

Terms of Buying Water Allocations – BD Water and Water Manager

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Our contact information

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By using the platform and/or participating in a trade, you are agreeing to be automatically bound by these terms of service, our platform terms of use, our privacy policy, our conflict of interest policy, our disclaimer, and any other legal disclaimers, terms or notices displayed on our platform. You also acknowledge that if you agree to purchase a water allocation via the platform, you will be required to enter into a binding sale agreement with the seller. Please let us know prior to bidding if you would like to see a copy of the template agreement.

We encourage you to carefully read and understand these terms before using the platform or any of our services. If you don't agree, your remedy is to stop using our platform.

Our role

We provide a platform to allow users to negotiate the sale and purchase of water allocations within Western Australia. We are not a broker and do not represent either party in a trade or engage in the negotiation process. You use our platform, including any information or resources on it, at your own risk.

As an overview, subject to the additional information about our role and the limitations to our liability set out in the platform terms of use linked from the platform, the process works like this:

- Potential buyers and sellers register to hold an account on our platform
- Sellers list water allocation(s) they have for sale. There are no identifying details of the seller or water allocation provided on the platform, the listing will reveal only the volume of the allocation proposed to be sold, the price and the water resource the allocation draws from
- Parties negotiate a sale (or a buyer may just use the buy-it-now style feature and purchase the allocation at the listed price)
- The parties enter into a binding sale agreement via the platform. Again, no identifying information will be visible on the contract, our platform collects identity information and allocates each registered account holder a unique identifying number. This number will be used in the agreement in place of each party's name. If a dispute arises, we have the discretion to release each party's personal information to any other party involved in the dispute.
- We will collect and hold settlement funds, gather the information required to prepare an application for consent to the transfer from DWER and, if approved by DWER, submit the application for stamp duty with the Office of State Revenue and then subsequent registration with DWER.
- Settlement happens when DWER finalises registration of the transfer.
- How long the process takes depends largely on the Office of State Revenue, DWER and the complexity of the trade, however 3 to 6 months is a common timeframe (unless we have advised you otherwise).

As trust accounts are not available in our industry, the settlement funds held by us are held in a general holding account of ours. Alternatively, you can arrange to have the settlement funds held in escrow using an

escrow service. You would be responsible for all fees involved with the escrow service and would still need to pay to us any upfront costs and stamp duty directly. You would also need to authorise the escrow agency to release our commission within 5 days of water allocation transfer approval by DWER.

Anonymity

One of the features of our platform is anonymity. As mentioned above, we generally do not disclose the identity of the buyer, seller or water licence/allocation number to the other party involved in a trade. There are exceptions which are covered in these terms or our conflict of interest policy. If it is important to you to know the licence number of the water allocation you are buying or the identity of the other party in the transaction, our platform is not for you and your remedy is to not use our platform.

Your responsibilities

In addition to your responsibilities and account obligations set out in the platform terms of use, as a buyer using the platform, you must:

- have land or legal access to land within the water resource area for the water allocation you are bidding on or committing to buy.
- act honestly and fairly in all negotiations and transactions you enter into with other users
- if you find a water licence on the platform, you must only purchase the licence transfer via the platform
- if you elect to purchase a water allocation listed on the platform at the advertised price as a 'buy-it-immediately' (or similar wording), this forms a binding contract between you and the seller and you are bound to make the necessary payments and complete the trade (subject to DWER approval)
- if you negotiate a price with the seller via the platform, a seller can accept, reject or counteroffer and offer you make. If a seller accepts an offer made by you, this forms a binding contract between you and the seller and you are bound to make the necessary payments and complete the trade (subject to DWER approval)
- pay the stamp duty as assessed for the water licence transfer. We do collect the estimated stamp duty up front at the start of the trade process however the final assessment is sometimes more or less than the estimate. If the assessment is less, we will refund you the difference within 7 days of the formal assessment. If the assessment is more, we will request the balance from you, and you agree to pay the balance of the assessment within 7 days of our request
- you must truthfully, and without omission, complete the questions prompted by the platform about your intended use of the water allocation and your financial capacity to utilise the water allocation. The answers to these questions are provided to DWER who may use the information in granting their consent for the transfer

Identity verification, limitation of liability, indemnity, applicable law, force majeure, validity

These clauses can be found in the platform terms of use and apply equally to these terms of service

Authority

Where you are completing a water trade purchase, we have no obligation to make enquiries about your authority to do so or to ensure you have correctly completed any internal processes where you represent an organisation or company. Once you commit to a trade on our platform, we are deemed to be entitled to proceed with our services. If there is a subsequent cancellation of the trade, due to a problem with authority or any other reason, you agree to pay for any costs we have incurred in conducting assessments or engaging sub-contractors.

We may update these terms from time to time and the new provisions will apply from the date they are updated. We have included a 'last updated' date at the top of these terms of use to help you keep track of any changes.

A breach of these terms of service will also be a deemed breach of the platform terms of use.

Definitions

When we talk about:

- 'us' or 'our', we mean our company as identified in the table at the top of these terms
- 'you', 'user' or 'your', we mean you, a user of our platform or a buyer in a trade
- 'platform', we mean our water trading platform at [insert URL] including any related App.
- 'trade' means a buyer and a seller negotiating or entering into a binding contract to buy/sell water allocation rights under a water licence issued by DWER
- 'DWER' means the Department of Water and Environmental Regulations