

## **12GL WATER OFFER TERMS AND CONDITIONS**

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

1.1 Capitalised terms used in this Application have the following meanings, unless the contrary intention appears:

- (a) where a definition is given in the dictionary at the end of this Application, that definition applies; and
- (b) where no definition is given in the dictionary at the end of this Application, the definition in the Entitlements Contract applies.

1.2 The interpretation rules at the end of this Application apply.

### **2. Offer to receive Water Allocation**

2.1 The Applicant offers irrevocably to receive the Final Volume from the Company, on and subject to the terms and conditions of this Application.

2.2 The Applicant's offer cannot be withdrawn except with the consent of the Company.

### **3. Acceptance by the Company**

3.1 The Company may, at its absolute discretion:

- (a) accept or decline the Applicant's offer to receive the Final Volume; and
- (b) determine the Final Volume.

3.2 Clauses 4 to 7 of this Application are conditional on the Company accepting the Applicant's offer to receive the Final Volume on or before the Acceptance Deadline. If the Company does not accept the Applicant's offer to receive the Final Volume on or before the Acceptance Deadline, then clauses 4 to 7 of this Application are of no force or effect.

3.3 The Company may accept the Applicant's offer to receive the Final Volume by giving notice to the Applicant of the Final Volume:

- (a) verbally, including by telephone; or
- (b) in accordance with clause 10, including by email, fax or text message.

### **4. Total Price**

4.1 The amount payable by the Applicant to receive the Final Volume is the price per megalitre specified in this Application, multiplied by the number of megalitres of Water Allocation determined by the Company to be the Final Volume.

4.2 The Total Price is a Charge for the purposes of the Entitlements Contract.

**5. Payment of Total Price**

5.1 The Applicant must pay the Total Price to the Company as soon as practicable after the Company notifies the Applicant of the Company's acceptance of the Applicant's offer to purchase the Final Volume, but in any event, no later than the Payment Deadline.

5.2 The Applicant must make payment using one of the following payment methods:

(a) **Cheque:** Must be received by the Company at either the Finley or Deniliquin offices before 5 pm on the due date for payment.

(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 5 pm on the due date for payment. The payer must fax or otherwise communicate to the Company a copy of the payment confirmation.

(c) **Direct Deposit:** Payment must be received by the Company before 5 pm on the due date for payment. 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 5 pm on the due date for payment and quote the details of the credit card to be used.

**6. Crediting Final Volume if Application is successful**

6.1 The Company must, within three Business Days after receiving payment as cleared funds, credit the Final Volume to the Applicant's Water Allocation Account.

**7. Use of the Final Volume**

7.1 The Applicant must only use the Final Volume as Water Allocation ordered for delivery under the Entitlements Contract.

7.2 The Applicant is not entitled to transfer the Final Volume except with the consent of the Company.

**8. Default by the Applicant**

8.1 The Applicant is in breach of this Application if any money payable by the Applicant to the Company under this Application remains unpaid for after the due date for payment.

8.2 Without limiting the Company's rights under this Application or the Entitlements Contract, if any money payable by the Applicant to the Company under this Application remains unpaid for after the due date for payment:

- (a) the Company may, from time to time, immediately without giving notice to the Applicant, cancel some or all of the Customer's Water Allocation, up to a maximum number of megalitres (with fractions to be rounded up to the nearest whole number) calculated by dividing the amount of money payable by the Applicant to the Company under this Application which remains unpaid for after the due date for payment by the price per megalitre specified in this Application; and
- (b) to the extent that, from time to time, the Final Volume exceeds:
  - (i) the amount of money paid by the Applicant to the Company under this Application divided by the price per megalitre specified in this Application (with fractions to be rounded down to the nearest whole number) (**Paid Volume**); plus
  - (ii) any volume of Water Allocation cancelled by the Company under clause 8.2(a) (**Cancelled Volume**),

the Company may, from time to time, immediately without giving notice to the Applicant, deduct Water Allocation from any future credits to the Customer's Water Allocation Account (including Annual Allocation and transfers into the Customer's Water Allocation Account) until the Paid Volume plus the Cancelled Volume equal the Final Volume.

8.3 If any money payable by the Applicant to the Company under this Application remains unpaid for after the due date for payment, whether or not any formal or legal demand has been made, the Company may charge interest from the date on which those amounts respectively fell due for payment until they are 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.

8.4 The Applicant acknowledges that if the Applicant breaches this Application by not paying the Total Price in full, it will not be possible for the Company to mitigate its loss by crediting the Final Volume to another person and the Company will be under no duty to mitigate its loss in this or any other way.

8.5 The Applicant indemnifies the Company against all Loss incurred by the Company in connection with the Applicant's failure to pay any money payable by the Applicant to the Company by the due date for payment.

## **9. Limitation of liability**

9.1 To the maximum extent permitted by law, all liability of the Company (including liability for negligence) for any determination or decision with respect to this Application by the Company is excluded (including in respect of errors or omissions in the preparation or lodgement of this Application by the Applicant or the Company).

## **10. Notices**

10.1 Subject to clause 3.3(a), each communication in connection with this Application (including a notice, agreement, authorisation, consent, request, waiver or demand) (**Notice**) has no legal effect unless it is in writing.

10.2 Subject to clause 3.3(a), clause 45 of the Entitlements Contract applies, 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 this Application for any supply made under or in connection with this Application does not include GST.

12.3 To the extent that any supply made under or in connection with this Application 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. Time is of the essence**

13.1 Time is of the essence in respect of obligations to pay money under this Application.



## Murray Irrigation

### 14. Governing law

- 14.1 The law of New South Wales governs this Application.
- 14.2 The Company and the Applicant submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

### 15. Entire agreement

- 15.1 This Application:
- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Application; and
  - (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

### 16. Dictionary and interpretation rules

#### 16.1 Dictionary

- (a) **Acceptance Deadline** means 1pm on 2 November 2016 or any later time and date determined by the Company.
- (b) **Applicant** means the applicant whose name and details are specified in this Application.
- (c) **Application** means this document.
- (d) **Company** means Murray Irrigation Limited ABN 23 067 197 933.
- (e) **Entitlements Contract** means the Entitlements Contract between the Applicant and the Company.
- (f) **Final Volume** means:
  - (i) the volume of Water Allocation specified in this Application to be received by the Applicant; or
  - (ii) any lesser volume of Water Allocation,  
as determined by the Company.
- (g) **Payment Deadline** means 5pm on 14 November 2016 or any later time and date determined by the Company.
- (h) **Total Price** means the amount payable for the Final Volume calculated under clause 4.1.

#### 16.2 Interpretation

In this Application, 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 this Application) 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 this Application must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Application or the inclusion of the provision in this Application.