

Water Product Terms

These Conditions apply to the sale of Lots that are Water Products and prevail to the extent of any inconsistency in the Auction Terms. The Common Terms also apply to and are deemed to be incorporated into these Water Product Terms.

1. Sale and Purchase

- 1.1 Where an Auction results in the sale of a Water Product, these Water Product Terms form part of the Contract for the sale of the Lot. The Contract for sale of the Lot is described in the Auction Terms.
- 1.2 The Vendor agrees to be bound by these Water Product Terms by listing a Water Product for sale on the Auction Platform.
- 1.3 The Buyer agrees to be bound by these Water Product Terms by submitting a Bid to buy a Water Product through the Auction Platform.

2. Description of the Water Product

- 2.1 The Vendor:
 - 2.1.1 warrants that the Lot Description accurately describes the Water Product; and
 - 2.1.2 acknowledges and repeats the warranties given by the Vendor in the Auction Terms,

and each of these warranties is given in favour of the Buyer and Elders at the end of the Auction and at the time of Delivery of the Water Product.

3. Invoicing and Payment into Trust Account

- 3.1 The Invoice Amount is due for payment immediately upon receipt of an invoice by the Buyer.
- 3.2 Elders will issue a tax invoice to the Buyer as agent for the Vendor for the Purchase Price of the Water Product. Elders will also invoice the Buyer for the Buyer's Premium, if any.
- 3.3 The Buyer must pay the Invoice Amount to Elders by any of the payment mechanisms that are made available on the Website from time to time.
- 3.4 Upon receipt of the full Invoice Amount in cleared funds, Elders will notify the Vendor that Elders has received the Invoice Amount from the Buyer.
- 3.5 Elders will hold the Invoice Amount in a trust account as stakeholder, pending Delivery of the Water Product to the Buyer. If the sale and purchase of the Water Product completes satisfactorily, Elders will distribute the Purchase Price in accordance with the Auction Terms.
- 3.6 The Vendor acknowledges that Elders is not a del credere agent. The Vendor further acknowledges that if it permits delivery of the Water Product to occur before receiving confirmation from Elders that funds have been received by Elders it does so at the Vendor's own risk.

4. Delivery

- 4.1 Delivery will occur when the Water Authority approves the Application and the Water Product is transferred to the Buyer.
- 4.2 The Vendor and Buyer each:

- 4.2.1 authorise Elders to provide all information required by the relevant Water Authority to process the Application relating to the sale of the Water Product Lot;
 - 4.2.2 authorise Elders to effect the transfer of the relevant Water Product Lot (including by executing documents on behalf of the Buyer or the Seller);
 - 4.2.3 must do all things within their power, or as reasonably requested by Elders, to ensure that the Transaction is completed; and
 - 4.2.4 acknowledge and agree that Elders is in no way liable if a Water Authority does not approve an Application.
- 4.3 Elders recommends to Vendors that they not agree to deliver a Water Product to Buyers until Elders confirms the receipt of the full Invoice Amount in cleared funds. The Buyer acknowledges that the Vendor will not be required to effect Delivery of the Water Product until the Buyer has paid the Invoice Amount to Elders in full.

5. Failure of a Trade

5.1 Buyer's failure to pay Fees

- 5.1.1 If a Buyer fails to pay Invoice Amount then, without prejudice to any other rights that Elders or the Vendor may have under these terms, Elders may require the Buyer to do all things within its power to reverse the Transaction.
- 5.1.2 The Buyer is liable to the Vendor for all costs associated with the reversal of a Transaction, including any shortfall between what the Vendor would have received from the Transaction to which the Buyer was a party and what the Vendor receives as a result of entering into a further Transaction with another Buyer in respect of that Water Product.
- 5.1.3 Elders is not liable to a Vendor for a Buyer's failure to pay any Invoice Amount.

5.2 Vendor's failure to deliver Water Product

If a Vendor fails to deliver a Water Product the subject of the Contract, the Vendor is liable to the Buyer for:

- 5.2.1 any increase between what the Buyer would have paid in relation to the Transaction to which the Vendor was a party and what the Buyer ultimately pays as a result of entering into a further transaction in respect of a water product that is equivalent to the Water Product that was to be sold by that Vendor; and
- 5.2.2 the amount of any penalty imposed by a Water Authority that the Buyer may incur as a result of acting on the basis that the Water Product the subject of the Transaction would be transferred to the Buyer by the Vendor.

Elders is not liable to a Buyer Customer for a Vendor's failure to deliver a Water Product.

5.3 Application not approved

- 5.3.1 If the relevant Water Authority declines an Application, no fees (including the Invoice Amount, Buyers Premium, Commission and any other applicable fees) will be payable by the Vendor, Buyer or Elders in relation to the Transaction to which the Application related, unless the Water Authority rejected the Application as a result of the actions of the Buyer or Vendor (**Defaulting Party**) in which case, the Buyer or Vendor (as the case may be) will be liable to Elders

for the costs incurred by Elders, and any charges made by the Water Authority, in relation to the Transaction.

