



Australian Government

Commonwealth Environmental Water Holder

Sale of Water Allocation Glossary

Last updated 13 January 2023

1. Definitions and Interpretation

1.1. In the Agreement, unless otherwise stated:

- a. **ABN** means Australian Business Number;
- b. **Act** means the relevant legislation in the Source Jurisdiction applicable to the Water Allocation, which is current at the date of the Acceptance of Bid (and as updated, repealed or replaced from time to time);
- c. **Acceptance of Bid** means the written notice we send to you by email (or by another method at our election), accepting your Bid(s) and confirming the agreed terms;
- d. **Account Holder** means the holder, or all holders jointly (if there is more than one holder), of the Allocation Account nominated by you in the Bid;
- e. **Agreed Volume** means the total portion of the Water Available we agree to sell to you, as stated in the Acceptance of Bid, and which may comprise one or more Bid Volume amounts;
- f. **Agreement** means the agreement between you and us which is formed when we send to you the Acceptance of Bid, and which comprises:
 - i. the terms set out in the Acceptance of Bid;
 - ii. the Terms;
 - iii. this Glossary;
 - iv. the relevant Bid Form (or Bid Forms), as set out and confirmed by us in the Acceptance of Bid; and
 - v. any further amendment agreed in writing by the Parties from time to time;
- g. **Agreement Commencement Date** means the date on which we send to you the Acceptance of Bid;
- h. **Allocation Account** means an account in which a Party's accumulated Water Allocations are recorded and from which that Party can draw from time to time;
- i. **Authority** means the entity having responsibility for dealings (including assignment and transfers) in Water Allocations in the Source Jurisdiction (and where applicable, the Destination Jurisdiction), including, to the extent applicable, the relevant water corporation, the state office responsible for water management, and the private irrigation corporation (or any one or all of them as the situation requires);
- j. **Bidder** means a person who submits a Bid Form and where the context permits, includes you;
- k. **Bid** means each legally binding, unconditional offer to purchase the stated Bid Volume at the Bid Price made in accordance with the instructions in the Bid Form and the Terms;

- l. **Bid Form** means the form which must be submitted to make a Bid, and includes any attachments and supporting documents;
- m. **Bid Period** means the period during which Bids must remain open for acceptance by us which runs from the Sale Close Time, as set out in the Bid Form;
- n. **Bid Price** means the price per megalitre (\$/ML) a Bidder is willing to pay for the Bid Volume they wish to buy from us, as stated in a Bid Form;
- o. **Bid Price Limit** means the minimum price per megalitre (\$/ML) that the Commonwealth is willing to accept under the Sale Process;
- p. **Bid Volume** means the volume in megalitres (ML) of Water Allocation a Bidder wishes to buy from us, as stated in a Bid Form;
- q. **Business Day** means a day which is not a Saturday, Sunday or public holiday in the relevant Source Jurisdiction or Destination Jurisdiction, or the Australian Capital Territory;
- r. **CEWH** means the Commonwealth Environmental Water Holder;
- s. **CEWO** means the Commonwealth Environmental Water Office, established to support the Commonwealth Environmental Water Holder;
- t. **Commonwealth** means the Commonwealth of Australia;
- u. **Consequential Loss** means any liability, Loss or claim suffered or incurred by any person, whether arising in contract, tort (including negligence), under statute, or on any other basis in Law or equity for:
 - i. indirect or incidental Loss;
 - ii. punitive or exemplary damages of any kind;
 - iii. loss of profit;
 - iv. loss of revenue;
 - v. loss of goodwill; or
 - vi. loss of business opportunity;
- v. **Default** means a breach of any term of the Agreement (including the breach of a warranty given under the Agreement);
- w. **Department** means the Department of Climate Change, Energy, the Environment and Water;
- x. **Destination Jurisdiction** means the jurisdiction in which the Allocation Account nominated by you in a Bid Form is located;
- y. **Guidelines** means the Sale of Water Allocation Guidelines, available at the [Trade of Commonwealth environmental water](#) website;
- z. **Invoice** means the invoice or invoices we send to a Bidder either with, or following our sending of, the Acceptance of Bid;
- aa. **Laws** mean all statutes, regulations, rules, by-laws, ordinances, proclamations, enactments, statutory instruments, or delegated or subordinate legislation

