

## Murray Irrigation Water Exchange: Terms and Conditions

### 1. Summary of rules

- 1.1 The content set out in this rule 1 is not legally binding and is designed only to explain the effect of the binding rules (being all rules other than this rule 1) in this document. This rule 1 should be read in conjunction with the full Exchange Terms and Conditions.
- 1.2 In general terms, Transactions on the Water Exchange are conducted in three steps:
  - (a) Offers and Bids are listed;
  - (b) Offers and Bids are matched, or Buy Orders are placed; and
  - (c) Transactions are registered and payments are made at Completion.
- 1.3 Murray Irrigation Buyers may buy, and Murray Irrigation Sellers may sell, Tradeable Rights.
- 1.4 Persons who are not Murray Irrigation Buyers may buy, and persons who are not Murray Irrigation Sellers may sell, Water Allocation but not Delivery Entitlements or Carryover Units.
- 1.5 A glossary of defined terms appears in rule 22.1. Other terms are defined in the Entitlements Contract and Transfer Rules Policy.
- 1.6 Applications must be completed in the prescribed Form. Forms are available from all Murray Irrigation offices and on the Web Site.
- 1.7 All Forms must be completed and signed by all registered proprietors of the relevant Tradeable Rights or those previously authorised by the registered proprietors and notified in writing to Murray Irrigation in a form acceptable to Murray Irrigation. In the case of a company, all authorisations and Forms must be executed in accordance with section 127 of the *Corporations Act 2001* (Cth). Forms not complying with these requirements will be rejected and returned to the applicant.
- 1.8 Subject to these Exchange Terms and Conditions, Offers and Bids listed on the Water Exchange are legally binding. If an Offer and Bid is matched, or if a Buy Order is placed that matches an Offer, the respective parties will be legally bound to sell and purchase the relevant Tradeable Rights that are specified in the Offer and Bid, or Buy Order, as the case may be.
- 1.9 Murray Irrigation will deposit all money paid to it under these Exchange Terms and Conditions (including fees payable to Murray Irrigation, payments for Bids that are matched with an Offer and payments following Buy Orders) into a bank account in its name. To the extent that Murray Irrigation is not entitled to this money, it holds the money as custodian (not as trustee) and subject to these Exchange Terms and Conditions.

- 1.10 Payment in full for Tradeable Rights, including applicable fees, purchased by:
- (a) matching a Bid to an Offer; or
  - (b) placement of a Buy Order, must be received by Murray Irrigation no later than three Business Days after the Bid is matched to an Offer, or the Buy Order is placed, as the case may be. If payment is not received by Murray Irrigation on time:
  - (c) the contract that is formed between the Buyer and the Seller under these Exchange Terms and Conditions is terminated;
  - (d) on the first occasion on which payment is not received from the Buyer on time, the Buyer may receive a warning; and
  - (e) on each subsequent occasion on which payment is not received from the Buyer on time after the Buyer has received a warning, the Buyer and their associates must be suspended from using the Water Exchange in their capacity as a Buyer for a period of 12 months.
- 1.11 Within 10 Business Days after a Transaction has completed under these Exchange Terms and Conditions, Murray Irrigation must pay to the Seller the total amount paid by the Buyer in respect of the Offer, less the sum of all applicable fees and any other outstanding debt owed by the Seller to Murray Irrigation, by way of set-off.
- 1.12 A Bid may be altered or withdrawn at any time to the extent that it has not been matched with an Offer, and an altered or new Bid may be listed in its place, in accordance with these Exchange Terms and Conditions.
- 1.13 Buyers and Sellers should obtain their own advice with respect to GST and other tax matters relating to the use of the Water Exchange.
- 1.14 Buyers and Sellers who are not Murray Irrigation Buyers or Murray Irrigation Sellers are responsible for obtaining all approvals required by law for External Transfers and Pre-Offer Transfers and should consult the relevant state authority with regards to trade rules including deadlines.
- 1.15 Murray Irrigation's role is solely to operate the Water Exchange and process Transactions. Murray Irrigation does not provide any information or advice in relation to Transactions and does not affect the price at which Transactions are carried out. No financial products (as defined in the *Corporations Act 2001* (Cth) as at the time of publication of these Exchange Terms and Conditions) are traded on the Water Exchange.