- 5.3.2 The Defaulting Party must pay the costs and charges referred to in clause 5.3.1 above within 10 Business Days of an invoice from Elders advising of the amount of the costs and charges.
- 5.3.3 Without limiting clause 5.3.2 above, the Defaulting Party must indemnify Elders against any direct or indirect losses, costs (including legal costs on a full indemnity basis), expenses, claims, demands or any other actions which may be brought against Elders or suffered or incurred by Elders directly or indirectly as a result of the Defaulting Party's failure to make a payment in relation to a Transaction in accordance with these terms.

6. Liability

- 6.1 The Vendor and Buyer acknowledge that they are the principal parties to the Contract for the sale of the Water Product and that Elders is not liable to either the Buyer or the Vendor and the Buyer and Vendor severally hold Elders harmless against any loss or damage suffered by either of them where such loss or damage is caused by, arises from or is connected with:
 - 6.1.1 a breach by either the Vendor or the Buyer of a Contract for the sale and purchase of the Water Product;
 - 6.1.2 the description or misdescription of the Water Product in the Lot Description, including as a result of the omission of facts or information;
 - 6.1.3 the Water Product not being fit for any particular purpose, whether or not that purpose was disclosed to Elders or to the Vendor; and
 - 6.1.4 the Vendor's title to the Water Product or the existence of Encumbrances over the Water Product.
- 6.2 The Vendor indemnifies Elders against any liabilities, losses, damages, costs or expenses incurred or suffered by Elders and all actions, proceedings, claims or demands made against Elders arising from or connected with:
 - 6.2.1 a breach of the Contract by the Vendor;
 - 6.2.2 a breach of the Auction Terms or the Registration Terms by the Vendor;
 - 6.2.3 any negligent act or omission of the Vendor;
 - 6.2.4 any misleading or deceptive statement or representation about the Water Product (including by way of omission of facts or information), including misdescription of the Water Product in the Lot Description; and
 - 6.2.5 the Vendor's ownership of and authorisation to sell the Water Product Lot free from Encumbrances.
- 6.3 The Buyer indemnifies Elders against any liabilities, losses, damages, costs or expenses incurred or suffered by Elders and all actions, proceedings, claims or demands made against Elders arising from or connected with:
 - 6.3.1 a breach of the Contract by the Buyer;
 - 6.3.2 a breach of the Auction Terms or the Registration Terms by the Buyer;
 - 6.3.3 the failure of the Buyer to take Delivery of the Water Product within the time permitted under the Contract; and

- 6.3.4 any negligent act or omission of the Buyer.
- 6.4 If, notwithstanding the terms of the Contract, Elders is liable to the Vendor or the Buyer for any reason, then subject to clause 6.6 and to the extent permitted by Law, the liability of Elders is limited to:
- 6.4.1 in the case of liability to the Vendor, the lesser of the Vendor's direct losses and the Purchase Price (less any Commission and exclusive of any Buyer's Premium); and
- 6.4.2 in the case of liability to the Buyer, the lesser of the Buyer's direct losses and the Invoice Amount.
- 6.5 Clauses 6.1 to 6.4 do not apply where a Related Body Corporate of Elders is a Vendor or Buyer of the Water Product in its own right.
- 6.6 Any liability which Elders has to a party (including, without limitation, for negligence or breach of any statutory duty) relating to any loss or damage suffered by that party, to the extent permitted by law, will be:
- 6.6.1 reduced or limited to the extent (if any) that the party causes or contributes to the loss or damage; and
- 6.6.2 except in the case of fraud by Elders, will be limited to the Purchase Price for the Water Product to which the claim for loss or damage relates.
- 6.7 Notwithstanding any other provision of the Contract and to the extent permitted by law, neither Elders, the Vendor nor the Buyer will be liable to any of the other parties and each party releases the other parties from all liability for any indirect or consequential loss or damage, including loss of profits, loss of production, loss of opportunity and loss of reputation, irrespective of how that loss or damage was caused (including as a result of a party's negligence), even if such loss or damage was reasonably foreseeable.

7. Force Majeure

- 7.1 The Vendor is not responsible for the loss of the Water Product between the end of the Auction and Delivery caused by any Force Majeure Event, provided that the Vendor makes every reasonable effort in the circumstances to recover the Water Product and deliver the Water Product to the Buyer. In such circumstances, the Buyer is not entitled to take any action for non-performance under the Contract, but is entitled to elect whether or not to accept the Water Product for Delivery.
- 7.2 If either the Buyer or Vendor is interrupted in, or prevented from, the performance of its obligations under the Contract by reason of any Force Majeure Event, such party will not be in breach of the Contract and the time for performance of its obligations under the Contract will be extended for a period equal to the duration of the Force Majeure Event that caused the delay, interruption or prevention, provided that if any such period exceeds 20 Business Days, either party may immediately terminate this agreement without liability, by notice in writing to the other and to Elders.

8. Termination

- 8.1 Without limiting their rights to terminate the Contract at law or under another provision of the Contract, either the Buyer or the Vendor may terminate the Contract by notice in writing to the other party and to Elders:
- 8.1.1 if the other party breaches a fundamental term of the Contract; or
- 8.1.2 if the other party suffers an Insolvency Event.

8.2 Termination of the Contract does not affect any rights that a party has that accrued prior to termination.