

Contract for the sale and purchase of water entitlement - 2016 Edition

(A choice printed in **BLOCK CAPITALS** applies unless a different choice is marked)

TERM	MEANING OF TERM																
vendor's agent (if more than one, the first named)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">Name</td> <td style="width: 50%;">Nutrien Ag Solutions</td> <td style="width: 10%;">Phone</td> <td style="width: 20%;">03 5881 1777</td> </tr> <tr> <td>Address</td> <td>99-101 Davidson Street, Deniliquin NSW 2710</td> <td>Fax</td> <td>03 5881 4428</td> </tr> <tr> <td></td> <td></td> <td>Ref</td> <td>James Sides</td> </tr> </table>	Name	Nutrien Ag Solutions	Phone	03 5881 1777	Address	99-101 Davidson Street, Deniliquin NSW 2710	Fax	03 5881 4428			Ref	James Sides				
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vendor	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">Name</td> <td style="width: 50%;">Gregory James White and Katrina Joy Taylor</td> <td style="width: 10%;">ACN/ARBN</td> <td style="width: 20%;"></td> </tr> <tr> <td>Address</td> <td>600 Henry Street, Deniliquin NSW 2710</td> <td>ABN</td> <td></td> </tr> </table>	Name	Gregory James White and Katrina Joy Taylor	ACN/ARBN		Address	600 Henry Street, Deniliquin NSW 2710	ABN									
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vendor's Solicitor	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">Name</td> <td style="width: 50%;">Francis Kelly & Grant</td> <td style="width: 10%;">Phone</td> <td style="width: 20%;">03 5881 2066</td> </tr> <tr> <td>Address</td> <td>144 End Street, Deniliquin NSW 2710</td> <td></td> <td></td> </tr> <tr> <td>DX</td> <td>DX 5561, Deniliquin</td> <td>Ref</td> <td>David Grant</td> </tr> <tr> <td>Email</td> <td>legal@fkg.net.au</td> <td></td> <td></td> </tr> </table>	Name	Francis Kelly & Grant	Phone	03 5881 2066	Address	144 End Street, Deniliquin NSW 2710			DX	DX 5561, Deniliquin	Ref	David Grant	Email	legal@fkg.net.au		
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Address	144 End Street, Deniliquin NSW 2710																
DX	DX 5561, Deniliquin	Ref	David Grant														
Email	legal@fkg.net.au																
date for completion	The 42 nd day after the contract date (clause 20)																
water authority	<input checked="" type="checkbox"/> NSW OFFICE OF WATER <input type="checkbox"/> irrigation infrastructure operator name																
water entitlement	<input type="checkbox"/> WAL LICENCE NO <input checked="" type="checkbox"/> Share Component Vendor WAL No 41662; 47 units TO purchaser WAL No ; 47 units <input type="checkbox"/> Allocation Vendor WAL No ; % TO purchaser WAL No ; % <input type="checkbox"/> Transfer vendor WAL to purchase WAL <input type="checkbox"/> Vendor WAL No ; units TO purchaser WAL No ; units <input type="checkbox"/> subdivision of vendor WAL No subdivision units to purchaser WAL No <input type="checkbox"/> Exit from WAL No to purchase WAL No <input type="checkbox"/> Other (specify)																
water delivery entitlement	<input type="checkbox"/> WATER DELIVERY ENTITLEMENT – number of delivery entitlements . <input type="checkbox"/> shares – number of shares																
water account balance	megalitres (clause 11)																
water sharing plan	Water sharing plan url: https://legislation.nsw.gov.au/view/html/inforce/current/sl-2016-0366																
purchaser	Name Address																
if more than one, as	<input type="checkbox"/> JOINT TENANTS <input type="checkbox"/> tenants in common (in equal shares unless otherwise stated)																

Purchaser's Solicitor	Name Address DX Email	Fax	Phone Ref
Price Deposit Balance	\$ \$ \$		
the water entitlement share component (if included) vendor's water account balance	\$ \$		
Interdependent contract Change to licence re water supply work approval Subject to term transfer	NO <input checked="" type="checkbox"/> yes <input type="checkbox"/> (clause 19) If yes – vendor: purchaser: land: NO <input checked="" type="checkbox"/> yes <input type="checkbox"/> (clause 23)		
Contract date	(if not stated, the date this Contract was made)		

DOCUMENTS (copy of document attached if marked)

- WAL folio
- Conditions of the *water entitlement*
- Share certificate or other certificate evidencing *water entitlement*
- Approval
- Other (specify)

SIGNATURES

Vendor

Witness

Purchaser

Witness

WARNINGS

1. (a) This contract is not designed for transfer of water rights under the Contract for sale and purchase of land and transfers of specific purpose licences as defined in the WMA;

(b) This contract is not designed to be used for the transfer of rights under the *Water Act 1912 (NSW)*.
2. Various Acts of Parliament and the water sharing plan can affect the rights of the parties to access the water rights under the water entitlement. You should review and understand your rights under a water sharing plan. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving

Australian Competition and Consumer Commission	NSW Department of Industry
Council	NSW Land and Property Information
County Council	NSW Office of Water
Department of Industry, Skills and Regional Development	Owner of adjoining land
Department of Planning and Environment	Privacy
Department of Primary Industries	WaterNSW
Local Land Services	Water, sewerage or drainage authority

If you think that any of these matters affects the water entitlement, tell your solicitor.

3. A consent to transfer may be required under legislation, see for example, clauses 16 and 22-26 as to the obligations of the parties.
4. If the purchaser agrees to the release of deposit, the purchaser's right to recover the deposit may stand behind the rights of others (for example the vendor's mortgagee).
5. A purchaser should be satisfied that finance will be available at the time of completing the purchase.
6. A fee may be payable for a hydrogeological survey or assessment.

