

A vertical splash of water with bubbles and a rainbow-colored light trail, set against a dark red background.

auction

Southern Rural Water
water share auction

Contract of sale

Contract of sale of water shares pursuant to section 33P of the Water Act 1989

Gippsland and Southern Rural Water Authority hereby sells pursuant to section 33P of the *Water Act 1989* a water share for a volume of irrigation water for the Thomson/Macalister system to the Purchaser and for the price set out in the Schedule conditional upon the Purchaser complying with all conditions of this Contract.

The terms and conditions of this Contract are contained in the attached General Terms and Conditions and the Schedule.

Dated this nineteenth day of February 2019

Signed for and on behalf of
Gippsland and Southern Rural Water Authority

Signature _____ Print Name _____

Signed for and on behalf of the Purchaser: Note: This contract must be signed by all registered owners

Signed by the purchaser

Signature of witness

(Print Name)

Name of witness

Signed by the purchaser

Signature of witness

(Print Name)

Name of witness

Executed by _____ ACN _____
in accordance with section 127 of the Corporations Water Act 2001:

Director _____ Director/Secretary _____

Full Name _____ Full Name _____

Signed by proxy/agent

Print name

As Proxy / Agent for the Purchaser pursuant to authorisation provided on the application form.))))
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Dated the nineteenth day of February 2019

The schedule

1. The authority

Name: Gippsland and Southern Rural Water Authority
ABN: 70 801 473 421
Address: 88 Johnson Street, Maffra, Vic, 3860
Telephone: 1300 139 510
Fax: (03) 5139 3150
E-mail: srw@srw.com.au

2. Purchaser

Given name/s	Surname / Company name	ABN / ACN
Postal address:		

If held jointly:

Nature of Joint Ownership: Joint tenants / tenants in common as to _____ (delete as applicable)

3. Water share attributes

The water share has the following attributes:

Water System Source	Thomson/Macalister
Water System Type	Regulated
Water Corporation	Gippsland and Southern Rural Water Authority
Trading Zone Source	41
Trading Zone Use	41/42B
Delivery System	MID
Reliability	High / Low

4. Volume

Bid Number	Water Share Type	Unit Price (\$/ML)	Volume Purchased (ML)	Purchase Price (\$)
	High /Low			
	High/Low			
	High/Low			
	High/ Low			
	High/Low			
			Total	Total

Bid Number	Water Share Type	Unit Price (\$/ML)	Volume Purchased (ML)	Purchase Price (\$)
	High			
	High			
	High			
	High			
	High			
			Total	Total

5. Purchase price

The total purchase price is: \$_____

6. Deposit

A non-refundable deposit of: \$_____ being 10% of the Purchase Price payable on the signing of this Contract.

7. Balance of the purchase price

Balance of the purchase price: \$_____

8. Date by which the purchase price must be paid

The balance of the purchase price must be paid on or before: **4.30pm on, Tuesday 19 March 2019**

9. Associated land

Please list below the water-use licence(s) that you would like the new water share to be linked with.

W	U								W	U							
W	U								W	U							

General terms and conditions

1. Interpretations

1.1 Definitions

The following definitions shall apply in this Contract:

“**Auction**” means the auction of irrigation water held by the Authority;

“**Auction Information Kit**” means the kit handed to prospective purchasers at the time of registering to be a bidder which includes the registration form to enable a person or body to apply to become a registered bidder;

“**Authority**” means Gippsland and Southern Rural Water Authority of 88 Johnson Street, Maffra, Vic, 3860;

“**Clause**” means unless otherwise stated a clause of this Contract;

“**Contract**” or “this Contract of Sale” means this Contract of Sale containing page 1, the General Terms and Conditions and the Schedule;

“**Credit Card**” means a credit card issued by Visa, Bankcard or Mastercard;

“**GST**” means any tax imposed under any GST Law and includes GST within the meaning of GST Water Act;

“**Non-Refundable Deposit**” means a sum equal to 10% of the Purchase Price, as set out in the Schedule;

“**Purchaser**” means the person or entity named in The Schedule;

“**Purchase Price**” means the price to be paid by the Purchaser for the Water Share as set out in the Schedule;

“**Water Act**” means the Water Act 1989 (Vic).

“**Water Register**” means the water register established under Part 5A of the Water Act.

“**Water Share**” means a water share issued under section 33F of the Water Act with the characteristics set out in the Schedule.