## **2. Listing Offers**

- 2.1 To apply to list an Offer on the Water Exchange, a Seller must:
- (a) correctly complete, sign and submit to Murray Irrigation:
    - (i) if the Seller is a Murray Irrigation Seller, a Form WEX/2;

- (ii) if the Seller is not a Murray Irrigation Seller and is not a Western Murray Irrigation Seller, a Form WEX/2; or
  - (iii) if the Seller is not an Murray Irrigation Seller but is a Western Murray Irrigation Seller, a Form WEX/3; or
- (b) submit the Offer through the Seller Listing Page, and
- (c) if the Seller is a Murray Irrigation Seller, have available in the Seller's Water Allocation Account at least the volume of Tradeable Rights specified in the Offer; and
- (d) if the Seller is not a Murray Irrigation Seller:
  - (i) nominate a Water Exchange Account in the name of the Seller which has credited to it at least the volume of Water Allocation specified in the Offer; or
  - (ii) satisfy the following conditions:
    - (A) pay to Murray Irrigation as cleared funds any fees in the Schedule of Standard Service Fees applicable to External Annual Transfers, plus GST;
    - (B) deliver to Murray Irrigation an application to the relevant state authority for the Minister's approval of a Pre-Offer Transfer, duly signed by the Seller and with the Seller's details completed; and
    - (C) deliver to Murray Irrigation a notice setting out the Minister's approval of the Pre-Offer Transfer in respect of the Offer, in a form acceptable to Murray Irrigation.

2.2 Murray Irrigation must, within one Business Day after a Seller complies with rule 2.1:

- (a) list the Offer on the Water Exchange; or
- (b) refuse to list the Offer (acting reasonably) and give notice to the Seller of the refusal within a reasonable time.

2.3 When an Offer is listed on the Water Exchange:

- (a) if the Seller is a Murray Irrigation Seller, Murray Irrigation must debit the volume of Tradeable Rights specified in the Offer from the Seller's Water Allocation Account and credit that volume of Tradeable Rights to the Seller's Water Exchange Account; and
- (b) if the Seller is not a Murray Irrigation Seller and has carried out a Pre-Offer Transfer in accordance with rule 2.1(d)(ii), Murray Irrigation must credit the volume of Water Allocation specified in the Offer to the Seller's Water Exchange

Account (which Murray Irrigation will establish for the Seller in accordance with rule 9.2).

- 2.4 A Seller must not transfer or offer for sale any of the Tradeable Rights in the Seller's Water Exchange Account which relate to a listed Offer, other than on the Water Exchange, for the period in which that Offer is listed.
- 2.5 Water Allocation in a Water Exchange Account must be transferred to a Water Allocation Account in order to make it available for supply under an Entitlements Contract.
- 2.6 Listed Offers in respect of each type of Tradeable Right are ranked from lowest to highest in accordance with the price specified in the Offer, with earlier Offers ranking in priority to later Offers at the same price.
- 2.7 A Seller may apply to Murray Irrigation to alter the price specified in an Offer by, and only by:
  - (a) submitting a correctly completed and signed Form WEX/5; or
  - (b) by correctly applying via the Seller Listing Page.

An alteration to the price of an Offer takes effect when Murray Irrigation alters the price of the Offer listed on the Water Exchange, but the price of the Offer remains unaltered until then. The altered Offer will be regarded as a new Offer ranking behind all Offers at the same price which were listed on the Water Exchange before Murray Irrigation altered the price of the Offer.

### **3. Listing Bids**

- 3.1 To apply to list a Bid on the Water Exchange, a Buyer must:
  - (a) correctly complete, sign and submit to Murray Irrigation a Form WEX/4 (whether or not the Buyer is a Murray Irrigation Buyer); or
  - (b) submit the Bid through the Buyer Listing Page.
- 3.2 The maximum volume of Tradeable Rights which can be specified in any Bid submitted to Murray Irrigation for listing pursuant to rule 3.1 is 1,000 ML. If a Bid specifies a volume of Tradeable Rights that is greater than 1,000 ML, Murray Irrigation will refuse to list the Bid pursuant to rule 3.3(b).
- 3.3 Murray Irrigation must, within one Business Day after a Buyer complies with rule 3.1:
  - (a) list the Bid on the Water Exchange; or
  - (b) refuse to list the Bid (acting reasonably) and give notice to the Buyer of the refusal within a reasonable time.

- 3.4 Listed Bids in respect of each type of Tradeable Right are ranked from highest to lowest in accordance with the price specified in the Bid, with earlier Bids ranking in priority to later Bids at the same price.
- 3.5 A Buyer may apply to Murray Irrigation to alter the price specified in a Bid by, and only by:
- (a) submitting a correctly completed and signed Form WEX/7; or
  - (b) by correctly applying via the Buyer Listing Page.
- 3.6 An alteration to the price of a Bid takes effect when Murray Irrigation alters the price of the Bid listed on the Water Exchange, but the price of the Bid remains unaltered until then. The altered Bid will be regarded as a new Bid ranking behind all Bids at the same price which were listed on the Water Exchange before Murray Irrigation altered the price of the Bid.