DISPUTES

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example mediation under the Law Society Mediation Model and Guidelines).

AUCTION - CONDITIONS OF SALE

- (a) The *vendor's* reserve price must be given in writing to the auctioneer before the auction commences.
- (b) A bid for the *vendor* cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the *vendor*.
- (c) The highest bidder is the *purchaser*, subject to any reserve price.
- (d) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
- (e) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the *vendor*.
- (f) A bidder is taken to be bidding on the bidder's own behalf unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person.
- (g) A bid cannot be made or accepted after the fall of the hammer.
- (h) As soon as practicable after the fall of the hammer the *purchaser* is to sign this contract.

Where the auction includes **rural land** (as that term is used in the *Property Stock and Business Agents Act 2002*) the following additional conditions of sale apply:

- (i) All bidders must be registered in the Bidders Record and must display an identifying number when making a bid;
- (j) Subject to condition (i) the auctioneer may make only one vendor bid at an auction for the sale of residential property or rural land and no other vendor bid may be made by the auctioneer or any other person;
- (k) Immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announce "vendor bid".

Where the auction is of co-owned rural land or the sale of such land by a seller as executor or administrator the following additional conditions of sale apply:

- (l) More than one vendor bid may be made to purchase the interest of a co-owner;
- (m) A bid by or on behalf of an executor or administrator may be made to purchase in that capacity;
- (n) Before the commencement of the auction, the auctioneer must announce that bids to purchase the interest of another co-owner or to purchase as executor or administrator may be made by or on behalf of the seller;
- (o) Before the commencement of the auction, the auctioneer must announce the bidder registration number of any co-owner, executor or administrator or any person registered to bid on behalf of any co-owner, executor or administrator.

The *vendor* sells and the *purchaser* buys the *water entitlement* at the *price* subject to the following terms and conditions.

1. Definitions (a term in italics is a defined term)

1.1 In this contract, these terms (in any form) mean -

<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>depositholder</i>	<i>vendor's agent</i> (or if no <i>vendor's agent</i> is named in this contract, the <i>vendor's solicitor</i>);
<i>DPI</i>	Department of Primary Industries, DPI Water, WaterNSW or any other department or authority replacing those departments;
<i>document of title</i>	document relevant to the title or the passing of title;
<i>interdependent contract</i>	the contract described in clause 19.1;
<i>Operator</i>	Irrigation Infrastructure Operator;
<i>party</i>	each of the <i>vendor</i> and the <i>purchaser</i> ;
<i>PPSA</i>	the <i>Personal Property Securities Act 2009</i> (Cth);
<i>register</i>	the register of <i>WALs</i> administered by LPI – Titling and Registry Services;
<i>rescind</i>	rescind this contract from the beginning;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none">• issued by a <i>bank</i> and drawn on itself; or• if authorised in writing by the <i>vendor</i> or the <i>vendor's solicitor</i>, some other <i>cheque</i>;
<i>terminate</i>	terminate this contract for breach;
<i>transfer</i>	means an application in the form required by the <i>Operator</i> if the <i>water entitlement</i> is a right against an <i>Operator</i> , in the form of shares, water entitlements, delivery entitlements, or a combination of these;
<i>WAL</i>	Water Access Licence issued pursuant to the <i>WMA</i> ;
<i>water authority</i>	the organisation administering the <i>water entitlement</i> ;
<i>within</i>	in relation to a period, at any time before or during the period;
<i>WMA</i>	the <i>Water Management Act 2000</i> (NSW) (as amended) and the regulations made under it, and
<i>WSP</i>	the water sharing plan applicable to the <i>WAL</i> .

Definition of a water entitlement

1.2 In this contract a *water entitlement* (in any form) means:

1.2.1 a *WAL* issued pursuant to the *WMA*; or

1.2.2 if the *water authority* is an *Operator*, an irrigation right as defined in the *Water Act 2007* (Cth) held against that *water authority*.

2 The deposit

- 2.1 Unless the contract otherwise provides the *purchaser* must pay the *deposit* on the making of this contract to the *depositholder* as stakeholder and in this regard time is essential.
- 2.2 If this contract requires the *purchaser* to pay the *deposit* at a later time, that later time is essential.
- 2.3 If the whole of the *deposit* is not paid on time or if any *cheque* tendered for the *deposit* is not honoured on presentation, the *vendor* can *terminate*. This right to *terminate* is lost as soon as the *deposit* is paid in full.

3 Investment of deposit

If the *vendor* and *purchaser* agree that the *deposit* is to be invested the *vendor* must procure the *depositholder* to invest the *deposit* with a *bank* in an interest bearing account in New South Wales at call or for a term which expires on or before the *date for completion* and to pay the interest to the *parties* equally after deductions of all proper taxes and financial institution charges. Such *deposit* is invested at the risk of the *party* who becomes entitled to it.

4 Transfer

- 4.1 The *purchaser* must *serve* the form of transfer at least 14 days before the *date for completion*.
- 4.2 If any information required to complete the transfer is not disclosed in this contract the *vendor* must provide that information upon request by the *purchaser*.
- 4.3 If the *purchaser* serves a transfer in which the transferee is not the *purchaser* then the *purchaser* must give to the *vendor* a direction signed by the *purchaser* for this form of transfer.

5 Requisitions

If the *purchaser* is or becomes entitled to make a *requisition*, the *purchaser* can make it only by *serving* it -

- 5.1 if it arises out of this contract or is a general *requisition* about the *water entitlement*, *within* 21 days after the *contract date*;
- 5.2 if it arises out of anything *served* by the *vendor*, *within* 21 days after the later of the date of service and the *contract date*;
- 5.3 in any other case, *within* a reasonable time.

