

## **CIT Water Exchange: Terms and Conditions Temporary Allocation Trade**



The CIT Water Exchange provides a water markets intermediary service principally to Central Irrigation Trust customers. The CIT Water Exchange operates in accordance with the Water Markets Intermediary Code.

The CIT Water Exchange is a registered broker on the [waterexchange.com.au](http://waterexchange.com.au) platform. The [waterexchange.com.au](http://waterexchange.com.au) platform is operated by WEX Water Pty Ltd (ACN 615 100 206). All matched trades are processed via the [waterexchange.com.au](http://waterexchange.com.au) platform and all customer money is processed via the WEX Statutory Trust Account.

The following terms and conditions outline how services related to the trade of temporary allocation will be undertaken by the CIT Water Exchange and its customers.

### **1 Authority to Act**

- 1.1 The Customer acknowledges and agrees that by signing or otherwise authorising a Buy Order or Sell Order it is authorising the CIT Water Exchange to act on its behalf to match Buy or Sell Order(s), to load Buy or Sell Order(s) into the WEX market(s), to bind the Customer in relation to the trading of Water Products, and to lodge applications with the Relevant Authority on its behalf.

### **2 Listing Sell Orders – temporary allocation**

- 2.1 To submit a Sell Offer to the CIT Water Exchange, a Seller must:
  - a) correctly complete, sign and submit to the CIT Water Exchange a Sell Order
  - b) have available in the Seller's Water Allocation Account at least the volume of Tradeable Rights specified in the Offer
- 2.2 CIT Water Exchange must:
  - (a) accept the Offer for matching via the CIT Water Exchange; or
  - (b) refuse the Offer (acting reasonably) and give notice to the Seller of the refusal within a reasonable time.
- 2.3 A Seller must not transfer or offer for sale any of the Tradeable Rights which relate to a submitted Order, other than with the CIT Water Exchange, for the period in which that Offer is listed.
- 2.4 Sell Orders 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 Orders ranking in priority to later Orders at the same price.
- 2.5 To alter the price of an Order, a Seller must first withdraw the existing Order by emailing the CIT Water Exchange authorising the withdrawal of the Order, and then submitting a new correctly completed and signed Sell Order.

- 2.6 An alteration to the price of an Order takes effect when CIT Water Exchange alters the price of the Order listed on the Water Exchange, but the price of the Order remains unaltered until then.

### **3 Listing Buy Orders – temporary allocation**

- 3.1 To submit a Buy Order to the CIT Water Exchange, a Buyer must correctly complete, sign and submit to CIT Water Exchange a Buy Order.
- 3.2 CIT Water Exchange must, after a Buyer complies with rule 3.1:
- (a) accept the Buy Order on the Water Exchange; or
  - (b) refuse the Buy Order (acting reasonably) and give notice to the Buyer of the refusal within a reasonable time.
- 3.3 Listed Buy Orders in respect of each type of Tradeable Right are ranked from highest to lowest in accordance with the price specified in the Order, with earlier Order ranking in priority to later Bids at the same price.
- 3.4 To alter the price of an Order, a Buyer must first withdraw the existing Order by emailing the CIT Water Exchange authorising the withdrawal of the Order, and then submitting a new correctly completed and signed Buy Order.
- 3.5 An alteration to the price of an Order takes effect when CIT Water Exchange alters the price of the Order listed on the Water Exchange, but the price of the Order remains unaltered until then.

### **4 Trade Process – Temporary Allocation**

- 4.1 Orders are matched as follows:
- (a) the highest-ranked Buy Order in respect of a type of Tradeable Right is paired with the lowest-ranked Sell Order in respect of the relevant type of Tradeable Right so that either the Sell Order or Buy Order is fully satisfied;
  - (b) a new ranking of Orders is established after deducting the volume of Tradeable Rights paired under rule 4.1(a), with the remainder of a partly satisfied Order being ranked as a new Order made at the time of the original Order;
  - (c) the processes set out in rule 4.1(a) and rule 4.1(b) are repeated until the highest-ranked Buy Order price is below the lowest-ranked Sell Order price;
  - (d) where the highest-ranked Buy Order and lowest-ranked Sell Order prices respectively do not match or overlap, such Orders will not participate in the process outlined in paragraph 4.1(c); and
  - (e) any Orders which have not been matched at the completion of the process described in paragraph 4.1(c) will remain listed until removed due to time expiry or offer is withdrawn in accordance with rule 2.5 or rule 3.5.
- 4.2 When a Sell Order is matched to a Buy Order, a binding contract is formed between the Buyer and Seller whose Orders are matched for the sale and purchase of Tradeable

Rights at the price and volume matched, which is subject to these CIT Water Exchange Terms and Conditions.

- 4.3 Once a contract is formed between a Buyer and a Seller pursuant to rule 4.2 the Buyer must pay, as cleared funds to the WEX Statutory Trust Account, within two Business Days after the formation of the contract:
- (a) the amount payable for the volume of Tradeable Rights at the price specified in the offer; and
  - (b) all applicable fees.
- 4.4 Once a Trade is Matched and the Fees are paid by the Buyer, the CIT Water Exchange will promptly apply to the Relevant Authority to obtain the approval of the Relevant Authority to the Transfer of the Temporary Allocation to the Buyer.