1.2 Interpretation

- (a) The singular includes the plural and vice versa.
- (b) A word denoting any gender includes all genders.
- (c) A reference to a person includes a reference to a firm, corporation or other corporate body and vice versa.
- (d) In entering into this Contract the parties do so for themselves and their successors in law with the intent that their successors in law shall be entitled to all benefits and rights, and be bound by and subject to all duties obligations and provisions of this Contract.
- (e) If a party consists of more than one person, this Contract binds them jointly and each of them severally.
- (f) A reference to a statute shall include any statutes amending, consolidating or replacing same, and shall also include any regulations made under such statutes as those regulations are in force from time to time.
- (g) All headings or notes in italics are for ease of reference only and shall not be taken into account in the construction or interpretation of this Contract.
- (h) Any reference to money is in Australian dollars.
- (i) The Purchase Price and other references to money in this Contract are inclusive of all costs of the Authority whether foreseen or unforeseen including without limitation all taxes and duties.

2.0 Agreement to buy and sell

The Purchaser agrees to buy the Water Share, and the Authority agrees to issue the Water Share to the Purchaser, on the terms of this Contract.

3.0 Deposit

- 3.1 The Purchaser must pay to the Authority or its nominee the Non-Refundable Deposit on the signing of this Contract.
- 3.2 The deposit is payable by cheque drawn on an Australian bank or by Credit Card.
- 3.3 If this Contract is terminated for any reason, the Non-Refundable Deposit will be forfeited by the Purchaser and retained by the Authority.
- 3.4 If the Purchaser fails to pay the Non-Refundable Deposit on the signing of this Contract, or the cheque provided by the Purchaser is not accepted by the Authority's bank or bounces, then the Authority may at its option terminate this Contract by verbally notifying the Purchaser and the Purchaser shall be liable to pay to the Authority an amount equal to the Non-Refundable Deposit together with interest as specified in this Contract, as liquidated damages.

4.0 Payment of balance of purchase price

- 4.1 The balance of the Purchase Price must be paid to the Authority on or before the date specified in the Schedule.
- 4.2 The Purchaser must pay the balance of the Purchase Price to the Authority by way of a bank cheque or personal cheque drawn in favour of the Authority.
- 4.3 If the Purchaser fails to pay any sum due under this Contract by the due date the Authority may immediately terminate this Contract by serving written notice on the Purchaser.
- 4.4 Upon termination of this Contract pursuant to clause 4.3, the Authority may keep the Non-Refundable Deposit and may sell or transfer the Water Share to another purchaser.
- 4.5 If the Purchaser defaults in payment of any money under this Contract then in addition to all of the rights and remedies of the Authority interest at the rate of 2% higher than the rate for the time being fixed under Section 2 of the Penalty Interest Rates Water Act 1983 computed on the money overdue during the period of default shall be paid on demand without prejudice to any other rights of the Authority.

5.0 Issue of water share

- 5.1 Subject to clause 5.4, upon payment of the Purchase Price in full:
 - a) the Authority must issue the Water Share to the Purchaser;
 - b) the Authority must issue a valid certificate in relation to the Water Share to the Purchaser and do all other things necessary to evidence the issuance of the Water Share to the Purchaser.
- 5.2 The Authority is responsible for ensuring that details of the Water Share are recorded in the Water Register in accordance with the Water Act.
- 5.3 The Purchaser acknowledges the Authority's rights to vary the Water Share and impose conditions in relation to the Water Share under the Water Act.
- 5.4 The Authority has no obligation to issue the Water Share unless the Purchaser has paid all outstanding accounts owing to the Authority by the Purchaser. If there are any outstanding accounts owing to the Authority by the Purchaser, the date of issue of the Water Share will be the date on which the Purchase Price has been paid in full and the outstanding accounts owing to the Authority by the Purchaser have been paid in full.

6.0 Initial allocation

Without prejudice to anything contained elsewhere in this Contract, the Purchaser acknowledges that if the Purchaser defaults in the payment of any money under this Contract but subsequently pays the full Purchase Price and the Authority issues the Water Share to the Purchaser notwithstanding the Purchaser's default, the Purchaser may not receive a water allocation in relation to the Water Share for the first year that the Purchaser owns the Water Share.

7.0 Water use licence

- 7.1 The Purchaser hereby acknowledges that it is not entitled to use any water taken in accordance with the Water Share unless it is authorised to do so pursuant to a water-use licence or water-use registration that authorises the use of water by the Purchaser.
- 7.2 The Purchaser hereby acknowledges that the Purchaser may apply for a water-use licence or water-use registration under the Water Act but that the Authority has no obligation to issue a water-use licence or water-use registration to the Purchaser.
- 7.3 The Purchaser is responsible to apply for all consents, licences or other matters required under this Contract (including those associated with the delivery of the water being purchased under this Contract) or to be performed on behalf of the Purchaser and shall be liable to pay all fees, costs and expenses associated therewith.