#### **4. Matching Bids and Offers**

- 4.1 Bids and Offers are matched as follows:
- (a) the highest-ranked Bid in respect of a type of Tradeable Right is paired with the lowest-ranked Offer in respect of the relevant type of Tradeable Right so that either the Bid or the Offer is fully satisfied;
  - (b) a new ranking of Bids and Offers is established after deducting the volume of Tradeable Rights paired under rule 4.1(a), with the remainder of a partly satisfied Bid or Offer being ranked as a new Bid or Offer made at the time of the original Bid or Offer;
  - (c) the processes set out in rule 4.1(a) and rule 4.1(b) are repeated until the highest-ranked Bid price is below the lowest-ranked Offer price;
  - (d) where the highest-ranked Bid and lowest-ranked Offer prices respectively do not match or overlap, such Bids and Offers will not participate in the process outlined in paragraph 4.1(c); and
  - (e) any Bids or Offers which have not been matched at the completion of the process described in paragraph 4.1(c) will remain listed until removed or withdrawn in accordance with rule 12 or rule 13.
- 4.2 When a Bid is matched to an Offer, a binding contract is formed between the Buyer and Seller whose Bid and Offer are matched for the sale and purchase of Tradeable Rights at the price and volume matched, which is subject to these Exchange Terms and Conditions.

#### **5. Buy Orders**

- 5.1 A Buyer may submit a Buy Order through the Buyer Listing Page. The Buy Order is taken to have been placed:
- (a) if it is placed before 5 pm on a Business Day, on the day on which it was placed; or

- (b) if it is placed at any other time, at the beginning of the next Business Day after the day on which it was placed.
- 5.2 When a Buyer places a Buy Order, a binding contract is formed between the Buyer and the Seller to whose Offer the Buy Order relates for the sale and purchase of Tradeable Rights at the price and volume specified in the Buy Order which is subject to these Exchange Terms and Conditions.

## **6. Completion**

- 6.1 Once a contract is formed between a Buyer and a Seller pursuant to rule 4.2 or rule 5.2, as the case may be, the Buyer must pay as cleared funds to Murray Irrigation's nominated bank account within three Business Days after the formation of the contract:
  - (a) the amount payable for the volume of Tradeable Rights at the price specified in the Bid or the Buy Order, as the case may be; and
  - (b) all applicable fees set out in the Schedule of Standard Service Fees plus GST.
- 6.2 Once Murray Irrigation has received payment from a Buyer in accordance with rule 6.1, Murray Irrigation must:
  - (a) if the Buyer is a Murray Irrigation Buyer, within one Business Day, debit the volume of Tradeable Rights purchased by the Buyer from the Seller's Water Exchange Account and credit that volume of Tradeable Rights to the Buyer's Water Allocation Account; or
  - (b) if the Buyer is not a Murray Irrigation Buyer, within one Business Day, debit the volume of Water Allocation purchased by the Buyer from the Seller's Water Exchange Account and credit that volume of Water Allocation to the Buyer's Water Exchange Account.
- 6.3 Completion of a contract formed between a Buyer and a Seller pursuant to rule 4.2 or rule 5.2, as the case may be, is taken to have occurred once:
  - (a) Murray Irrigation has received payment from the Buyer in accordance with rule 6.1; and
  - (b) Murray Irrigation has credited the Tradeable Rights to the Buyer's Water Allocation Account or Water Exchange Account, as the case may be, under rule 6.2.
- 6.4 Until the payment by a Buyer to Murray Irrigation under rule 6.1 has been received as cleared funds the Tradeable Rights purchased may not be transferred to another person, or listed for sale on the Water Exchange.
- 6.5 If a Buyer does not comply with rule 6.1:
  - (a) on the first occasion on which full payment is not received from the Buyer on time, Murray Irrigation must issue the Buyer with a warning; and

- (b) on each subsequent occasion on which full payment is not received from the Buyer on time after the Buyer has received a warning, Murray Irrigation must suspend the Buyer and any associate of the Buyer from using the Water Exchange in their capacity as a Buyer for a period of 12 months.
- 6.6 Murray Irrigation's rights under rule 6.5 do not prejudice or limit Murray Irrigation's ability to accept or reject applications to have Bids or Offers listed or relisted on the Water Exchange.

