

Customer Terms and Conditions



Buy, Sell, Trade.

The Water Broking Company provides water markets intermediary services to Customers in connection with the WEX Exchange and operates in accordance with the Water Markets Intermediaries Code.

By engaging the Water Broking Company to provide Services through the WEX Exchange, you, the Customer agree to be bound by these Terms and Conditions (Terms).

These Terms apply only to Services provided through the WEX Exchange and do not apply to any services the Water Broking Company provides outside of or unrelated to the WEX Exchange.

1 Water Broking Services

- 1.1 The Customer may engage the Water Broking Company to provide one or more of the following services by issuing a Buy Order or Sell Order or otherwise providing instructions to the Water Broking Company:
 - (a) identifying trading opportunities for Water Products;
 - (b) lodging, modifying and withdrawing Buy Orders and Sell Orders;
 - (c) negotiating Trades on or off the WEX Exchange; and
 - (d) providing such other ancillary services as are reasonably necessary to facilitate Trades, (the **Services**).
- 1.2 The Water Broking Company may agree to provide the Services by accepting the Buy or Sell Order or otherwise providing written confirmation to the Customer.
- 1.3 The Customer acknowledges that in providing the Services, the Water Broking Company does not:
 - (a) guarantee that a Trade will be Matched or completed; and
 - (b) offer any legal, financial or other advice relating to that Trade.
- 1.4 The Water Broking Company will provide the Services in accordance with these Terms and those applicable laws set out in the Obligations Page.

2 Water Trading

- 2.1 The Customer:
 - (a) must sign or confirm a Buy Order or Sell Order before it is submitted onto the WEX Exchange;
 - (b) authorises the Water Broking Company to arrange a Trade that is consistent with the signed or confirmed Buy Order or Sell Order;
 - (c) except for online auctions, may amend or withdraw a Buy Order, Sell Order or its instructions at any time before the Trade is Matched by notifying its Broker;

- (d) must do all things reasonably necessary or requested by the Water Broking Company to ensure that a Trade is completed; and
 - (e) must always comply with the Exchange Rules.

- 2.2 The Customer acknowledges that:
 - (a) all Matched Trades under these Terms will be processed via the WEX Exchange and all Customer moneys will be processed via the WEX Trust Account; and
 - (b) it has read and agrees to the Exchange Rules, including the Trade processes set out in the Exchange Rules.

3 Commission Payments

- 3.1 For each Trade facilitated by the Water Broking Company, the Water Broking Company will receive the Commission Payment applicable to that Trade.
- 3.2 The Customer acknowledges that:
 - (a) where the Customer is required to make a payment under a Trade, an invoice will be issued by WEX to the Customer for the Commission Payment and the Customer must pay the Commission Payment by the specified due date; and
 - (b) where the Customer is entitled to receive a payment under a Trade, the Commission Payment will be deducted from the amount payable to the Customer.
- 3.3 The Commission Payment will be held by WEX on trust in accordance with the Exchange Rules.

4 Managing Customer Relationships

- 4.1 The Customer acknowledges that the Water Broking Company, or a related party, may act for both parties in a Trade and receive Commission Payments from each party.

- 4.2 The Customer's Broker will disclose any conflicts of interests to the Customer:
- (a) before providing Services; or
 - (b) as soon as reasonably practicable after becoming aware of the conflict.
- 4.3 By signing or otherwise accepting the disclosure, the Customer consents to the Water Broking Company providing the Services notwithstanding the conflict.
- 4.4 If the Water Broking Company, or a related party, has or will have a material personal interest in respect of a Trade, the Water Broking Company will not provide Services to the Customer for that Trade.
- 4.5 The Customer's Broker, or a Water Broking Company employee, will provide written disclosure to the Customer of any material personal interest:
- (a) before providing Services; or
 - (b) as soon reasonably practicable after becoming aware of the interest.