8.0 Acknowledgement by purchaser

- 8.1 The Purchaser hereby acknowledges that it has been informed by the Authority of, and understands, the following in respect of the Water Share by the Purchaser and their associated licences and entitlements:
- a) The volume of irrigation water to be allocated annually under the Water Share is subject to the Authority's seasonal water allocation policy which may be varied by the Authority from time to time, the volume of water allocated therefore may vary from year to year and expectations of the volumes allocated may be different and may be subject to decline in the event that there is a long term decline in catchment yield.
 - b) The purchase of a Water Share does not guarantee any particular standing water level in the Authority's works or the waterway from which the water will be extracted.
 - c) From time to time the Authority may be required to reduce the supply of water to the Purchaser.
 - d) The quality of the water to be provided under the Water Share will vary with time and with seasonal conditions. The Authority does not guarantee nor warrant that the water to be purchased under this Contract will be of any particular level of quality.
- 8.2 The Authority neither guarantees nor warrants to the Purchaser the quality or quantity of any water supplied pursuant to the Water Share purchased nor that any such quality or quantity shall be maintainable in the future.
- 8.3 The Purchaser is not entitled to make any claim or demand to the Authority in relation to the quality or quantity of water supplied pursuant to the Water Share.

9.0 Indemnities

- 9.1 The Purchaser releases and holds harmless the Authority from and against all liabilities, actions, claims, demands, losses, damages, costs and expenses:
- a) in respect to the quality or quantity of water taken (or proposed to be taken and used) and used in accordance with the Water Share issued under this Contract;
 - b) in respect to the effect of the use or cumulative use of water;
 - c) arising from all or any of the following which are caused or contributed to by any act omission on the part of the Purchaser, its servants or agents:
 - (i) the negligent use, misuse or abuse of water;
 - (ii) the use of the irrigation water supplied under the Water Share; and
 - (iii) loss of or damage to property or land as a result of the use of water, whether or not such use was negligent.
 - d) by reason of;
 - (i) the imposition of a condition in respect of the Water Share;
 - (ii) the Purchaser forfeiting the Water Share in accordance with clause 4 of this Contract; or
 - (iii) any decision to be made or discretion exercised by the Authority in respect of the Water Share (including any conditions applied through land and water management plans, seasonal allocations or subdivisions).

10. Privacy

- 10.1 The Authority may give information about the Purchaser to a credit reporting agency before, during or after the provision of credit (including entering into a payment arrangement) to the Purchaser for the following purposes:
- a) to obtain a consumer credit report about the Purchaser, and/or
 - b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.
- 10.2 This information is limited to:
- a) identity particulars - name, sex, address and the previous two addresses, date of birth, name of employer, and drivers license number;
 - b) the Purchaser's application for credit or commercial credit - the fact that The Purchaser have applied for credit and the amount;
 - c) the fact that the Authority is a current credit provider to the Purchaser;
 - d) invoices or accounts which are overdue by more than 60 days, and for which debt collection has started;
 - e) advice that the Purchaser's accounts are no longer overdue in respect of any default that has been listed;
 - f) information that, in the opinion of the Authority the Purchaser has committed a serious credit infringement, that is, acted fraudulently or shown an intention not to comply with the Purchaser's credit obligations;

- g) dishonoured cheques - cheques drawn by the Purchaser for \$100 or more which have been dishonoured more than once.
- 10.3 The Purchaser agrees that the Authority may obtain a consumer credit report about the Purchaser from a credit reporting agency for the purpose of collecting overdue payments relating to amounts owed by the Purchaser.
- 10.4 The Purchaser agrees that the Authority may exchange information about the Purchaser to the Purchaser's credit providers including those named in a consumer credit report issued by a credit reporting agency:
- a) to assess an application by the Purchaser for credit;
 - b) to notify other credit providers of a default by the Purchaser;
 - c) to exchange information with other credit providers as to the status of the Purchaser's credit facility with the Authority where the Purchaser is in default with other credit providers;
 - d) to assess the Purchaser's debt worthiness.
- 10.5 The Purchaser acknowledges that the information exchanged can include anything about the Purchaser's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Water Act.
- 10.6 The Authority may disclose any information held by the Authority in relation to the Purchaser to any person for the purposes related to the collection of overdue payments relating to amounts owed by the Purchaser. This includes, for the avoidance of doubt, contacting a tenant or occupier of land (where the Purchaser is the owner) or contacting an owner of land (where the Purchaser is a tenant or occupier) an notifying them that the Purchaser has overdue payments owing to the Authority.
- 10.7 This Clause 10 applies in relation to amounts owing by the Purchaser to the Authority in relation to the Water Share or other amounts owing by the Purchaser to the Authority after the Water Share has been issued, and not merely payments due under or in relation to this Contract.

