

DATED:

day of

2021

VENDOR:

PURCHASER:

AGREEMENT FOR SALE OF WATER ENTITLEMENTS

**NOYCE, SALMON & D'AQUINO,
SOLICITORS,
LEVEL 1, 1360-140 YAMBIL STREET,
GRIFFITH. NSW. 2680.
(DX 5902, Griffith)**

**PH: 6969 0000
FAX: 6962 7237**

**AGREEMENT FOR SALE OF WATER ENTITLEMENTS
THE PARTICULARS**

- A. **Vendor:**
(Full name and address) Coleambally NSW 2707
- B. **Purchaser:**
(Full name and address)
- C. **Vendor's Solicitor:** Noyce Salmon & D'Aquino
(Address and DX) Level 1/136-140 Yambil Street, Griffith, NSW 2680
DX 5902 GRIFFITH
Phone: (02) 6969 0000
Fax: (02) 6962 7237
Ref: NW:HW:244791-4
- D. **Purchaser's Solicitor:**
(Address and DX)
- E. **Water Authority:** Coleambally Irrigation Co-operative Limited
- F. **Vendor's Landholding:** Farm 647, Coleambally
- G. **Purchaser's Landholding:** Farm , Coleambally / LRN / WAL
- H. **Water Entitlements:** _____ megalitres of Normal Security Water Entitlements
All 2021/2022 allocation, excluding allocation announced above 70%
of entitlement.
- I. **Price (in words):**
- | | |
|-------------|----------|
| (a) Price | \$ |
| (b) Deposit | \$ _____ |
| (c) Balance | \$ |
- J. The Deposit is payable to: Vendor's Agent
- K. Vendor's Agent: Mannes Agencies 10 Kingfisher Ave, Coleambally NSW 2707
02 6954 4411
- Date of making this Agreement: _____ day of _____ 2021.

Vendor : Initials

Purchaser : Initials

THE CONDITION OF SALE

Upon the making of this Agreement for Sale of Water Entitlements (herein called “this Agreement”), the Vendor agrees to sell and the Purchaser agrees to purchase the Water Entitlements as described in H of the Particulars for the price stated in the I of the Particulars, and upon and subject to the following conditions:

1. Deposit and Price

- (a) Upon or before the making of this Agreement, the sum stipulated as deposit in I of the Particulars shall be paid by the Purchaser in accordance with J of the Particulars and shall be held as stakeholder until completion when, and by virtue of which, the deposit shall vest in the Vendor and shall be accounted for to the Vendor upon receipt of an order from the Purchaser or the Purchaser’s Solicitor authorising such payment, which order shall be given on completion.
- (b) The deposit or any part thereof may be paid by cheque unless otherwise agreed between the parties. If the deposit is not paid as provided in this Agreement or if any cheque for the deposit is not honoured on presentation, the Purchaser shall immediately and without notice be in breach of an essential obligation under this Agreement.
- (c) The balance of the price as stated in I of the Particulars shall be paid as stipulated in PART ONE of the SCHEDULE.
- (d) If the Vendor has stipulated a Solicitor in C of the Particulars any moneys payable under this Agreement (other than the deposit referred to in clause 1(b)) to the Vendor by the Purchaser shall be paid to that Solicitor or as that Solicitor may direct in writing. If a Solicitor is not so stipulated any such moneys shall be paid to the Vendor or as the Vendor may direct in writing.

2. Passing of Title

- (a) Title to the Water Entitlements the subject of this Agreement shall not pass until completion of this Agreement.
- (b) This Agreement is subject to and conditional upon the consent of the Water Authority to the transfer of the Water Entitlements from the Vendor to the Purchaser. If the consent of the Water Authority is refused or is not obtained within 120 days from the date of this Agreement or is granted subject to conditions which are unreasonable to the Purchaser acting reasonably, then either party may by notice in writing served on the other party, but before the consent with reasonable conditions is issued, rescind this Agreement.

3. **Interest**

If completion does not take place on the due date for completion other than by the default of the Vendor, then the Purchaser shall pay to the Vendor in addition to the balance due under this Agreement interest on such balance at the rate of eight per centum (8%) per annum calculated on a daily basis as and from the due date for completion to the date of actual completion of this Agreement.

4. **Application for Approval of Transfer of Water Entitlements**

- (a) The Vendor and Purchaser acknowledge that it will be necessary for them to apply to the Water Authority for approval of the transfer of the Water Entitlements and in this regard the Vendor and Purchaser covenant that they will execute the necessary documents and apply forthwith to the Water Authority for that approval as soon as practicable after the date of this Agreement and will each use due diligence in promptly supplying the information, evidence and consents required of each of them by the Water Authority and in complying with all other requirements of the Water Authority.
- (b) Payment of the application fee with the application shall be the responsibility of the Purchaser.