6 Error or misdescription

- 6.1 The *purchaser* can (but only before completion) claim compensation for an error or misdescription in this contract (whether substantial or not).
- 6.2 This clause applies even if the *purchaser* did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 This clause does not apply to the extent the *purchaser* knows the true position.

7 Claims by purchaser

The *purchaser* can make a claim (including a claim under clause 6) before completion only by *serving* it with a statement of the amount claimed, and if the *purchaser* makes one or more claims before completion -

- 7.1 the *vendor* can *rescind* if in the case of claims that are not claims for delay -
 - 7.1.1 the total amount claimed exceeds 5% of the *price*;
 - 7.1.2 the *vendor* serves notice of intention to *rescind*; and
 - 7.1.3 the *purchaser* does not *serve* notice waiving the claims *within* 14 days after that *service*; and
- 7.2 if the *vendor* does not *rescind*, the *parties* must complete and if this contract is completed -
 - 7.2.1 the lesser of the total amount claimed and 10% of the *price* must be paid out of the *price* to, and held by, the *depositholder* until the claims are finalised or lapse;
 - 7.2.2 the amount held is to be invested in accordance with clause 3;
 - 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made within 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case, the *parties* are bound by the terms of any Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
 - 7.2.4 the *purchaser* is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the *purchaser*;
 - 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held is paid to those *parties*; and
 - 7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse.

8 Vendor's rights and obligations

8.1 The *vendor* can *rescind* if -

- 8.1.1 the *vendor* is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 8.1.2 the *vendor* serves a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 8.1.3 the *purchaser* does not serve a notice waiving the *requisition* within 14 days after that service.

8.2 If the *vendor* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *purchaser* can *terminate* by serving a notice. After the *termination* -

- 8.2.1 the *purchaser* can recover the *deposit* and any other money paid by the *purchaser* under this contract;
- 8.2.2 the *purchaser* can sue the *vendor* to recover damages for breach of contract; and
- 8.2.3 if the *purchaser* has had use of the entitlement a *party* can claim for a reasonable adjustment.

9 Purchaser's default

If the *purchaser* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *vendor* can *terminate* by serving a notice. After the *termination* the *vendor* can -

- 9.1 keep or recover the *deposit* (to a maximum of 10% of the *price*);
- 9.2 hold any other money paid by the *purchaser* under this contract as security for anything recoverable under this clause -
 - 9.2.1 for 12 months after the *termination*; or
 - 9.2.2 if the *vendor* commences proceedings under this clause within 12 months, until those proceedings are concluded; and
- 9.3 sue the *purchaser* either -
 - 9.3.1 where the *vendor* has resold the *water entitlement* under a contract made within 12 months after the *termination*, to recover -
 - the deficiency on resale (with credit for any of the *deposit* kept or recovered and after allowance for any capital gains tax, goods and services tax or any other charges or taxes payable on anything recovered under this clause); and
 - the reasonable costs and expenses arising out of the *purchaser's* non-compliance with this contract or the notice and of resale and any attempted resale; or
 - 9.3.2 to recover damages for breach of contract.

10 Adjustments

- 10.1 The *vendor* shall be liable up to the *date for completion* for all outgoings in relation to the *water entitlement* and for all charges for water used by the *vendor* under the *water entitlement* after which date the *purchaser* will be liable and will indemnify the *vendor* against any such liability.
- 10.2 The *parties* must make any necessary adjustment on completion.

11 Vendor's water account balance

- 11.1 The *vendor* promises that the *water account balance* at the *date for completion* shall not be less than as stated in this contract unless the amount in the *water account balance* has been varied by the *water authority*.
- 11.2 Upon completion if so required by the *purchaser* the *vendor* shall furnish to the *purchaser* a written authority permitting the *purchaser* to take water from the *vendor's water account balance* prior to the registration of the transfer of the *water entitlement*.

12 Completion

Vendor's obligations on completion

- 12.1 On completion the *vendor* must give the *purchaser* any *document of title* that relates to the *water entitlement*.
- 12.2 If on completion the *vendor* has possession or control of a *document of title* that relates also to a water entitlement other than the *water entitlement* the *vendor* must produce it as and when necessary.
- 12.3 On completion the *vendor* must cause the legal title to the *water entitlement* to pass to the *purchaser* free of any mortgage or other interest subject to any registration.

- 12.4 The legal title to the *water entitlement* does not pass before completion.
- 12.5 If the *vendor* gives the *purchaser* a document (other than the transfer) that needs to be lodged for registration the *vendor* must pay the lodgement fee to the *purchaser* plus another 20% of that fee.

Purchaser's obligations on completion

- 12.6 Upon completion the *purchaser* must pay to the *vendor* by *settlement cheque* the purchase price less any deposit paid and subject to any adjustments to be made pursuant to this contract.
- 12.7 If the *vendor* requires more than five *settlement cheques* the *vendor* must pay \$10.00 for each extra *cheque*.
- 12.8 On completion the *purchaser* must give the *vendor* an order signed by the *purchaser* authorising the *depositholder* to account to the *vendor* for the *deposit*.
- 12.9 On completion the *deposit* belongs to the *vendor*.

Parties' obligations on completion

- 12.10 The *parties* must do everything reasonably required to ensure the *water authority* completes the transfer of the *water entitlement*.