5 Termination

- 5.1 The Water Broking Company may terminate these Terms:
- (a) immediately by written notice:
 - (i) if the Customer breaches these Terms and, where capable of remedy, the Customer does not remedy that breach within 7 days of the Water Broking Company providing notice;
 - (ii) if the Customer is insolvent, unable to pay its debts as they fall due, or subject to an event that restricts it from dealing with its assets; or
 - (iii) if in the Water Broker Company's opinion, the Customer's activities are damaging, or likely to damage, the Water Broker Company's reputation and/or goodwill; or
 - (b) by giving the Customer 10 days' written notice.
- 5.2 The Customer may terminate these Terms by providing 30 days' written notice.
- 5.3 Upon notice of termination, the Water Broking Company will facilitate the settlement of any outstanding Trades for the Customer.
- 5.4 Termination does not affect rights or obligations that have accrued before the termination date.
- 5.5 The Water Broking Company remains entitled to receive the Commission Payment in respect of Trades facilitated before termination, including where completion occurs after the termination date.
- 5.6 This clause and clauses 3 (Commission Payments), 6 (Representations and warranties), 7 (Indemnity and limitation of liability), 8.3 (Confidentiality), 8.6 (Complaints) and any other clauses which by their nature are intended to survive termination, will survive termination of these Terms.

6 Representations and warranties

- 6.1 The Customer represents and warrants to the Water Broking Company that:
- (a) where it is an individual, it is 18 years or older;
 - (b) where it is a corporation:
 - (i) it is duly incorporated or registered and validly exists under the laws of its place of incorporation or registration;
 - (ii) it has full power and authority to be bound by these Terms and perform its obligations under these Terms; and
 - (iii) these Terms do not contravene its constituent documents (if any) or any law or obligation by which it, or any of its assets, are bound; and
 - (c) entering into these Terms and performing its obligations under these Terms does not violate any law, regulation or order.
- 6.2 The Customer represents and warrants to the Water Broking Company and other Customers that:
- (a) all information contained in a Buy Order or Sell Order, and otherwise provided by the Customer to the Water Broking Company, is true, complete and accurate;
 - (b) by signing or confirming a Buy Order or Sell Order, it will not breach any law, regulation or order;
 - (c) for Sell Orders, it is the legal and beneficial owner of, or has the lawful authority to Trade, the Water Product specified in any Sell Order free from encumbrances;
 - (d) it has, or will have, sufficient funds to pay all amounts due under each Trade, including the Commission Payment; and
 - (e) it has the ability to contract with the other party to the Trade and to transfer, or accept the transfer of, the Water Product; and
 - (f) it is aware that Water Products are subject to the regulations and laws applicable to the Water Product and any conditions disclosed by the selling party to the Trade.

7 Indemnity and limitation of liability

- 7.1 To the extent permitted by law, the Customer indemnifies and holds harmless the Water Broking Company, its Brokers and other employees, officers, agents and representatives against any direct or indirect losses, costs (including legal costs on a full indemnity basis), expenses, claims or any other action which may be brought against the Water Broking Company or suffered or incurred by the Water Broking Company directly or indirectly as a result of the Customer's activities (or the activities of any authorised person of that Customer) in connection with these Terms including, the Customer's failure to make a payment in relation to a Trade when due, the Customer's failure to complete a Trade or where a Trade does not complete due to the actions of the Customer, or the Customer's failure to comply with these Terms.

7.2 To the extent permitted by law, the liability of the Water Broking Company, if any, arising out of or in connection with these Terms and the performance of its obligations (including in respect of the supply of the Services under these Terms), including for negligence, is limited to (at the option and reasonable discretion of the Water Broking Company) the supply of the Services again or payment for the cost of having the Services supplied again. In any event and notwithstanding any other provision of these Terms (other than this clause 7.2), the Water Broking Company's liability in aggregate for all actions, proceedings, claims, demands, costs, expenses and liabilities arising out of or in connection with these Terms and the performance of its obligations under these Terms (including in respect of the supply of the Services under these Terms) is capped at an amount equal to the Commission Payment(s) payable to the Water Broking Company in respect of the Trade(s) giving rise to the liability.