## **7. Payment of Transaction proceeds to Sellers**

- 7.1 Within 10 Business Days after a Transaction has completed under rule 6.3, Murray Irrigation must pay to the Seller the amount equal to:
  - (a) the total amount paid by the Buyer to Murray Irrigation in respect of the Offer; less
  - (b) all applicable fees set out in the Schedule of Standard Service Fees, plus GST; less
  - (c) any outstanding debt owed by the Seller to Murray Irrigation, by way of set-off.

## **8. No interest on funds held by Murray Irrigation**

- 8.1 Murray Irrigation may deposit any money paid to it by a Buyer or a Seller under these Exchange Terms and Conditions, including:
  - (a) fees;
  - (b) amounts paid by Buyers under rule 6.1; and
  - (c) amounts payable to Sellers under rule 7.1;in any type of account held at a bank or other financial institution.

- 8.2 No Buyer or Seller is entitled to, and Murray Irrigation is not required to pay, any interest on any money paid to Murray Irrigation by a Buyer or a Seller under these Exchange Terms and Conditions.

- 8.3 To the extent that Murray Irrigation is not entitled to this money, it holds the money paid to it by a Buyer or a Seller under these Exchange Terms and Conditions as custodian (not as trustee) and subject to these Exchange Terms and Conditions.

## **9. Water Exchange Accounts**

- 9.1 Murray Irrigation will establish a Water Exchange Account for a Seller that is a Murray Irrigation Seller if Murray Irrigation accepts an application by the Seller to list an Offer on the Water Exchange and the Seller does not already have a Water Exchange Account.
- 9.2 A Seller who is not a Murray Irrigation Seller may apply for a Water Exchange Account by correctly completing, signing and submitting to Murray Irrigation a Form WEX/9. Murray

Irrigation will refuse an application by a Seller that is not a Murray Irrigation Seller to list an Offer on the Water Exchange if the Seller does not have a Water Exchange Account.

9.3 Murray Irrigation will establish a Water Exchange Account for a Buyer that is a Murray Irrigation Buyer if Murray Irrigation accepts an application by the Buyer to list a Bid on the Water Exchange or place a Buyer Order and the Buyer does not already have a Water Exchange Account.

9.4 A Buyer who is not a Murray Irrigation Buyer may apply for a Water Exchange Account by correctly completing, signing and submitting to Murray Irrigation a Form WEX/9. Murray Irrigation will refuse an application by a Buyer who is not a Murray Irrigation Buyer to list a Bid on the Water Exchange or place a Buyer Order if the Buyer does not have a Water Exchange Account.

9.5 If a Buyer has Water Allocation credited to its Water Exchange Account, the Buyer may:

- (a) nominate the Water Exchange Account for the purposes of rule 2.1(c) or rule 2.1(d)(i), as the case may be, when applying to list an Offer on the Water Exchange;
- (b) apply for an External Transfer of the Water Allocation; or
- (c) apply for an Internal Annual Transfer of the Water Allocation in the Buyer's Water Exchange Account to a Water Allocation Account nominated by the Buyer.

9.6 All External Transfers are subject to:

- (a) Murray Irrigation receiving from the transferee an application to the relevant state authority for the Minister's approval of an External Transfer to the transferee of the Water Allocation to be transferred, duly signed by the transferee and with the transferee's details completed;
- (b) Murray Irrigation receiving from the relevant state authority notice of the Minister's approval of the External Transfer in a form acceptable to Murray Irrigation; and
- (c) payment of all applicable fees set out in the Schedule of Standard Service Fees, plus GST.

9.7 All fees payable to relevant state authorities in respect of External Transfers are the responsibility of the transferee.

## **10. Payments by Buyers and Sellers**

10.1 All payments made by Buyers and Sellers under these Exchange Terms and Conditions must be made using one of the methods set out in Schedule 1 of this document.



## **11. Closure of a Water Exchange Year**

11.1 At the time notified on the Web Site for closure of the Water Exchange on the last Business Day of a Water Exchange Year:

- (a) Murray Irrigation must remove all Bids and Offers from the Water Exchange;
- (b) if a Seller is a Murray Irrigation Seller, Murray Irrigation must debit any Tradeable Rights in the Seller's Water Exchange Account and credit that volume of Tradeable Rights to the Seller's Water Allocation Account; if a Buyer is a Murray Irrigation Buyer, Murray Irrigation must debit any Tradeable Rights in the Buyer's Water Exchange Account and credit that volume of Tradeable Rights to the Buyer's Water Allocation Account; and
- (c) if a Seller is not a Murray Irrigation Seller, Murray Irrigation must carry out an External Transfer to the Seller of the Water Allocation in the Seller's Water Exchange Account, subject to Murray Irrigation receiving from the relevant state authority a notice setting out the Minister's approval of the External Transfer, in a form acceptable to Murray Irrigation; and
- (d) if a Buyer is not a Murray Irrigation Buyer, Murray Irrigation must carry out an External Transfer to the Buyer of the Water Allocation in the Buyer's Water Exchange Account, subject to Murray Irrigation receiving from the relevant state authority a notice setting out the Minister's approval of the External Transfer, in a form acceptable to Murray Irrigation.