13 Release of perfected security interest

- 13.1 This clause applies if the *water entitlement* is subject to a perfected security interest under the *PPSA*.
- 13.2 Words and phrases used in this clause which are defined in the *PPSA* have the same meaning in this clause.
- 13.3 The *vendor* must do everything reasonable to enable the *purchaser* to ascertain whether there are any security interests in the *water entitlement*.
- 13.4 Normally the *vendor* must ensure that at or before completion, the *purchaser* receives one of the following documents –
- 13.4.1 a release (the "PPS release") from each secured party releasing the security interest in respect of the *water entitlement*; or
 - 13.4.2 a statement in accordance with section 275(1)(b) of the *PPSA* setting out that the amount or obligation that is secured is nil at completion; or
 - 13.4.3 an approval or correction in accordance with section 275(1)(c) of the *PPSA* indicating that, on completion, the *water entitlement* is not or will not be property in which the security interest is granted if the security interest is to remain perfected despite completion;
- and the *purchaser* does not have to complete until the *vendor* has complied with this clause 13.4.
- 13.5 Normally, the *purchaser* must accept a PPS release that is in a form published by the Australian Bankers' Association, the Law Society of NSW or the Law Council of Australia.
- 13.6 If the *vendor* proposes to give the *purchaser* another form of PPS release the *purchaser* must accept that form unless it is unreasonable to do so.
- 13.7 A *party* must provide a copy of any document mentioned in this clause to the other *party* on request.

14 Place for completion

Unless otherwise stated in this contract completion must take place -

- 14.1 if this contract is interdependent with a contract for sale of land, at the place where that contract is to be completed; or
- 14.2 if there is no *interdependent contract* -
- 14.2.1 at the place stipulated for completion in this contract; or
 - 14.2.2 if none is stated, at the address nominated by the first mortgagee of the *water entitlement*, or
 - 14.2.3 if there is no mortgage of the *water entitlement*, at the address of the *vendor's* solicitor stated in this contract.

15 Rescission

- 15.1 If this contract expressly gives a *party* a right to *rescind* the *party* can exercise that right -
- 15.1.1 only by *servicing* a notice before completion; and
 - 15.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or registration.

- 15.2 Unless otherwise stated in this contract if a *party* exercises a right to *rescind* expressly given by this contract or any legislation -
- 15.2.1 the *deposit* and any other money paid by the *purchaser* under this contract must be refunded;
 - 15.2.2 the *vendor* can claim for a reasonable adjustment if the *purchaser* has used any water allocation standing to the credit of the *water account balance*;
 - 15.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
 - 15.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.

16 Consents

- 16.1 This clause applies only if the *water entitlement* cannot be lawfully transferred without consent.
- 16.2 The *purchaser* must properly complete and then *serve* the *purchaser's* part of an application for consent to transfer of the *water entitlement* *within* 14 days of the *contract date* together with a *cheque* payable to the *water authority* for its application or processing fee.
- 16.3 The *vendor* must apply for consent *within* 14 days after *service* of the *purchaser's* part.
- 16.4 A *party* must *serve* a copy of any correspondence received from the *water authority*.
- 16.5 If consent is refused, either *party* can *rescind*.
- 16.6 If consent is given subject to one or more conditions that will substantially disadvantage the *purchaser*, then the *purchaser* can *rescind* *within* 14 days after receipt by or *service* upon the *purchaser* of written notice of the conditions.
- 16.7 If consent is not given –
- 16.7.1 *within* 42 days after the *purchaser* *serves* the *purchaser's* part of the application, the *purchaser* can *rescind*; or
 - 16.7.2 *within* 90 days after the application is made, either *party* can *rescind*.
- 16.8 Each *party* must do whatever is reasonably necessary to cause the consent to issue.
- 16.9 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 16.8.
- 16.10 This clause can operate more than once.
- 16.11 The date for completion becomes the later of the *date for completion* and 14 days after *service* of the notice granting consent to transfer (and if more than one consent is required, the latest of those consents).
- 16.12 If the *water authority* charges an application or processing fee to consent to the transfer of the *water entitlement* and that fee was not paid under clause 16.2, the *parties* must make the necessary adjustment on completion.

17 Surveys or Assessments

- 17.1 This clause applies only if *DPI* requires a hydrogeological survey or hydrological survey or assessment in respect of the right of the *purchaser* to extract water through specific nominated works.
- 17.2 The *purchaser* can *rescind* *within* 7 days of the *purchaser* being notified of that requirement.
- 17.3 If the *purchaser* does not *rescind*, the *purchaser* must apply for the survey or assessment at the expense of the *purchaser* (including payment of the prescribed fee to *DPI*).

18 Foreign Acquisitions and Takeovers Act 1975

- 18.1 The *purchaser* promises that the *Foreign Acquisitions and Takeovers Act 1975* (Cth) does not prohibit the *purchaser* from acquiring the *water entitlement*.
- 18.2 This promise is essential and a breach of it entitles the *vendor* to *terminate*.

19 Interdependent Contract

- 19.1 This clause applies only if this contract says there is an *interdependent contract*.
- 19.2 If the *interdependent contract* is *rescinded* by the *purchaser* or the *vendor* under this contract, this contract is also *rescinded*.
- 19.3 If the *interdependent contract* is *terminated* by the *purchaser* or the *vendor*, this contract is also *terminated* by that *party*.

20 Obligation to complete

- 20.1 Normally the *parties* must complete by the *date for completion* and if they do not, a *party* can *serve* a notice to complete if that *party* is otherwise entitled to do so.
- 20.2 A *party* does not have to complete unless each of the approvals referred to in this contract has been granted.

21 Sale of share component only

If the *water entitlement* includes a share component but does not include a *WAL*, 'transfer' means an application for consent to assignment of rights pursuant to section 71Q of the *WMA*.