(whether Federal, State or Territory, municipal or of any Authority) and the common law;

- bb. **Loss/Losses** means all liabilities, expenses, losses, damages, fines and costs (including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);
- cc. **Maximum Bid Volume** is the maximum volume of Water Available for which Bidders may make a Bid, as set out and defined in the Bid Form;
- dd. **Minimum Bid Volume** is the minimum volume of Water Available for which Bidders may make a Bid, as set out and defined in the Bid Form;
- ee. **Party** means each of you and us, and **Parties** means you and us, together;
- ff. **Payment Period** means the period during which Bidders must pay the Value to us, as set out in the Bid Form;
- gg. **Sale Close Time** means the time and date set out and defined in the Bid Form;
- hh. **Sale Open Time** means the time and date set out and defined in the Bid Form;
- ii. **Sale Process** means the process for the sale of the Agreed Volume to you, including your submission of Bid(s), the evaluation of your Bid(s) and the transfer of the Agreed Volume to the Allocation Account nominated by you;
- jj. **Source Jurisdiction** means the jurisdiction in which our relevant Allocation Account is located;
- kk. **Terms** means the Sale of Water Allocation Terms of Offer, available at the [Trade of Commonwealth environmental water](#) website;
- ll. **Trade** means the actual transfer or assignment of the Agreed Volume (or another volume as agreed by the Parties);
- mm. **Trade Approval Lodgement Costs** means the application fees payable to the Authority for the Trade Form, but excluding Usage Charges;
- nn. **Trade Form** means all form(s) which are required to be executed by us (whether or not they must also be executed by you or the Account Holder(s), as applicable), together with all relevant information required by the Authority, and submitted to the Authority to process the Trade (or any part of it), but excluding any forms or documents which do not require execution by us;
- oo. **Trading Rules** means the Laws and processes governing the trading of Water Allocations in the Source Jurisdiction and the Destination Jurisdiction (including the specific rules applying to the relevant Trading Zone, water source or water management area), as amended from time to time;
- pp. **Trading Zone** means the trading zone into or out of which the Agreed Volume will be traded;
- qq. **Us, we or our** means the Commonwealth of Australia as represented by the Commonwealth Environmental Water Holder within the Department of Climate

Change, Energy, the Environment and Water, and the capitalised or decapitalised use of those terms have the same meaning;

- rr. **Usage Charges** means charges payable to the Authority for usage of the Agreed Volume which is payable as a direct consequence of the nature of the Bidder's or the Allocation Holder's (as applicable) water entitlement or Allocation Account (including where that water entitlement is not associated with water supply works or a usage licence, or where charges are payable to the Source Jurisdiction for the transfer of water into the Destination Jurisdiction) and which is payable as a condition of approval of the Trade;
- ss. **Value** means the total value of the Agreed Volume, determined by multiplying each Bid Volume by the corresponding Bid Price;
- tt. **Water Allocation** means the seasonal water allocation made to an Allocation Account;
- uu. **Water Available** is the total volume of Water Allocation offered for sale by us, as set out and defined in the Bid Form; and
- vv. **You** or **your** refers to you, being the person submitting the Bid Form, and the capitalised or decapitalised use of those terms have the same meaning.

1.2. In the Agreement, unless the context otherwise requires:

- a. words importing a gender include other genders;
- b. words in the singular include the plural and vice versa;
- c. a reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors in law, permitted assignees, and substitutes;
- d. a reference to a person includes a reference to an incorporated body;
- e. all references to dollars are to Australian dollars;
- f. a reference to any Laws includes all amendments and revisions made from time to time to those Laws;
- g. headings in the Terms are inserted for convenience and reference only, and are not to affect the interpretation of the Terms;
- h. in the interpretation of the Terms, no rules of construction apply to the disadvantage of any Party on the basis that it put forward the Terms;
- i. if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- j. a reference to time is to the time in the place where the obligation is to be performed;
- k. a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry, including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact; and

- I. the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.