11.2 If the Minister does not approve an External Transfer required to be carried out under rule 11.1(c) or rule 11.1(d), the Seller or Buyer must elect to:

- (a) nominate a different Water Licence for the External Transfer, and rule 11.1(c) or rule 11.1(d), applies; or
- (b) apply for an Internal Annual Transfer of the Water Allocation in the Seller or Buyer's Water Exchange Account to a Water Allocation Account nominated by the Seller or Buyer.

11.3 All Tradeable Rights in a Seller's or Buyer's Water Exchange Account at the end of a Water Year will be cancelled and taken to have been forfeited by the Seller or Buyer. Murray Irrigation is not liable to compensate anyone in respect of cancelled Tradeable Rights.

## **12. Removal and withdrawal of Bids and Offers**

12.1 A Seller may apply to withdraw an Offer at any time to the extent that it has not been matched with a Bid, or a Buyer Order has not been submitted with respect to that Offer, by, and only by:

- (a) submitting a correctly completed and signed Form WEX/6; or
- (b) by correctly applying via the Seller Listing Page.

- 12.2 Murray Irrigation must, if a Murray Irrigation Seller applies to withdraw an Offer in accordance with rule 12.1:
- (a) remove the Offer from listing on the Water Exchange by the end of the next Business Day after the application was received; and
  - (b) debit the volume of Tradeable Rights specified in the Offer from the Seller's Water Exchange Account (**Withdrawn Offer Volume**) and:
    - (i) if the Seller is a Murray Irrigation Seller, by the end of the next Business Day, credit the Withdrawn Offer Volume to the Seller's Water Allocation Account; or
    - (ii) if the Seller is not a Murray Irrigation Seller, within 10 Business Days, carry out an External Transfer to the Seller of the Withdrawn Offer Volume, subject to Murray Irrigation receiving from the relevant state authority a notice setting out the Minister's approval of the External Transfer, in a form acceptable to Murray Irrigation.
- 12.3 If the Minister does not approve an External Transfer required to be carried out under rule 12.2(b)(ii), the Seller must elect either to:
- (a) nominate a different Water Licence for the External Transfer, and rule 12.2(b)(ii) applies;
  - (b) apply for an Internal Annual Transfer of the Water Allocation in the Seller's Water Exchange Account to a Water Allocation Account nominated by the Seller; or
  - (c) keep the Withdrawn Offer Volume in the Seller's Water Exchange Account, and the Seller may apply to have another Offer listed.
- 12.4 A Buyer may apply to withdraw a Bid at any time to the extent that it has not been matched with an Offer by, and only by:
- (a) submitting a correctly completed and signed Form WEX/6; or
  - (b) by correctly applying via the Buyer Listing Page.
- 12.5 Murray Irrigation must, if a Buyer applies to withdraw a Bid in accordance with rule 12.4, remove the Bid from listing on the Water Exchange by the end of the next Business Day after the application was received.

### **13. Transfer Rules Policy**

- 13.1 The Transfer Rules Policy in place as at the time when a contract is formed under rule 4.2 or rule 5.2, as the case may be, applies to Transactions and Internal Annual Transfers of Tradeable Rights from Water Exchange Accounts and External Annual Transfers (including Pre-Offer Transfers and External Transfers) of Water Allocation to and from Water Exchange Accounts.

- 13.2 Water Exchange Accounts are taken to be Water Allocation Accounts for the purposes of applying the provisions of the Transfer Rules Policy to Internal Annual Transfers of Tradeable Rights from Water Exchange Accounts and External Annual Transfers (including Pre-Offer Transfers and External Transfers) of Water Allocation to and from Water Exchange Accounts.
- 13.3 Murray Irrigation may vary the Transfer Rules Policy in accordance with procedure set out in the Entitlements Contract.