22 Subdivision

22.1 This clause applies only if part only of the share component of the *vendor's water entitlement* is being sold and the *purchaser* is entitled to receive a *WAL* as part of the *water entitlement*.

22.2 The *vendor* must *within 14 days* after the *contract date* lodge with *DPI* an application under section 71P of the *WMA* and must do or procure the doing of everything reasonable to have the subdivision of the *water entitlement* approved *within 90 days* after the *contract date*.

22.3 The *purchaser* must if required by the *vendor* join in the application and furnish all information as may be required for proper consideration of the application by *DPI*.

23 Change of nominated works on a water access licence

23.1 This clause applies only if the nominated works relating to a water access licence are to be changed prior to completion and clause 22 does not apply.

23.2 This contract is subject to approval being granted by *DPI* to change a water access licence to vary or remove the water supply work nominated on the licence.

23.3 The *purchaser* must *within 14 days* after the *contract date* lodge with *DPI* an application under section 71W of the *WMA* and must do or procure the doing of everything reasonable to have the application approved *within 90 days* after the *contract date*.

23.4 The *vendor* must join in the application if the *vendor's water supply work* is to be removed from a water access licence.

23.5 Where the application is to vary the water supply work nominated on the *WAL* the approval for such water supply work to be nominated is as disclosed in this contract.

24 WAL to be created to enable registration of dealings

24.1 This clause applies only if the *WAL* has not been created as at the *contract date* and is not to be created pursuant to an application under either section 71P or section 74 of the *WMA*.

24.2 The *vendor* must *within 14 days* after the *contract date* make an application to the *DPI* for the *WAL*.

24.3 The *purchaser* must if required by the *vendor* join in the application and furnish all information as may be required for proper consideration of the application by *DPI*.

25 Water Entitlement Transfer requiring section 74 Exit Application

25.1 This clause applies only if an application under section 74 of the *WMA* is required in order to create the *WAL*.

25.2 The *vendor* must *within 60 days* after the *contract date* lodge with *DPI* an application under section 74 of the *WMA* and must do or procure the doing of everything reasonable to have the exit of the *water entitlement* approved *within 90 days* after the *contract date*.

25.3 If, despite the best endeavours of the *vendor*, *DPI* does not approve the application *within 120 days* after the *contract date*, then either *party* can *rescind*.

25.4 The *vendor* is liable for any fee payable to the other holder(s) of the *WAL* from which the *water entitlement* is exited, as a termination fee, or otherwise, and to supply any water entitlements required to be forfeited to, or at the direction of, such holder(s) as a condition of the approval of the exit application by such other holder(s).

25.5 If this clause applies, and the *water entitlement* includes a share component but does not include a *WAL*, then the time *within* which the *purchaser* must properly complete and serve the form of transfer is *within 14 days* of the date upon which the *purchaser* is served with notice of the description of the *WAL* from which the *water entitlement* is to be transferred.

25.6 If the *water entitlement* includes a *WAL*, the *purchaser* must serve the form of transfer *within 14 days* after the date upon which the *purchaser* is served with notice of the description of the *WAL* constituting the *water entitlement*.

26 Transformation

26.1 This clause applies only if the *water entitlement* is a right against an *Operator* that is to be transformed into a water access entitlement to be held by the *purchaser*, reducing the share component of the *Operator's water access entitlement*.

- 26.2 The *parties* must *within* 14 days after the *contract date* lodge an application in the form required by the *Operator* to transfer and transform the water entitlement.
- 26.3 The *vendor* is liable for any termination fee payable to the *Operator*.
- 26.4 This contract is subject to:
- 26.4.1 the *Operator* approving the transformation application; and
 - 26.4.2 *DPI* approving the reduction of the share component of the *Operator's* water access entitlement.
- 26.5 Each *party* will do all things reasonable to have the applications approved *within* 90 days after the *contract date*.

27 The Water Sharing Plan

The *water entitlement* is sold subject to all terms and conditions of the *WSP* and to any amendments to the *WSP* made prior to completion as to which the *purchaser* cannot make a claim or *requisition* or *rescind* or *terminate* in respect of the *WSP* as amended.

28 Amendments to the water entitlement

The *vendor* must not make any application to change any particulars shown on the *water entitlement* or any of its terms and conditions without the consent of the *purchaser*.

29 Statement of Title

- 29.1 If the *purchaser* serves a notice requiring the *vendor* to provide a statement of title to the *water entitlement* the *vendor* must serve it *within* seven days.
- 29.2 The statement may comprise a list of documents, events and facts arranged (apart from a will or codicil) in date order if the list in respect of each document -
- 29.2.1 shows its date, general nature, names of parties and any registration number; and
 - 29.2.2 has attached a legible photocopy of it certified by the *vendor's solicitor*.
- 29.3 In the case of a replacement *water entitlement*, the statement must commence with the grant of the former entitlement.
- 29.4 In the case of a *water entitlement* granted pursuant to the *WMA*, the statement must commence with the grant of the *WAL*.
- 29.5 The *purchaser* does not have to serve the form of transfer of the *WAL* until after the *vendor* has served a proper statement of the title.

30 Covenants for Title

- 30.1 The *vendor* promises -
- 30.1.1 that the *vendor* has a good right to transfer the title;
 - 30.1.2 that subject to the *WMA*, the *water entitlement* can be used by the *purchaser* free of any interference from any third party;
 - 30.1.3 that the title will be transferred free of any encumbrances; and
 - 30.1.4 that the *vendor* and any person claiming title through the *vendor* will execute and effect any further assurances as might reasonably be required for transferring title to the *WAL* to the *purchaser*.
- 30.2 These promises continue after completion.