8 General

- 8.1 **Amendment:** The Water Broking Company may amend these Terms at any time by posting 5 days' notice of any variation on the Water Broking Company's site along with an amended version of these Terms, or otherwise by providing written notice to the Customer.
- 8.2 **Assignment:** The Customer may not assign its rights or obligations under these Terms except with the prior written consent of the Water Broking Company. The Water Broking Company may assign its rights and obligations under these Terms at any time without the Customer's consent.
- 8.3 **Confidentiality:** Each party must keep confidential all information of the other party that is designated as confidential, or that ought reasonably to be treated as confidential, and must not use or disclose such information except:
- (a) to its employees, contractors or advisers on a need-to-know basis and who are bound by obligations of confidence;
 - (b) as required by law or the rules of any stock exchange; or
 - (c) with the prior written consent of the other party.
- 8.4 **Privacy:** The Customer agrees to allow the Water Broking Company to collect, store, use, and share its personal information in accordance with applicable privacy laws.
- 8.5 **Complaints:** All complaints relating to these Terms and/or Services will be dealt with in accordance with the Water Broking Company's Complaints Handling Process.
- 8.6 **Further assurances:** Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the provisions of these Terms or any Trade, and to use all reasonable endeavours to cause relevant third parties to do the same.

- 8.7 **Waiver:** Without limiting any other provision of these Terms, any failure or delay by a party to enforce one or more of these Terms will not be taken as a waiver of that party's rights under those terms or the right at any time subsequently to enforce all of these Terms.
- 8.8 **Entire agreement:** These Terms form the entire agreement between the Water Broking Company and the Customer in relation to the Services through the WEX Exchange and replaces and supersedes all past discussions, representations, agreements or understandings, whether written or oral.
- 8.9 **Severability:** If any part of these Terms is found to be illegal or unenforceable under any enactment or rule of law, then that part will to that extent be deemed not to form part of these Terms and the remaining parts will continue in full force and effect.
- 8.10 **Governing law and jurisdiction:** The laws in the State of New South Wales apply to these Terms. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

9 Definitions

- 9.1 In these terms:

Broker means an employee of the Water Broking Company who is authorised to provide Services to the Customer.

Buy Order means an offer submitted on the WEX Exchange to:

- (a) buy a Water Product;
- (b) lease a Water Product; or
- (c) enter a carryover capacity,

each on the terms specified in the Buy Order.

Commission Payment means the commission payable by the Customer to Water Broking Company for the Services, generally being between 1% and 3% of the value of the Water Product Traded, with the exact amount identified in the Buy Order or Sell Order.

Complaints Handling Process means the Water Broker Company's documented process for receiving, assessing, and resolving complaints from Customers, in accordance with the Water Markets Intermediaries Code.

Customer means a person who has engaged a Broker to provide Services.

Exchange Rules means the rules governing the use of the WEX Exchange as amended from time to time.

Match means the moment in time when a Trade is matched, either:

- (a) on the WEX Exchange; or
- (b) through negotiation facilitated by a Broker where both parties have agreed to the terms of the Trade,

with the intention to complete such Trade.

Sell Order means an offer submitted on the WEX Exchange to:

- (a) to sell a Water Product;
- (b) lease a Water Product; or
- (c) enter a carryover capacity,

each on the terms specified in the Sell Order.

Terms means these Terms and Conditions as amended from time to time.

Trade means a transaction relating to a Water Product that is processed through the WEX Exchange.

Water Allocation means the specific volume of water allocated to a Water Entitlement in a given water year or allocated as specified within a water resource plan.

Water Broking Company means the water broking company engaged by the Customer as identified on the Buy Order or Sell Order and includes its Brokers and other employees, officers, and representatives.

Water Entitlement means a perpetual or ongoing entitlement, by or under a law of a state, to exclusive access to a share of the water resources of a water resource plan area.

Water Markets Intermediaries Code means the Water Markets Intermediaries Code and Trust Accounting Framework set out in Part 5 of the *Water Regulation 2008* (Cth) as amended from time to time.

Water Product means any Water Allocation or Water Entitlement listed or transacted on the WEX Exchange.

WEX Exchange means the platform operated by WEX Water Pty Ltd for the exchange, Trading and settlement of Water Products.

WEX Trust Account means the trust account operated by WEX Water Pty Ltd to facilitate settlement of trades on the WEX Exchange.