#### **14. Termination of the contract formed between a Buyer and a Seller**

- 14.1 A contract formed under rule 4.2 or rule 5.2, as the case may be, is terminated automatically and with immediate effect upon a Buyer failing to pay to Murray Irrigation the full amount owing under rule 6.1 in accordance with rule 6.1. Each party retains the rights, remedies and powers, they have in connection with the Buyer's failure to pay.
- 14.2 Subject to rule 14.4, a Seller may terminate a contract formed under rule 4.2 or rule 5.2, as the case may be, if the Transfer Rules Policy in place at the time when the Seller's Offer, which is the subject of the contract, was listed under rule 2.2(a) has been replaced by a new Transfer Rules Policy at the time the contract was formed.
- 14.3 Subject to rule 14.4, a Buyer may terminate a contract formed under rule 4.2 if the Transfer Rules Policy in place at the time when the Buyer's Bid, which is the subject of the contract, was listed under rule 3.3(a) has been replaced by a new Transfer Rules Policy at the time the contract was formed.
- 14.4 A termination under rule 14.2 or rule 14.3 will only have effect if:
- (a) Murray Irrigation receives written notice of termination from the party wishing to exercise its right to terminate within three Business of the relevant contract being formed under rule 4.2 or rule 5.2, as the case may be; and
  - (b) the written notice states that the party giving the notice wishes to exercise its right to terminate pursuant to rule 14.2 or rule 14.3, as the case may be.

#### **15. Disclaimer, release and indemnity**

- 15.1 Subject to rule 15.2, to the maximum extent permitted by law, all Buyers and Sellers and their executors, administrators, successors and assigns release and indemnify Murray Irrigation and its associates from and against all claims, demands, proceedings, losses, damages, remedies, costs or other matters, whether in tort (including negligence), contract, under law or otherwise arising directly or indirectly from or in connection with:
- (a) participating in the Water Exchange;
  - (b) the refusal by Murray Irrigation to list any Bid or Offer;
  - (c) the sale of, or failure to sell, Tradeable Rights at a particular price or in a particular volume;

- (d) the failure of a Buyer to pay all or any part of the purchase price for a Transaction;
  - (e) the failure of a Seller to transfer all or any part of the Tradeable Rights specified in an Offer; and
  - (f) the Minister not approving a Pre-Offer Transfer or an External Transfer.
- 15.2 The release and indemnity in rule 15.1 does not cover any claim, demand, proceeding, loss, damage, remedy, cost or other matter to the extent that it was caused or contributed to by the unremedied breach of these Exchange Terms and Conditions, contravention of the law or negligence of Murray Irrigation or any of its employees, representatives or agents.
- 15.3 Each Buyer and Seller remains fully responsible for the proper completion, lodgement and registration of all Forms and information necessary for a Transaction.
- 15.4 Monitoring Bids and Offers listed on the Water Exchange is the responsibility of Buyers and Sellers. Murray Irrigation will not be liable for any loss suffered by a Buyer or Seller as a result of a Transaction entered into, alteration of an Offer or Bid, or withdrawal of an Offer or Bid, on the Water Exchange.
- 15.5 Murray Irrigation is not liable in any circumstances whatsoever for any indirect or consequential losses (including loss of goodwill, loss of business or anticipated savings), loss of profits or use, any rectification costs or any third party claims in connection with the supply of services under these Exchange Terms and Conditions.
- 15.6 Murray Irrigation does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified to a limited extent, as between Murray Irrigation and a Buyer or Seller by law, including liability under the *Competition and Consumer Act 2010* (Cth). However, where such statutory provisions apply, to the extent to which Murray Irrigation is entitled to do so, Murray Irrigation's liability under these Exchange Terms and Conditions will be limited to the supply of services under these Exchange Terms and Conditions again.

## **16. Disputes**

- 16.1 Any dispute between a Buyer and a Seller in relation to the operation of the Water Exchange or a Transaction will be determined by Murray Irrigation and Murray Irrigation's decision (which it may make acting reasonably) will be final and binding on all parties.

## **17. No advice or financial products**

- 17.1 Nothing in these Exchange Terms and Conditions or the operation of the Water Exchange and no act done by Murray Irrigation constitutes advice to a Buyer or a Seller in relation to a Transaction or whether to enter into a Transaction. The Buyer and the Seller acknowledge that they enter into Transactions on the basis of their own independent advice, for which Murray Irrigation has no liability.
- 17.2 No financial products (as defined in the *Corporations Act 2001* (Cth) as at the time of publication of these Exchange Terms and Conditions) are traded on the Water Exchange.

## 18. Intellectual Property

- 18.1 All Intellectual Property used in the Water Exchange is owned by Murray Irrigation and no Buyer or Seller may use this Intellectual Property in any way other than in accordance with these Exchange Terms and Conditions.

## 19. Privacy Policy

- 19.1 The Buyer and the Seller agree to Murray Irrigation dealing with their personal information in accordance with the Privacy Policy.