31 Purchaser's Indemnity

Following completion and until the transfer is registered on the *register* the *purchaser* indemnifies the *vendor* against all claims or liability arising out of -

- 31.1 failure on the part of the *purchaser* or the *purchaser's* mortgagee to register the transfer of the *water entitlement* sold under this contract *within* any time limit set by the *water authority*; or
- 31.2 any breach of the terms and conditions of the *WMA*, the *water entitlement* or any approval and resulting from any acts, omissions or default on the part of the *purchaser* or any person acting under or with authority or permission of the *purchaser*.

32 General Warranties

- 32.1 The *vendor* warrants that as at completion -
- 32.1.1 the *vendor* will not be in breach of any conditions in the *WAL* or of any provisions of the *WMA*;
 - 32.1.2 there will be no outstanding notices or orders concerning the suspension, cancellation or compulsory acquisition of the *WAL*; and
 - 32.1.3 there will be no litigation proceedings or claims involving the *WAL*.

33 Time limits in these provisions

- 33.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 33.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.
- 33.3 Normally, the time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 33.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 33.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clause 2 (deposit).
- 33.6 Normally, the time by which something must be done is fixed but not essential.

34 Miscellaneous

- 34.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the *vendor* before the *purchaser* signed it and is part of this contract.
- 34.2 Anything attached to this contract is part of this contract.
- 34.3 If a *party* consists of two or more persons, this contract benefits and binds them separately and together.
- 34.4 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 34.5 A document under or relating to this contract is -
 - 34.5.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.3);
 - 34.5.2 served if it is served by the *party* or the *party's solicitor*;
 - 34.5.3 served if it is served on the *party's solicitor*, even if the *party* has died or any of them has died;
 - 34.5.4 served if it is served in any manner provided in s170 of the *Conveyancing Act 1919*;
 - 34.5.5 served if it is sent by fax to the *party's solicitor*, unless it is not received;
 - 34.5.6 served on a person if it (or a copy of it) comes into the possession of the person;
 - 34.5.7 served at the earliest time it is served, if it is served more than once; and
 - 34.5.8 not served if it is only sent by email.
- 34.6 An obligation to pay an expense of another *party* of doing something is an obligation to pay -
 - 34.6.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it;
 - 34.6.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 34.7 A reference of any legislation includes a reference to any corresponding later legislation.
- 34.8 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.

SPECIAL CONDITIONS

This is the annexure to the Contract for the sale and purchase of water entitlement between:

Gregory James White and Katrina Joy Taylor as Vendors; and

as Purchaser

- 1.1 1.1.1 The Vendor covenants and agrees with the Purchaser that the Vendor will forthwith upon being required to do so execute an application for assignment of share component under section 71Q of the *Water Management Act* for the purpose of transfer of 47 units from the Vendor's WAL 41662 ("Vendor's WAL") to the Purchaser's nominated WAL _____ ("Purchaser's WAL") and will forthwith lodge that application with Water NSW.
- 1.1.2 The Purchaser will be responsible for any fees payable in relation to any environmental or other assessment conducted by Water NSW following its receipt of the 71Q application and any other fees charged by Water NSW associated with the processing of the application together with the application fee of \$371.85.
- 1.1.3 In the event that the Purchaser does not hold a WAL at the date of signature of this contract the Purchaser covenants and agrees to forthwith lodge an application with Water NSW for a zero WAL for the purpose of nominating that WAL for transfer under clause 1.1.1. In the event that the Purchaser has not nominated a WAL under 1.1.1 within 28 days from the date of this contract the Vendor may rescind forthwith on notice in which event the Purchaser shall be responsible for the payment of the sum of \$550.00 GST inclusive on account of the Vendor's legal costs to be deducted from the deposit.
- 1.2 Completion shall take place within 14 days of the Vendor notifying the Purchaser that the 71Q application has been approved, and the relevant Notification and Notice of Determination issued by Water NSW.
- 1.3 In the event of Water NSW refusing the 71Q transfer or not approving within 60 days from the date of this contract then either party shall be entitled to rescind this contract by serving a notice to that effect upon the other party whereupon the deposit shall be returned to the Purchaser without deduction.
2. Printed condition 10.1 is deleted and substituted with the following:
- "10.1 The Purchaser shall be liable for the WaterNSW charges applicable to the units to be transferred to the Purchaser the subject of this contract as and from 1 July 2021."*

3. Prior to completion the Purchaser's Solicitor will submit to the Vendor's solicitor a Form 71T for the purpose of transferring to the Purchaser on settlement, at the Purchaser's expense, the applicable 2021/2022 allocation (excluding carryover) relating to the units sold under this contract.
4. On completion the Vendor must deliver to the Purchaser in exchange for the settlement cheque:
 - (a) a properly executed Notification under the *Water Management Act 2000* Section 71Q decreasing the Vendor's WAL by 47 units (ML) and increasing the Purchaser's WAL by that number of units; and
 - (b) production slip from Land Registry evidencing lodgment of the Vendor's WAL for registration of the 71Q application; and
 - (c) any other forms and documents which are required to be delivered to the Purchaser in order for the Vendor to fulfil its obligations under the contract.
5. If for any reason not solely attributable to the Vendor the balance of the purchase money shall not be paid by the Purchaser to the Vendor by the completion date hereto the Purchaser shall on completion pay by way of liquidated damages a sum equal to the rate of twelve per centum (12%) per annum on the said balance from the due date until the actual completion without prejudice to the Vendor's rights under this contract to exercise the Vendor's rights and remedies therein mentioned or its other rights to damages by virtue of the default of the Purchaser hereunder. Such sum shall form part of the purchase monies and be paid on completion as an essential term of this agreement.
6. The Purchaser acknowledges that the search of WAL 41662 attached to this contract is a full and complete statement of the Vendor's title in accordance with printed condition 26 and the Purchaser shall make no requisition, objection or claim for compensation with regard thereto.

