
  - 13.4. No action for damages of any kind shall arise against Waterpool as a result of any of the above.

### **Additional Obligations Of Companies**

14. If you are a Company, you acknowledge that:
  - 14.1. Upon seeking to become registered to use any of the Waterpool Facilities, You must provide Waterpool with:

- 14.1.1. a current ASIC company extract being less than 3 months old;
- 14.2. After registration, You must notify Waterpool within 3 business days of any:
  - 14.2.1. changes to the company including changes of directors or director's details;
  - 14.2.2. resolution of the company to appoint an administrator or for voluntary liquidation;
  - 14.2.3. notice by ASIC or any other relevant government authority to the company of an intention to deregister the company;
  - 14.2.4. an application to a Court of competent jurisdiction to wind up the company (whether insolvency or otherwise);
  - 14.2.5. proceedings issued against it or any of its directors for a breach of the *Corporations Act 2001* (Cth).

## PART 4 – SALE OR PURCHASE OF WATER SHARES – TERMS & CONDITIONS

### Offer to sell – Seller

1. Where:
  - 1.1. the owner ("**the Seller**") of a water share ("**the Water Share**") lodges an offer ("**the Sell Offer**") to sell all or part of the offered Water Share on the Website or by other means; and
  - 1.2. another user ("**the Buyer**") either:
    - 1.2.1. accepts the Sell Offer as to the whole of (or part of if relevant) that Water Share at the nominated price; or
    - 1.2.2. lodges a bid (where relevant) at a different price ("**the Counter-Offer**") and the Seller accepts the Counter-Offer then:
  - 1.3. within 14 business days after notification by Waterpool of acceptance of the Sell Offer or Counter-Offer, the Seller must provide to the Buyer a Contract of Sale for the Water Share and any other documentation required to give effect to the transaction (including any relevant water application documentation); and
  - 1.4. within 14 business days after the receipt of the documents referred to in Clause 1.3, the Buyer must provide to the Seller a fully executed Contract, signed documentation required to give effect to the transaction and a cheque payable to Waterpool for the deposit (being an amount equal to 10% of the agreed price).

The parties acknowledge no legal obligation to sell or buy the Water Share is created until such time as a written Contract has been entered into between the parties. The Seller may therefore sell the Water Share to another party at their discretion until a written Contract has been entered into and the deposit paid pursuant to Clause 1.4 herein.

### Offer to buy – Buyer

2. Where:
  - 2.1. a user ("**the Buyer**") lodges an offer to buy a water share ("**the Buy Offer**") on the Website or by other means; and
  - 2.2. the owner ("**the Seller**") of a water share ("**the Water Share**") either:
    - 2.2.1. accepts the relevant Buy Offer as to the whole of (or, in the case of an offer nominating that it may accepted in part, part of) the Water Share; or

2.2.2. lodges a bid (where the Buyer has nominated the price as negotiable) at a different price (“**the Seller Counter-Offer**”) to the relevant buy offer and the Buyer accepts the Seller Counter-Offer  
then:

- 2.3. within 14 business days after notification by Waterpool of acceptance of the Buy Offer or Seller Counter-Offer, the Seller must provide to the Buyer a Contract of Sale for the water share and any other documentation required to give effect to the transaction (including any relevant water application documentation);
- 2.4. within 14 business days after receipt of the documents referred to in Clause 2.3, the Buyer must provide to the Seller a fully executed Contract, signed documentation required to give effect to the transaction and a cheque made payable to Waterpool for the deposit (being an amount equal to 10% of the agreed price).

The parties acknowledge no legal obligation to sell or buy the Water Share is created until such time as a written Contract has been entered into between the parties. The Seller may therefore sell the Water Share to another party at their discretion until a written Contract has been entered into and the deposit paid pursuant to Clause 2.4 herein.