## **5 Payment of Transaction proceeds to Sellers**

- 5.1 WEX, on behalf of the CIT Water Exchange, will pay, from the WEX Statutory Trust Account, the amount due to a Seller in respect of a Trade, on the date which is 2 Business Days after the Relevant Authority has notified that it has approved the Application and transferred the Temporary Allocation in respect of the Trade to the Buyer free of all encumbrances, charges, liens, mortgages and other adverse or third-party interests.
- 5.2 The Seller agrees that Fees payable in respect of a Trade, including the Commission payment and any arrears payable to the Relevant Authority as advised by the Relevant Authority, will be deducted from the amount due to the Seller in respect of a Trade.

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

- 6.1 A contract formed under rule 4.2 is terminated automatically and with immediate effect upon a Buyer failing to pay 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.

## **7 Disclaimer, release and indemnity**

- 7.1 To the maximum extent permitted by law, all Buyers and Sellers and their executors, administrators, successors and assigns release and indemnify CIT Water Exchange 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 CIT Water Exchange;
  - (b) the refusal by CIT Water Exchange to list any Orders;
  - (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 Order; and
  - (f) the Relevant Authority not approving of a Trade.
- 7.2 The release and indemnity in rule 7.1 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 CIT Water Exchange or any of its employees, representatives or agents.
- 7.3 Each Buyer and Seller remains fully responsible for the proper completion, lodgement and registration of all Forms and information necessary for a Transaction.
- 7.4 Monitoring of Orders with the CIT Water Exchange is the responsibility of Buyers and Sellers. CIT Water Exchange will not be liable for any loss suffered by a Buyer or Seller as a result of a Transaction entered into, or withdrawal of an Order, on the Water Exchange.
- 7.5 CIT Water Exchange 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.
- 7.6 CIT Water Exchange 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 CIT Water Exchange 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 CIT Water Exchange is entitled to do so, CIT Water Exchange's liability under these Exchange Terms and Conditions will be limited to the supply of services under these Exchange Terms and Conditions again.

## **8 Disputes**

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

## **9 No advice or financial products**

- 9.1 Nothing in these Terms and Conditions or the operation of the CIT Water Exchange and no act done by CIT Water Exchange 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 CIT Water Exchange has no liability.
- 9.2 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.

## 10 Intellectual Property

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

## 11 Privacy Policy

11.1 The Buyer and the Seller agree to the CIT Water Exchange dealing with their personal information in accordance with the Privacy Policy.

## 12 Entire understanding

These CIT Water 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.

## 13 Governing law and jurisdiction

13.1 The law of South Australia governs these Exchange Terms and Conditions.

13.2 The parties submit to the non-exclusive jurisdiction of the courts of South Australia or any competent Federal court exercising jurisdiction in South Australia. The dispute must be determined in accordance with the law and practice applicable in the court.

## 14 Parties

14.1 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.

14.2 An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.

14.3 A party which is a trustee is bound both personally and in its capacity as a trustee.

## 15 Definitions

**Application** means an application to the Relevant Authority for the assignment and/or transfer of a Water Product as a result of a Trade.

**Business Day** means a day, other than a Saturday or Sunday or public holiday, on which banks are open for business in Sydney, New South Wales.

**Buy Order** means an offer to buy a Water Product on the terms specified in the Buy Order.

**Buyer** means the Customer that has initiated a Buy Order to buy a Water Product.

**Claim** means an allegation, debt, cause of action, claim, proceeding, suit or demand of any nature whatsoever, and whether present, unascertained, immediate, future or contingent.

**Commence or Commenced** means the time a Buy Order or Sell Order is initiated by the Broker or Customer

**Commission Payment** means the commission payable by the Customer to the Broker as identified in the Buy Order or Sell Order signed by the Customer.

**Complete or Completed** means in respect of a Trade, when a Buy Order is Matched with a Sell Order

**Customer** means the Buyer or Seller whose details appear in the Buy Order/Sell Order form

**Fees** means the amount payable by the Customer in relation to a Trade and includes the purchase price of the Water Product, the amount charged by the Relevant Authority to process an Application, the Commission Payment and any other amounts outstanding in relation to a Trade.

**Intellectual Property** means all intellectual property including:

- a) Patents, copyrights, rights in circuit layouts, registered designs, trademarks and the right to have Confidential Information kept confidential;
- b) Such generic information in relation to Trades such as price, volume and date traded but not information the specifically identifies a Customer; and
- c) Any application or right to apply for registration of the rights in paragraph (a).

**Match or Matched** means the moment in time when a Sell Order and a Buy Order are brought together and become binding on one another.

**Parties** means the CIT Water Exchange and the Customer.

**Relevant Authority** means, in respect of a Water Product, the relevant public or statutory authority which under law is responsible for the administration of the Water Product or its transfer pursuant to the Relevant Legislation.

**Relevant Legislation** means, in respect of a Water Product, relevant state and Australian legislation that provides for the establishment, administration or transfer of the Water Product.

**Temporary Allocation** means the right to access a volume of water for use or trade in the water year (1 July to 30 June)

**Sell Order** means an offer to sell a Water Product on the terms specified in the Sell Order.

**Seller** means the Customer that has initiated a Sell Order to sell a Water Product.

**Trade or Trading** means the sale or purchase of a Water Product.