Vendor

SIGNED by GREGORY JAMES WHITE in)
 the presence of:)

 Signature

 Signature of witness

 Print name of witness

SIGNED by KATRINA JOY TAYLOR in the)
presence of:)

Signature

Signature of witness

Print name of witness

Purchaser

SIGNED by)
in the presence of:)

Signature

Signature of witness

Print name of witness

SIGNED by)
in the presence of:)

Signature

Signature of witness

Print name of witness

Executed by)
ACN)

Director

Director/Secretary

Name: _____

Name: _____

DEED OF GUARANTEE AND INDEMNITY

(to guarantee performance of the obligations of _____ ACN
_____)

THIS DEED IS MADE ON _____

PARTIES: _____

of _____

and _____

of _____

(known as "guarantor")

and **Gregory James White and Katrina Joy Taylor** of 600 Henry Street, Deniliquin NSW 2710
("vendor")

RECITALS

- A. At the request of the guarantor the vendor entered into the contract.
- B. In consideration of the vendor entering into the contract the guarantor agreed to give this guarantee and indemnity.

AGREEMENTS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 Where commencing with a capital letter:

"Contract" means the contract of sale of the **"water entitlements"** hereunder between the vendor (as vendor) and the purchaser (as purchaser) for the sale of the water entitlements at the price and to which contract this deed is attached.

"Price" means the price stated in the contract.

"Property" means the 47 units in WAL41662 in the contract

"Purchaser" means _____

ACN _____

of _____

1.2 Interpretation

1.2.1 Where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2.2 In this deed unless the context otherwise requires, a reference to:

- (a) one gender includes a reference to the other genders and each of them;
- (b) a person includes a reference to a corporation or firm and vice versa; and
- (c) the singular denotes the plural and vice versa.

1.3 Joint and several

1.3.1 When two or more persons comprise a party to this deed, all the covenants, conditions, terms and restrictions bind the persons jointly and each of them severally and also bind the respective personal representatives, assigns and successors in title of each of them jointly and severally.

2. GUARANTEE

2.1 The guarantor guarantees to the vendor that the purchaser will punctually perform all of the obligations and in default of the punctual performance by the purchaser of any of the obligations the guarantor covenants with

the vendor to perform the obligations or cause them to be performed as if the obligations were primarily the responsibility of the guarantor.

- 2.2 If the purchaser defaults in the payment of any money under the contract, the guarantor will on demand by the vendor pay the money to the vendor.
- 2.3 If the purchaser fails to comply with any of the obligations the guarantor will on demand:
 - 2.3.1 pay to the vendor damages, expenses and costs; and
 - 2.3.2 reimburse the vendor for all losses;which the vendor has incurred or suffered whether or not the vendor has exercised or exhausted its remedies for recovery from the purchaser.

3. CONTINUING GUARANTEE

- 3.1 This guarantee and indemnity is a continuing guarantee and indemnity and will not be considered as wholly or partly satisfied or discharged by the payment or liquidation at any time after the date of this deed of any money due to the vendor under the contract or any settlement of account or any other matter or thing and will extend to cover all money at any time due to the vendor notwithstanding any special payment, liquidation or settlement of account or other matter or thing.
- 3.2 This guarantee and indemnity will not be prejudiced or discharged or in any way affected by:
 - 3.2.1 any transaction or arrangement that may take place between the vendor and the purchaser or the guarantor or any other person;
 - 3.2.2 any compromise, release, abandonment, waiver, variation, renewal or relinquishment of any of the rights of the vendor against the purchaser, the guarantor or any other person;
 - 3.2.3 the winding up or bankruptcy of the purchaser, the guarantor or any other person;
 - 3.2.4 any failure or omission by the purchaser, the vendor or any other person to give notice to the guarantor of any default by the purchaser under the contract or under any other agreement or arrangement with the purchaser;
 - 3.2.5 any laches, acts, omissions or mistakes on the part of the vendor;
 - 3.2.6 the vendor obtaining judgement against the purchaser, the guarantor or any other person for the payment of the price or other money or for the performance or otherwise of any act, matter of thing which the purchaser by the contract has agreed to pay, to do or not to do; or
 - 3.2.7 any settlement of account or act, matter or thing.
- 3.3 This guarantee and indemnity will continue and remain in full force and effect until the purchaser has performed all of the obligations.
- 3.4 The liability of the guarantor under this deed will not be prejudiced, discharged or in any way affected by the termination of the contract for non-payment of the price or other money. The guarantor guarantees the payment to the vendor of all money which may be payable by the purchaser whether damages or otherwise following upon termination of the contract.

4. VENDOR MAY VARY CONTRACT

- 4.1 The vendor and the purchaser may amend or vary the contract or agree to any amendment, variation or replacement of any other agreements or arrangements now or in the future in force between the vendor and the purchaser and without notice to or consent by the guarantor being necessary.
- 4.2 The liability of the guarantor under this deed will extend to cover the contract, any variations and any other agreements and arrangements in force between the vendor and the purchaser.