### **Contract of Sale**

3. The Contract of Sale must not:
  - 3.1. diminish any rights of Waterpool;
  - 3.2. require Waterpool to give up its right to hold the deposit as stakeholder;
  - 3.3. otherwise interfere in any way with Waterpool’s right to be paid its commission, including but without limiting the generality of the foregoing:
    - 3.3.1. waiving the requirement of the payment of a deposit;
    - 3.3.2. reducing the price payable for the Water Share (unless express provision is made for the payment of commission to Waterpool in the same amount as would have been applicable under the original price).

### **Liability of the parties for the payment of commission to Waterpool**

4. If the purchasing party fails to pay the deposit strictly by the date required (time being of the essence), then the amount of the commission that would have been payable to Waterpool shall become immediately due and payable by the purchasing party as a debt to Waterpool by way of liquidated damages notwithstanding that:
  - 4.1. the selling party has waived or otherwise given up the right to enforce the contract or sue for damages;
  - 4.2. the commission would not have otherwise been payable because:
    - 4.2.1. although the selling party enforces the contract it is otherwise abandoned or cancelled (eg. as being rejected by a Water Corporation or other relevant regulatory person or body); or
    - 4.2.2. although not enforced by the selling party, events would have transpired, that would have resulted in it being abandoned or cancelled.
5. Once a deposit is paid, both parties become liable to pay Waterpool the commission regardless of whether the contract proceeds to settlement or not. Waterpool is entitled as against both parties to retain commission from the amount held as a deposit.

## PART 5 – SALE OR PURCHASE OF WATER ALLOCATION (TEMPORARY TRADE) – TERMS & CONDITIONS

### Pooled Exchange

1. If an offer to sell or buy Water Allocation is made via the Pooled Exchange, then, in addition to these terms and conditions (as applicable):
  - 1.1. The Buyer agrees to and is bound by the terms and conditions set out in Schedule 3 hereto.
  - 1.2. The Seller agrees to and is bound by the terms and conditions set out in Schedule 4 hereto.

### Terms applicable to temporary transfers other than via Pooled Exchange

#### Offer to sell – Seller

2. Where:
  - 2.1. the owner (“**the Seller**”) of Water Allocation (“**Water Allocation**”) lodges an offer (“**the Sell Offer**”) to sell all or part of the offered Water Allocation on the Website; and
  - 2.2. another user (“**the Buyer**”) either:
    - 2.2.1. accepts the relevant sell offer as to the whole of (or part of it relevant) the Water Allocation at the nominated price.  
then both the Seller and Buyer are bound to a contract for the sale and transfer of the Water Allocation.
    - 2.2.2. in respect of the number of megalitres as agreed between the parties during the Seller Offer acceptance process referred above;
    - 2.2.3. at the price nominated in the Sell Offer;
    - 2.2.4. on the terms set out in Clauses 4 to 8 (inclusive) of this Part.

#### Offer to buy – Buyer

3. Where:
  - 3.1. a user (“**the Buyer**”) lodges an offer to buy Water Allocation (“**the Buy Offer**”) on the Website and;
  - 3.2. the owner (“**the Seller**”) of Water Allocation (“**the acceptance Water Allocation**”) either:
    - 3.2.1. accepts the relevant Buy Offer as to the whole or (or, in the case of an offer nominating that it may be accepted in part, part of) the acceptance Water Allocation; or  
then both the Buyer and Seller are bound to a contract for the sale and transfer of the acceptance Water Allocation.
    - 3.2.2. in respect of the number of megalitres as agreed between the parties during the Buy Offer acceptance process referred to above;
    - 3.2.3. at the price nominated in the relevant Buy Offer;
    - 3.2.4. on the terms set out in Clauses 4 to 8 (inclusive) of this Part.