## 20. Entire understanding

- 20.1 These Exchange Terms and Conditions:
- (a) are the entire agreement and understanding between the parties on everything connected with the Water Exchange and Transactions conducted on the Water Exchange; and
  - (b) supersede any prior written agreement on anything connected with that subject matter.

## 21. Governing law and jurisdiction

- 21.1 The law of New South Wales governs these Exchange Terms and Conditions.
- 21.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales or any competent Federal court exercising jurisdiction in New South Wales. The dispute must be determined in accordance with the law and practice applicable in the court.

## 22. Definitions and interpretation

- 22.1 In these Terms and Conditions, the following words have these meanings unless the contrary intention appears:
- (a) **Bid** means an offer to buy a specified volume of Tradeable Rights on the Water Exchange at a specified price;
  - (b) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in Deniliquin, New South Wales, or on which Murray Irrigation's offices are closed;
  - (c) **Buy Order** means the acceptance of an Offer in accordance with rule 5;
  - (d) **Buyer** means a party who wishes to purchase Tradeable Rights under a Transaction;
  - (e) **Buyer Listing Page** means the page on the Web Site on which Buyers can list Bids and Buy Orders, which is located within the customer portal (and a Murray Irrigation customer can log into this portal using their customer number and password);

- (f) **Completion** means the completion of a Transaction in accordance with rule 6;
- (g) **Entitlements Contract** means the contract between Murray Irrigation and a Customer in relation to, among other things, the terms and conditions pursuant to which a Customer holds and may deal with Water Entitlements and Delivery Entitlements;
- (h) **Exchange Terms and Conditions** means this document and the Forms;
- (i) **External Transfer** means:
  - (i) in relation to a Buyer, the assignment from a Water Licence held or nominated by Murray Irrigation to a Water Licence held or nominated by the Buyer of a volume of Water Licence Allocation that is equivalent to a volume of Water Allocation in the Buyer's Water Exchange Account; and
  - (ii) in relation to Seller, the assignment from a Water Licence held or nominated by Murray Irrigation to a Water Licence held or nominated by the Seller of a volume of Water Licence Allocation that is equivalent to the volume of Water Allocation in the Seller's Water Exchange Account;
- (j) **Forms** means the forms published on the Web Site;
- (k) **Intellectual Property** includes any:
  - (i) copyright;
  - (ii) design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
  - (iii) know-how, inventions, processes, confidential information (whether in writing or recorded in any form);and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;
- (l) **Minister** means the relevant minister of the New South Wales government;
- (m) **Murray Irrigation** means Murray Irrigation Limited ACN 067 197 933;
- (n) **Murray Irrigation Buyer** means a Buyer that is a Customer under an Entitlements Contract;
- (o) **Murray Irrigation Seller** means a Seller that is a Customer under an Entitlements Contract;
- (p) **Offer** means an offer to sell a volume of Tradeable Rights on the Water Exchange

at a specified price;

- (q) **Pre-Offer Transfer** means the assignment from a Water Licence held or nominated by the Seller to a Water Licence held or nominated by Murray Irrigation of a volume of Water Licence Allocation that is equivalent to the volume of Water Allocation specified in the Seller's Offer;
- (r) **Privacy Policy** means Murray Irrigation's privacy policy available on its Web Site;
- (s) **Schedule of Standard Service Fees**, means the fees and charges listed in the current standard services fees (Annexure B) available on its Web Site, as amended from time to time;
- (t) **Seller** means a party who wishes to sell Tradeable Rights under a Transaction;
- (u) **Seller Listing Page** means the page on the Web Site on which Sellers can list Offers, which is located within the customer portal (and a Murray Irrigation customer can log into this portal using their customer number and password);
- (v) **Tradeable Rights** means:
  - (i) Water Allocation;
  - (ii) Carryover Units; or
  - (iii) Internal Annual Transfers of Delivery Entitlements;
- (w) **Transaction** means the sale and purchase of Tradeable Rights in accordance with these Exchange Terms and Conditions;
- (x) **Water Allocation** means:
  - (i) the volume of water recorded in a Water Exchange Account; or
  - (ii) Water Allocation as defined in the Entitlements Contract, as the context requires;
- (y) **Water Exchange** means the market for the sale and purchase of Tradeable Rights conducted by Murray Irrigation in accordance with these Exchange Terms and Conditions;
- (z) **Water Exchange Account** means:
  - (i) in relation to a Buyer, an account maintained by Murray Irrigation in the name of the Buyer which records the volume of Tradeable Rights for which the Buyer has made payment following matching of a Bid and an Offer under rule 4 or a Buy Order; and
  - (ii) in relation to a Seller, an account maintained by Murray Irrigation in

the name of the Seller which records the volume of Tradeable Rights available to be sold on the Water Exchange;