11.0 Time is of the essence

Time shall be the essence of this Contract, all stipulated dates and times must therefore be adhered to by both the purchaser and the authority.

12.0 Auction information kit

- 12.1 The Purchaser acknowledges that at the time of registering to be a bidder at the Auction the Purchaser was given a copy of the Water Saving Auction Information Kit.
- 12.2 The matters set out in the Water Saving Auction Information Kit are hereby incorporated into, and form part of; this Contract provided however should there be any inconsistency between any of the provisions of:
- a) this Contract and the Water Saving Auction Information Kit then the provision of this Contract shall prevail.
 - b) this Contract and the Water Act then the provision of the Water Act shall prevail.
- 12.3 The Purchaser acknowledges that it has been advised by the Authority to seek independent legal and financial advice in respect to this Contract.

13.0 Transfer of water

A transfer of either the whole or part of the water to be purchased under this Contract may be approved by the Authority subject to the requirements of the Water Act.

14.0 Notices

A notice, demand, consent or other communication given or made under this Contract:

- a) must be in writing and signed by a natural person duly authorised by the sender;
- b) must either be delivered to the intended recipient by prepaid post or by hand or facsimile to the address or facsimile number in the Schedule or to the address or facsimile number last notified by the intended recipient to the sender;
- c) will be taken to have been received:
 - (i) in the case of delivery in person, when delivered;
 - (ii) where posted, two business days after the date of posting; and
 - (iii) where despatched by facsimile transmission, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages, the correct destination fax machine number and the result of the transmission as "OK",

but if such receipt is on a day which is not a business day or is later than 4.00 pm (Victorian local time) on a business day, the notice, demand, consent or other communication will be deemed to have been given or served on the next business day.

15. Transfer or assignment of contract

The Purchaser may, with the consent of the Authority (which consent shall not be unreasonably withheld), transfer or assign the Purchaser's interest in this Contract prior to the issue of the Water Share to any person who has purchased the Purchaser's land ("**Transferee**"), provided that the Transferee agrees in writing to be bound by the terms of this Contract.

16. Non - merger

Any provision of this Contract which is capable of taking effect after completion of this Contract shall not merge on completion but shall continue in full force and effect.

17. Severance

If any term or condition of this Contract or the application of it to any person or circumstance shall be or become invalid or unenforceable at law the remaining term and conditions shall not be affected and each term and condition in this Contract shall be valid and enforceable to the fullest extent permitted by law.

18. Governing law

This Contract shall be governed by and shall be constructed in accordance with the law of the State of Victoria.

19. Waiver

Any failure by any party to enforce any provisions of this Contract or any forbearance, delay or indulgence granted by either party shall not be construed as a waiver of the rights of the party under this Contract, unless such waiver shall be by notice in writing and signed by the party waiving its rights. Any waiver shall not be deemed to be a waiver for any other or subsequent breaches of this Contract.

20. Authority

A person who executes this Contract on behalf of the Purchaser represents and warrants that he or she has authority to execute this Contract and acknowledges he/she will be personally liable for the due performance of all the Purchaser's obligations under this Contract.

21. Dispute resolution

- 21.1 Should any dispute or difference arise between the parties out of or in connection with this Contract, either party may give written notice of the dispute or difference to the other party. The notice must state that it is a notice under this clause and must specify the dispute concerned.
- 21.2 Following the receipt by a party of a written notice of dispute under Clause 21.1, the parties must attempt to resolve the dispute between themselves.
- 21.3 If the parties fail to resolve between themselves a dispute or difference the subject of a notice of dispute under Clause 21.1, within 5 days of the notice of dispute being given, either party may by notice in writing submit a dispute or difference to an independent expert:
- a) to be agreed upon by the parties; or
 - b) if no such agreement is reached within 5 business days, to an independent expert having experience in the relevant field of the dispute, nominated by the Chairman, Institute of Arbitrators Australia (Victorian Chapter) or his or her nominee.
- 21.4 The costs of the appointment of the independent expert and any costs or fees imposed by the independent expert in reaching a decision on the dispute, will be shared equally by the parties.
- 21.5 Each of the parties agrees to be bound by the decision of the independent expert.

22. GST

The Purchaser acknowledges no GST is payable on this Contract of Sale and will not be entitled to a tax invoice.

water share auction

Contract of sale

Macalister Irrigation District



1300 139 510 www.srw.com.au