#### Payment

4. Upon the formation of a contract (as described in Clauses 2 or 3 above) then the Buyer (as the case may be) must within 48 hours pay to Waterpool:

- 4.1. the purchase price being the aggregate price (calculated as the number megalitres agreed to be sold or purchased multiplied by the price per megalitre) agreed to be the Buyer and Seller (as the case may be) as recorded by Waterpool from entries made on the Website ("**the Purchase Price**");
  - 4.2. the fees being any applicable fees prescribed by a relevant Water Corporation or other person or regulatory body required to be paid to submit or process an application to transfer Water Allocation ("**the Fees**");
  - 4.3. any commission or other fees payable by the Buyer.
- Time is of the essence in respect of the Buyers obligation to make these payments.

5. Waterpool shall:
  - 5.1. hold the Purchase Price pending approval of the transfer by the relevant Water Corporation or other body as required;
  - 5.2. hold the Fees until such time as it is required to pay the Fees to the relevant Water Corporation or other body to submit the application to transfer the water entitlement. Both parties hereby authorise Waterpool to deduct the Fees at the relevant time for this purpose.
6. Both parties acknowledge that no matter what the outcome of the transaction the Fees are non-refundable by the relevant Water Corporation or other body once the application for transfer is submitted and will not, therefore cannot be refunded by Waterpool once paid.

#### **Authorisation for Waterpool to act as agent and disclose personal information**

7. Each of the parties authorises Waterpool to act as their lawful agent and attorney to request any information from and disclose any information to a Water Corporation, the Water Registrar or any other regulatory body that is reasonably required to affect the transfer of the water entitlement.
8. Each of the parties authorises Waterpool to disclose to the other party (whether personally or to its lawful agents, for example lawyers) their personal details and any other information reasonably required to facilitate the transfer of the water entitlement.

## **SCHEDULE 1 – BUYING WATER ALLOCATION VIA POOLED EXCHANGE – TERMS & CONDITIONS**

### **The buyer authorises;**

1. Waterpool to buy, in the Waterpool Pooled Exchange, a Water Allocation based on the number of megalitres, the price, the trading zone and the number of exchanges listed on the offer form.
2. The Waterpool Chief Executive Officer and/or the Waterpool Supervisor to act as an authorised agent to complete and lodge the relevant forms with the Minister to complete the transfer of the allocation. The authorisation will cease if the offer lapses or upon approval of the application by the Minister.

3. Waterpool to withdraw the Offer to Buy from future exchanges upon completion of a purchase, or the offer is cancelled by the buyer and a receipt or acknowledgment of the cancellation is provided by Waterpool to the buyer or the offer lapses.

#### **Exchange rules for buyers of Water Allocation**

4. The offer to buy shall be governed by the laws of the State of Victoria.
5. Waterpool reserves, at its absolute discretion, and without giving explanation or reasons, the right to refuse to include any Offer to Buy in any exchange.
6. The buyer authorises Waterpool to obtain a credit report of the buyer's credit worthiness from a credit rating agency.
7. Offers may not be included in the exchange until they are deemed worthy by means of a feasibility check conducted through the electronic interface of the Victorian Water Register.
8. If inadequate or incorrect information is provided, then the offer to buy will not be included in an exchange until all information requested has been provided and has been confirmed as being correct.
9. Waterpool will give result notification to buyers before, or on the next working day, following the completion of an exchange.
10. The buyer will be committed to trade the allocation at the number of megalitres offered and at the nominated price specified in any Offer to Buy that is included in an approved exchange.
11. The numbers of megalitres offered for purchase in any pool may be reduced in order to balance that pool.
12. Where more than one buyer has nominated the same price and there is insufficient volume to satisfy those buyers a ballot may be conducted to determine the successful buyer(s).
13. A successful buyer will only pay a price equal to or lower than the price nominated on the Offer to Buy.
14. The offer to buy must be received by 12 noon one day prior to the execution of the next exchange.
15. The Offer to Buy is a legally binding offer to buy water and the offer cannot be withdrawn unless a Cancellation has been received by Waterpool, by 12 noon one day before the next scheduled exchange and a receipt or acknowledgement has been provided by Waterpool to the buyer.
16. In the event of the buyer being in default the buyer authorises Waterpool to sell the required number of megalitres to settle the exchange. The buyer authorises Waterpool to deduct from the sale of allocation the costs and expenses associated in selling such allocation to affect the exchange.
17. All debts incurred by buyers will be collected in accordance with Waterpool's debt management procedures as specified in the Operating Rules.
18. Waterpool shall be entitled to reply upon the use of facsimile and/or electronic transmission for the purpose of transferring Offers to Buy and/or Cancellations.
19. The buyer indemnifies Waterpool against all claims, losses, delays, costs and damages or expenses resulting from Waterpool's use of facsimile or electronically transferred documents.
20. Decisions made by the Independent Auditor in his role as the Exchange Controller will be final.
21. The buyer accepts full responsibility for the information entered on any Offer to Buy form.