- (aa) **Water Exchange Year** means the dates between which the Water Exchange is open, beginning on 1 July (or, if this is not a Business Day, the next Business Day thereafter) and ending on a date in the following June as advertised on the Web Site from time to time; and
- (bb) **Water Licence** means a perpetual or ongoing entitlement, by or under the laws of a State, to exclusive access to a share of a water resource, including:
  - (i) a water access licence under the *Water Management Act 2000* (NSW);
  - (ii) a water share under the *Water Act 1989* (Vic); and
  - (iii) a water licence under the *Natural Resources Management Act 2004* (SA);and
- (cc) **Water Licence Allocation** means the water to which the holder of a Water Licence is entitled from time to time under the Water Licence, as recorded in the water allocation account (or equivalent) for the Water Licence;
- (dd) **Web Site** means Murray Irrigation's website at [www.murrayirrigation.com.au](http://www.murrayirrigation.com.au); and
- (ee) **Western Murray Irrigation Seller** means a Seller who is a customer of Western Murray Irrigation Limited ACN 067 197 853.

22.2 Words and expressions defined in the Entitlements Contract or the Transfer Rules Policy have the same meaning in these Exchange Terms and Conditions unless otherwise defined in these Exchange Terms and Conditions or the contrary intention appears.

22.3 Reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate;
- (d) a party includes the party's executors, administrators, successors and permitted assigns;
- (e) a thing includes the whole and each part of it separately;
- (f) a statute, regulation, code or other law or a provision of any of them includes:
  - (i) any amendment or replacement of it; and
  - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced;



- (g) dollars means Australian dollars unless otherwise stated; and
  - (h) time is to the time in Deniliquin, New South Wales.
- 22.4 “Including” and similar expressions are not words of limitation.
- 22.5 The word “volume”, when used in respect of Carryover Units, includes “number”.
- 22.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 22.7 Headings and any table of contents or index are for convenience only and do not form part of these Exchange Terms and Conditions or affect their interpretation.
- 22.8 A provision of these Exchange Terms and Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Exchange Terms and Conditions.
- 22.9 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- 22.10 If an obligation is to be performed within a period of time after an event occurs, the period of time does not include the day on which the event occurs.

## **23. Parties**

- 23.1 If a party consists of more than one person, these Exchange Terms and Conditions bind each of them separately and any two or more of them jointly.
- 23.2 An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- 23.3 A party which is a trustee is bound both personally and in its capacity as a trustee.

## Schedule 1 – Payment methods

1. **B-Pay:** The payer must have e-mail access so that a B-Pay invoice can be delivered electronically by Murray Irrigation. Payment must be received by Murray Irrigation before 5 pm on the due date for payment. The payer must communicate to Murray Irrigation a copy of the payment confirmation (for example, in person or by e-mail).
2. **Direct Deposit:** Payment must be received by Murray Irrigation 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 communicate to Murray Irrigation a copy of the payment confirmation (for example, in person or by e-mail). Murray Irrigation nominates the following bank account for receipt of direct deposits:

Commonwealth Bank of

Australia BSB No. 062 533

Account No. 10179312 - Murray Irrigation Limited

3. **Credit Card:** The payer must contact Murray Irrigation's finance department before 5 pm on the due date for payment and quote the details of the credit card to be used.
4. **Direct Debit:** The payer must authorise Murray Irrigation to debit funds from their nominated bank account as payment of any amounts owing under these Exchange Terms and Conditions by correctly completing, signing and submitting to Murray Irrigation a Direct Debit Request Form. Murray Irrigation's authority to debit a payer's nominated bank account under these Exchange Terms and Conditions will remain in place until Murray Irrigation receives written notice from the payer that such authority is cancelled. While a direct debit authority is in place, any reference in these Exchange Terms and Conditions to:
  - (a) a requirement that a payer make a payment to Murray Irrigation will be satisfied by Murray Irrigation making a direct debit in accordance with a direct debit authority; and
  - (b) a payment not being received by Murray Irrigation on time or in accordance with the these Exchange Terms and Conditions will include instances where Murray Irrigation attempts to debit a payer's nominated account in accordance with a direct debit authority and the debit fails for any reason (including if there are insufficient funds in the account). Murray Irrigation is only obligated to attempt to debit the payer's nominated account once in respect of each payment to be made under these Exchange Terms and Conditions.