Obligations Page

1 Water Markets Intermediary Code and Water Act obligations

The Water Broking Company is obligated to:

- (a) place the client's interests before our own or those of a related party (regulation 5.03(2));
- (b) represent each client's interests diligently and with due care and skill (regulation 5.03(3));
- (c) act in accordance with each client's lawful instructions (regulation 5.03(4));
- (d) not use or disclose a client's confidential information without that client's authorisation or unless required to (regulation 5.03(5)-(6));
- (e) deal with each client in good faith (regulation 5.04);
- (f) unless an exception applies, disclose conflicts of interest, and where there is a material personal interest, not provide services to that client and notify the client in writing either before the Service is provided or otherwise as soon as practicable (regulations 5.05 and 5.06);
- (g) provide general information about the Services provided to clients before providing such Services, including (regulation 5.07):
 - (i) commission or fees generally charged;
 - (ii) if the Services require eligible tradeable water rights to be held in a broking water account, how we will deal with eligible tradeable water rights that are not able to be transferred to a person who is lawfully entitled to receive them; and
 - (iii) if any enforcement action specified in the Code has occurred in relation to the Water Broking Company in the past three years;
- (h) provide additional information about the Services provided to clients before providing such Services, including (regulation 5.08):
 - (i) the kind of Service to be provided and the terms and conditions of such services;
 - (ii) the commission or fees charged, if different to those generally charged;
 - (iii) if the Service is investigating trading possibilities for water rights, the water rights; whether the Water Broking Company are buying or selling for a client; the volume (in megalitres) and any splits; the price or price range; how a client's instructions may expire or be rescinded; and conditions of the service including exclusivity/non-exclusivity;
 - (iv) whether tradable water rights are to be held in a broking water account; and
 - (v) advise in writing of the outcome (or any delays or rejections) of any application to a water market authority within 2 business days;
- (i) deal with client complaints in good faith, with a genuine attempt to resolve complaints within required timeframes, and following a documented process (regulation 5.09);
- (j) obtain written authority from each person who owns or otherwise has a legal or other interest in the relevant water rights before trading or transferring water rights (regulation 5.10);
- (k) obtain written authority from a client to act as the client's agent (regulation 5.11);
- (l) maintain water broking accounts for water rights received on a client's behalf (regulation 5.12);
- (m) maintain accurate records of water trades and transactions in water broking accounts and statements of water broking accounts (regulation 5.13);
- (n) hold and maintain professional indemnity insurance that covers the provision of services to clients and complies with other requirements of the Code, and to keep records of this insurance for six years (regulations 5.14 and 5.15);
- (o) hold and keep for a period of 6 years all required client records including those relating to instructions and details of trades, as well as financial and accounting records relating to the client (regulation 5.16); and
- (p) if receiving money on behalf of a client, maintain and hold such money in a trust account accordance with the Water Act and Code (Part 5, Division 5 of the Water Act).
- (q) hold and maintain client ledgers for statutory trust accounts and water broking accounts, and make available to a client upon request and within 5 business days of receiving such request (regulations 5.17 and 5.18).

2 Australian Consumer Law obligations

The Water Broking Company is obligated to:

- (a) not engage in misleading or deceptive conduct or conduct that is likely to mislead or deceive (section 18);
- (b) not engage in unconscionable conduct (sections 20-21);
- (c) not make false or misleading representations (section 29);
- (d) not offer any rebate, gift, prize or other free item without the intention of providing it, or not providing it as offered (section 32);
- (e) not accept payment if we cannot or do not intend to provide the services (section 36);
- (f) assert a right for payment for unsolicited goods or services (section 40);
- (g) not use physical force, or undue harassment or coercion in the provision of services (section 50); and
- (h) if the client is a consumer as described under the Australian Consumer Law, the Water Broking Company must also:
 - (i) not induce a client to acquire goods or services by representing that they will receive a benefit for providing names of prospective customers or otherwise assisting the Water Broking Company to supply to other consumers, where that benefit depends on an event occurring after the contract is made (section 49);
 - (ii) provide services with due care and skill (section 60);
 - (iii) ensure services are reasonably fit for their intended purpose (section 61); and
 - (iv) ensure that the provision of services with be completed in a reasonable time if no time frame is specified (section 62).