## **Payments**

22. The buyer will pay Waterpool within 7 days of a successful exchange;
  - a) A commission of 1.9% of the value of the water purchased or a minimum commission of \$50.00 plus GST, as well as a buyer's fee of \$1.90 per Megalitre plus GST, or a minimum buyers fee of \$50.00 plus GST, and
  - b) the application Water Authority allocation trade lodgement and,
  - c) the value of the water purchased.
23. The buyer must pay all invoices prior to Waterpool notifying the relevant Water Authority to transfer the allocation to the buyer's Allocation Bank Account.
24. Notwithstanding the requirement that the buyer must pay the purchase price plus fees and charges within 7 days of a successful exchange, Waterpool may, at its absolute discretion, require, prior to including the buyer's offer in the pooled exchange;
  - a) a deposit as determined by Waterpool;
  - b) an amount equal to the purchase price estimated by Waterpool, being not less than the pooled exchange conducted immediately prior to the pooled exchange for which the offer is intended;
  - c) such other amount, which in the opinion of Waterpool is fair and reasonable, taking into account market conditions.
25. If the buyer does not pay the amount determined by Waterpool in accordance with this clause prior to the next exchange, Waterpool may, at its absolute discretion, refuse to include the buyers offer in any exchange until the amount has been paid by the buyer.
26. The buyer hereby indemnifies Waterpool against any losses, damages, delays, costs or expenses that may be incurred by the buyer due to the refusal of Waterpool to include the buyer's offer in any exchange.
27. If a buyer defaults in payment Waterpool reserves the right to apply interest at a rate of 2% above the rate fixed under Section 2 of the Penalty Interest Rate Act 1983 to any outstanding debt. Interest will be calculated from the date of the exchange in which the debt occurred.

## **Privacy Policy**

28. Waterpool is committed to protecting the private information of traders and will only provide personal information under the guidelines of Waterpool's published privacy policy. This policy can be viewed at [www.waterpoolcoop.com.au](http://www.waterpoolcoop.com.au).
29. Additional Offers to Buy will be subject to the trading rules of the relevant Water Authority and/or the Department of Environment, Land, Water and Planning or as gazetted in the *Water Act 1989*.

## **SCHEDULE 2 – SELLING WATER ALLOCATION VIA POOLED EXCHANGE – TERMS & CONDITIONS**

### **The seller authorises;**

1. Waterpool to sell in the Waterpool Pooled Exchange a Water Allocation, the number of megalitres, at the price, from the trading zone and for the number of exchanges as listed on the offer form.

2. The Waterpool Chief Executive Officer and/or the Waterpool Supervisor to act as an authorised agent to complete and lodge the relevant forms with the Minister to complete the transfer of the allocation. The authorisation will cease if the offer lapses or upon approval of the application by the Minister.
3. Waterpool to withdraw the Offer to Sell from future exchanges upon completion of a sale, or the offer is cancelled by the seller and a receipt or acknowledgment of the cancellation is provided by Waterpool to the seller or the offer lapses.