5. VENDOR MAY GRANT INDULGENCE OR REFRAIN

- 5.1 The vendor may:
 - 5.1.1 grant any time or other indulgence or consideration or concession to the purchaser or the guarantor or any other person, firm or corporation;
 - 5.1.2 compound, compromise with or release the purchaser or any other person to assent to any assignment or trust deed for the benefit of creditors or any scheme or deed of arrangement by the purchaser or any other person and whether with or without the winding up or sequestration of the estate of the purchaser or of the other person;
 - 5.1.3 release or discharge the purchaser in respect of payment of money or otherwise; or
 - 5.1.4 forebear to require the purchaser to pay any money or to do or refrain from doing any act, matter or thing which the purchaser by the contract has agreed to pay or do or not to do, without prejudicing or discharging or in any way affecting the liability of the guarantor under this deed.
- 5.2 The vendor may exercise or refrain from exercising any of the powers or discretions conferred on the vendor by law or by the contract or any other arrangement or agreement with the purchaser, the guarantor or any other person without the consent of the guarantor and without prejudicing, discharging or in any way affecting the liability of the guarantor under this deed.

6. WAIVER BY GUARANTOR

- 6.1 The guarantor waives in favour of the vendor so far as may be necessary to give effect to anything contained or implied in this deed all rights whatsoever against the vendor, the purchaser and any other person or any estate or asset including rights of subrogation, contribution and marshalling.
- 6.2 If the purchaser makes any arrangement, assignment or composition for the benefit of creditors, becomes bankrupt or goes into liquidation the guarantor will not prove in competition with the vendor. The guarantor authorises the vendor to prove for all money which the guarantor has paid under this deed and to appropriate any money so received until the vendor has received all money due to the vendor in respect of the indebtedness or liabilities of the purchaser under or arising out of the contract.
- 6.3 If the guarantor makes any arrangement, assignment or composition for the benefit of creditors, becomes bankrupt or goes into liquidation the vendor will be entitled to prove for the money guaranteed by this deed and all other money payable under this deed whether due under this deed or not up to the limit (if any) of the liability of the guarantor under this deed.

7. INDEMNITY

- 7.1 The guarantor agrees with the vendor that notwithstanding:
 - 7.1.1 anything contained or implied in this deed;
 - 7.1.2 the money guaranteed by this deed may not be recoverable or not presently recoverable from the purchaser for any reason or circumstance whatsoever; or
 - 7.1.3 any other act, matter or thing by which the obligations are not enforceable on the footing of this guarantee;

the guarantor as a separate and additional liability indemnifies and will keep indemnified the vendor in respect of and as a principal debtor agrees to pay to the vendor on demand in writing a sum of money equal to any loss, damage, cost, charge or expenses which if the payment were not made would otherwise be suffered or incurred by the vendor and the provisions of this deed shall apply mutatis mutandis to this indemnity.

8. STAMP DUTY

- 8.1 The guarantor will on demand by the vendor pay any stamp duty on or in connection with this deed.

9. GOVERNING LAW

- 9.1 This agreement is governed by and must be construed in accordance with the laws of New South Wales.
- 9.2 Each party:
 - 9.2.1 irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
 - 9.2.2 waives any right to object to proceedings being brought in those courts for any reason.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED by)

)

In the presence of:)

.....

.....
Signature of witness

.....
Name of witness

SIGNED, SEALED AND DELIVERED by)

)

In the presence of:)

.....

.....
Signature of witness

.....
Name of witness



LAND
REGISTRY
SERVICES

Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: WAL41662

SEARCH DATE	TIME	EDITION NO	DATE
-----	----	-----	----
2/9/2021	11:02 AM	2	12/6/2018

WARNING NOTE: INFORMATION ON THIS REGISTER IS NOT GUARANTEED

TENURE TYPE: CONTINUING

HOLDER(S)

GREGORY JAMES WHITE
KATRINA JOY TAYLOR
AS JOINT TENANTS

ENCUMBRANCES (1 ENCUMBRANCE)

1 TERM TRANSFER: NIL

NOTATIONS

UNREGISTERED DEALINGS: NIL

ACCESS LICENCE DETAILS

CATEGORY: REGULATED RIVER (GENERAL SECURITY)

SHARE COMPONENT:

SHARE - 147 UNITS
WATER SOURCE - NEW SOUTH WALES MURRAY REGULATED RIVER WATER
SOURCE
WATER SHARING PLAN - NEW SOUTH WALES MURRAY AND LOWER DARLING
REGULATED RIVERS WATER SOURCES 2016

EXTRACTION COMPONENT:

TIMES/RATES/CIRCUMSTANCES - SUBJECT TO THE CONDITIONS OF THE
WATER ACCESS LICENCE
EXTRACTION FROM - RIVER, LAKE OR SURFACE WATER RUNOFF
EXTRACTION ZONE - THAT PART OF THE WATER SOURCE UPSTREAM OF THE
RIVER MURRAY AT PICNIC POINT

NOMINATED WORKS:

WORK APPROVAL NUMBER(S) - NIL
INTERSTATE TAGGING ZONE - NIL

END OF PAGE 1 - CONTINUED OVER

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PRINTED ON 2/9/2021

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: WAL41662

PAGE 2

CONDITIONS

LICENCE CONDITIONS FORM A PART OF THIS LICENCE AND AFFECT THE SHARE AND EXTRACTION COMPONENTS. CONDITION STATEMENTS ARE AVAILABLE FROM WATERNSW

NOTES

A WATER LICENCE INFORMATION SHEET IS AVAILABLE FROM THE WATERNSW WEBSITE WWW.WATERNSW.COM.AU AND SHOULD BE REFERRED TO IN INTERPRETING THIS LICENCE.

WATERNSW PHONE 1300 662 077, EMAIL CUSTOMER.HELPDESK@WATERNSW.COM.AU
LICENCE REFERENCE NUMBER: 50AL513912

*** END OF SEARCH ***

21 0201 31613

PRINTED ON 2/9/2021

* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register. InfoTrack an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act 1900.