5. **Right to Transfer**

The Vendor covenants that on the date of completion the Vendor:

- (a) is the holder of the Water Entitlements and has the right to transfer the Water Entitlements to the Purchaser;
- (b) has applied for and used its best endeavours to obtain all necessary consents including consents of mortgagees, or lessees of the Vendor's land, to enable the Vendor to effect the required transfer of Water Entitlements. Should any such necessary consent not be obtained by the due date for completion of this Agreement, then either party may by notice in writing to the other before such necessary consent is obtained, rescind this Agreement whereupon the provisions of clause 16 hereto shall apply.

6. **Water Authority Forms**

6.1 The Purchaser shall on exchange of this Agreement hand to the Vendor the necessary forms and documents that are required by the Water Authority for the transfer of the Water Entitlements to the Purchaser duly executed and otherwise completed by the Vendor together with the Application fee.

6.2 The Vendor shall within seven (7) days of the date hereof submit the application to the **Water Authority**.

7. **Internal Transfer**

The Purchaser will add the Water Entitlements which they are purchasing from the Vendor to the water entitlements held by them in conjunction with the property described in Part Two of the **Schedule** hereto or such other property owned by them or held in trust for the Purchaser PROVIDED THAT the transfer of the Water Entitlements will not result in an external transfer as defined by the permanent transfer rules of the Water Authority. Should such sale result in an external transfer then the Purchaser shall pay all exit termination and other fees and charges and costs imposed by the Water Authority or other relevant Authority on the Vendor of and incidental to the transfer effected by this Agreement.

8. **Completion**

Completion of this Agreement shall be effected within 14 days of the granting by the Water Authority of its consent to the transfer of the Water Entitlements to the Purchaser.

9. **Water Authority Permanent Transfer Rules**

The parties acknowledge that they are familiar with the permanent water transfer rules of the Water Authority and will comply with those rules in so far as they affect this Agreement.

10. **Water Charges**

The Purchaser shall be liable for all charges and levies imposed or levied by the Water Authority in respect of the Water Entitlements from 1 July 2021.

11. **Disposal or Borrow of Water**

11.1 The Vendor warrants that he has not and will not prior to completion dispose of or agree to dispose of the whole or any part of the Water Entitlements for the 2021/2022 watering season.

11.2 The Purchaser acknowledges that included in the sale is the allocation for the 2021/22 watering season up to a maximum of 70% of the full allocation. The Vendor will transfer, if required any allocation announced as at the date of settlement to the Purchaser.

12. **Water Certificates**

12.1 If the Vendor is transferring the whole of his water entitlements, he shall hand over to or to the Purchaser on completion of this Agreement the Water Entitlements Certificate issued by the Water Authority.

12.2 If the Vendor is transferring a part only of his water entitlements, he shall hand the Water Certificates issued by the Water Authority to the Water Authority to enable the Water Authority to issue separate Water Certificates to the Vendor and to the Purchaser.

12.3 If the Vendor has lost or misplaced the Water Certificates then the Vendor shall apply for replacement Water Certificates at his expense.

13. **Carryover Water**

Not applicable and expressly excluded.

14. **Death or Bankruptcy of Party**

Without in any manner negating, limiting or restricting any rights or remedies which would have been available to either party at law or in equity had this Clause not been included herein should either party prior to completion:-

- (i) die, then the other party may rescind this Agreement by notice in writing to the Vendor or the Purchaser as the case may be whereupon the deposit shall be refunded to the Purchaser; or
- (ii) be declared bankrupt or enter into any Scheme or make any assignment for the benefit of creditors, or being a Company resolved go into liquidation or have a petition for the winding up of either party presented or enter into any Scheme or Arrangement with its creditors under Part X of the Companies Act, 1981, or should any liquidator, receiver or official manager be appointed in respect of the affairs of either party then that party shall be deemed to be in default hereunder.

15. **Default**

(a) Unless otherwise provided in this Agreement, if either party defaults in the observance or performance of any obligation under this Agreement, which is or the performance of which has become essential, the other party shall be entitled by notice in writing served on the defaulting party to terminate this Agreement and thereafter either:

- (1) to sue the defaulting party for breach of Agreement; or
- (2) if the Purchaser is the defaulting party, the deposit paid shall be forfeited to the Vendor and the Vendor's reasonable costs and expenses shall be payable by the Purchaser and shall be recoverable by the Vendor as liquidated damages provided that proceedings for the recovery thereof shall be commenced within twelve (12) months of the termination of this Agreement.
- (3) If the Vendor is the defaulting party, the deposit paid by the Purchaser pursuant to this Agreement shall be refunded in full to the Purchaser and the Purchaser's reasonable costs and expenses shall be payable by the Vendor and shall be recoverable by the Purchaser as liquidated damages provided that proceedings for the recovery thereof shall be commenced within twelve (12) months of the termination of this Agreement.