#### **Declaration by the seller of Water Allocation.**

The seller declares;

4. that the seller has the authority to sell the allocation and,
5. that the allocation offered for sale has not been used or sold and,
6. that Waterpool is indemnified against all claims and other actions of any person who may have an interest in the allocation and,
7. that the seller will be legally committed to sell the allocation, at the volume and price specified in any Offer to Sell that is included in an approved exchange and,
8. that the seller accepts full responsibility for the information provided on any Offer to Sell form.

#### **Exchange rules for sellers of Water Allocation**

9. The offer to sell shall be governed by the laws of the State of Victoria.
10. Waterpool reserves, at its absolute discretion, and without giving explanation or reasons, the right to refuse to include any Offer to Sell in any exchange.
11. Offers may not be included in the exchange until they are deemed worthy by means of a feasibility check conducted through the electronic interface of the Victorian Water Register.
12. If inadequate or incorrect information is provided, then the offer to sell will not be included in an exchange until all requested information has been correctly provided
13. Waterpool will give result notification to sellers before or on the next working day following the completion of an exchange.
14. The seller will be committed to trade the allocation at the number of megalitres offered and at the nominated price specified in any Offer to Sell that is included in an approved exchange.
15. The number of megalitres offered for sale in any pool may be reduced in order to balance that pool.
16. Where more than one seller has nominated the same price and there is insufficient volume to satisfy those sellers a ballot may be conducted to determine the successful seller(s).
17. A successful seller will only receive a price equal to or higher than the price nominated on the Offer to Sell.
18. The offer to sell must be received by 12 noon one day prior to the execution of the next exchange.
19. The Offer to Sell is a legally binding offer to sell water and the offer cannot be withdrawn unless a Cancellation has been received by Waterpool by 12 noon, one day prior to the next scheduled exchange, and a receipt or acknowledgement has been provided by Waterpool to the seller.
20. In the event of the seller being in default the seller authorises Waterpool to purchase the required number of megalitres to settle the exchange. The seller authorises Waterpool to deduct from the sale of allocation the costs and expenses associated in selling such allocation to affect the exchange.



21. All debts incurred by sellers will be collected in accordance with Waterpool's debt management procedures as specified in the Operating Rules.
22. Waterpool shall be entitled to reply upon the use of facsimile and/or electronic transmission for the purposes of transferring Offers to Sell and/or Cancellations.
23. The seller indemnifies Waterpool against all claims, losses, delays, costs and damages or expenses resulting from Waterpool's use of facsimile or electronically transferred documentation.
24. Decisions made by the Independent Auditor in his role as the Exchange Controller will be final.
25. The seller accepts full responsibility for the information entered on the Offer to Sell.

### **Fees and charges**

26. The following fees and charges will be deducted from payments made to successful sellers;
  - a) A commission of 0% of the value of the water sold, plus a seller's fee of \$2.00 per Megalitre plus GST, with a minimum applicable seller's fee of \$100.00 plus GST, and
  - b) The fee for lodgement of Water Authority allocation trade application.
27. Withholding Tax at 48.5% will apply on the sale price if a seller's ABN is not supplied. Sellers who are ABN exempt are required to provide written confirmation by completing a Statement by Supplier form.
28. Payments to successful sellers will be made by EFT (Electronic Funds Transfer) directly into the bank account nominated on the Offer to Sell form within 10 days of the exchange or Ministerial approval of the trade whichever is later.
30. Failure to provide the correct banking details on the Offer to Sell form will result in payment being made by cheque and may take up to 25 days.
31. Where the seller indicates his preferred payment, method is cheque this may take up to 25 days from the exchange date or Ministerial approval of the trade whichever is later.

### **Privacy Policy**

32. Waterpool is committed to protecting the private information of traders and will only provide personal information under the guidelines of Waterpool's published privacy policy. This policy can be viewed at [www.waterpoolcoop.com.au](http://www.waterpoolcoop.com.au).

### **Additional**

33. Offers to Sell will be subject to the trading rules of the relevant Water Authority and/or the Department of Environment, Land, Water and Planning or as gazetted in the *Water Act 1989*.