(b) If the Vendor defaults under this Agreement, the Purchaser may continue with the Agreement and take proceedings against the Vendor for specific performance of the Agreement and/or claim damages for breach of Agreement from the Vendor.

16. **Rescission**

If this Agreement is rescinded pursuant to a right to rescind then the Purchaser shall be entitled to a refund of the deposit and any other moneys paid to the Vendor by the Purchaser pursuant to this Agreement and neither party shall be liable to pay to the other party any sum for damages, costs or expenses.

17. Service of Notices

- (a) Service of any notice or document under or relating to this Agreement shall be sufficiently served:
- (1) if delivered personally;
 - (2) if left at the last known place of abode or business in or out of New South Wales of the person to be served;
 - (3) if sent by pre-paid post in an ordinary letter or a certified or registered letter addressed to the person to be served, by name, at that person's aforesaid place of abode or business, and if that letter is not returned through the post office undelivered, then such service shall be deemed to be made two business days after the date of posting;
 - (4) if sent by facsimile or email to the party to be served;
 - (5) if effected on the Solicitor for the party in any manner provided herein;
- (b) a notice given or document signed or served on behalf of any party by that party's Solicitor shall be deemed to have been given, signed or served by that party personally.

18. Temporary Transfer

Until such time as this Agreement is completed the parties shall do all such things and execute all such documents as are required pursuant to such temporary arrangement as is set out in PART THREE of the SCHEDULE hereto.

19. Goods and Services Tax

- 19.1 In this clause "supply", "GST" and "tax invoice" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
- 19.2 The Vendor and the Purchaser acknowledge and agree that the supply of the water the subject of this Agreement represents a GST-free supply in accordance with subclause 38-1 of the GST Act; however, if for any reason whatsoever GST is payable on the supply under this Agreement then GST is payable by the Purchaser in addition to the consideration. The Purchaser agrees on completion to pay to the Vendor, on receipt of a tax invoice, the amount of any GST that may be payable.
- 19.3 The benefit of this clause shall not merge on completion but shall enure for the benefit of both parties after completion.

20. Investment of deposit

If the parties agree to invest the deposit, then the deposit hereunder is to be invested by the deposit holder (at the risk of the party who becomes entitled to it) with a bank, building society or credit union, in an interest-bearing account in New South Wales, with interest to be reinvested, and the interest is to be paid on completion of the sale to the parties equally, after deduction of all proper government taxes and financial institution charges and other charges. If the sale is not completed interest shall be paid to the party entitled to receive the deposit.

21. **Governing Law**

- (a) The Laws applicable to New South Wales govern this document.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

22. **Waiver**

A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or any other right of that party.

23. **Variation**

A provision of this Agreement can only be varied by a later written document executed by all parties.

Alterations To Agreement

24. Each party hereto authorises its solicitor or any employee of that solicitor to make alterations to this Agreement including the addition of annexures after execution by that party and before the date of this Agreement and any such alterations shall be binding upon the party deemed hereby to have authorised the same and any annexure so added shall form part of this Agreement as if same had been annexed at the time of execution.

25. **No Merger**

- 26.1 No clause in this Agreement shall merge on completion of this Agreement where such clause may reasonably be construed as intended to have a continuing effect after completion.

26. **Interpretation**

- (i) Words importing the singular number or plural number shall include the plural number and singular number respectively.
- (ii) Where any party consists of more than one person the liability of such persons to the other person shall be joint and several.

- (iii) “corporation” means a reference to a corporation and includes its successors and permitted assigns.
- (iv) “GST Act” means A New Tax System (Goods and Services Tax) Act 1999 as amended.
- (v) “including” and “includes” are not words of limitation.
- (vi) “person” means a reference to a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.
- (vii) A reference to a natural person includes their personal representatives, successors and permitted assigns.
- (viii) “Stakeholder” means the person or entity referred to in J of the Particulars.
- (ix) “Water Authority” means **Coleambally Irrigation Co-operative Limited**.
- (x) “Water Certificates” means **Water Entitlements Certificate issued by the Water Authority**.
- (xi) “Water Entitlements” means the water entitlements set out in H of the Particulars.
- (xii) Words importing one gender include all other genders.
- (xiii) A reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (xiv) A reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- (xv) A reference to dollars or \$ is to Australian currency.

SCHEDULE

PART ONE:

The balance of the

Purchase price:

The balance of the purchase price shall be paid by bank cheque on completion.

PART TWO:

Internal Transfer:

PART THREE:

Not applicable.

Temporary arrangement:

IN WITNESS whereof the parties have executed this Agreement.

Executed by)
ACN 068 189 579)

Signature of Director
Name of Director:

Signature of Director
Name of Director:

If the purchaser is an individual:

SIGNED by the Purchaser in the presence of:)

Witness

Purchaser

Purchaser

If the purchaser is a corporation:

Executed by)
ACN)

Signature of Director
Name of Director:

Signature of Director
Name of Director: