

# Terms of Use – Water Manager

[last updated 5 January 2021]

## Our contact information

Name:	BD Water Pty Ltd ABN 86 642 510 334
Address:	Level 2, 11 Mounts Bay Road, Perth WA 6000, Australia
Email:	contact@bdwater.com.au
Website:	www.bdwater.com.au

When we talk about:

- 'us' or 'our', we mean our company as identified above
- 'you', 'user' or 'your', we mean you, the user of, or visitor to, our website
- 'platform', we mean our water trading platform at [app.watermanager.com.au](http://app.watermanager.com.au) including any related App.

By using this platform, you are agreeing to be automatically bound by these terms of use, including our privacy policy, disclaimer and any other legal disclaimers, terms or notices displayed on our platform. 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.

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.

## Feedback, comments or complaints

If you have any questions, please contact using our contact information above and we will usually respond to all enquiries within two business days.

## No unlawful or prohibited use

As a condition of your use of this platform, you warrant that you will not use this platform for any purpose that is unlawful, prohibited by these terms of use or in a manner that is damaging to our business or business reputation.

You may not use this platform in any manner which could damage, disable, overburden, or impair this platform or our related services or that interferes with any other party's use and enjoyment of this platform. You agree not to hack into areas of this platform that are not intentionally made available to you.

You expressly agree not to:

- use the platform in a fraudulent manner (for example you may not impersonate someone else or attempt to sell something you do not own or do not have the right to sell),
- use the platform for your own commercial interests (this might include collating lists or lead information or using the data mapping of available water allocations for a use other than as intended by the platform),
- engage in any internal or external spamming, or other similar actions,
- engage in any unlawful or immoral acts, or acts which are in violation of these terms of use,
- decompile, reverse engineer, or try to copy or imitate this platform or any underlying content.

**Links disclaimer**

This platform may contain links to other websites ('linked sites'). Unless otherwise indicated, the linked sites are not under our control and we are not responsible for the contents of a linked site or any form of transmission received from any linked site. Links are provided to you only as a convenience, and the inclusion of any link does not imply our endorsement of the platform, or any association with its operators.

**Promoted Services - disclaimer**

If we promote third party products or services via our platform it may be because they have provided sponsorship, donations or supported us in some way. You must exercise your own judgment based upon your own personal circumstances before purchasing third party products or services.

**Copyright, trademarks and other intellectual property**

We own, or have the right to use or display, the intellectual property rights in the contents of this platform. You may not use, copy, display, distribute, modify, translate, reformat, incorporate into advertisements or other works, promote, create derivative works, or in any way exploit or allow others to exploit any of our platform content in whole or in part except as expressly authorised by us.

Images and item descriptions posted on this platform by third parties are the responsibility of those third parties and may be subject to copyright. You must seek permission from the third party before using any of their content.

**Permission:** Where material is made available for you to do so, you may access, download, or print material from the platform for your personal use only. Sharing without prior permission and commercial use of any sort is expressly prohibited. You agree not to change or delete any copyright or proprietary notice from materials downloaded from this platform or any site accessible through this platform.

Except as otherwise expressly granted to you in writing, we do not grant you any other express or implied right or licence to use our platform content or our intellectual property.

**Our role**

We provide the platform to facilitate the negotiation and trading of water rights. We are not a broker and do not represent either party in a trade. We are not a party to the trade. You use our platform, including any information or resources on it, at your own risk.

In some limited circumstances we may assist one party in the trade. This assistance is limited to coaching them to be able to use the platform or entering data onto the platform at their request. This assistance does not amount to representing them and we offer no assistance or advice on their intended use or trades.

Where we undertake due diligence or similar investigations in relation to a water licence or allocation, we strive to be as accurate as possible however we make no guarantees about the completeness, adequacy or accuracy of our due diligence and specifically disclaim any liability for errors or omissions and provide no warranty of any kind in relation to the due diligence. We are also not responsible for any errors or delays of the Department of Water and Environmental Regulation.

We are not responsible for:

- the existence, accuracy, suitability or legality of a listing on the platform including the honesty or completeness of information in the listing.
- the behaviour or performance of any user on the platform, including their honesty or intentions.
- the ability of any user to complete a trade they enter into.
- the suitability, legality or enforceability of any resources provided via the platform including any contracts, authorities or other forms or documents made available by us. By making these available, we

are not providing legal, financial or other advice and we recommend you seek your own legal or financial advice as appropriate to your circumstances.

- the completeness or accuracy of information obtained via the platform.
- the completion or accuracy of our investigations or due diligence in relation to a water licence or allocation.

### **Your content**

You warrant that you hold the necessary rights and interests to use any material you add to our platform or social media pages (your content) and that none of your content infringes any third party privacy, confidentiality or intellectual property rights, including copyright and trade mark rights.

By submitting your content to our platform you irrevocably grant to us a perpetual, world-wide, non-exclusive, royalty-free, sub-licensable and transferable licence and right to use your content for our business purposes or providing services to you, now or in the future. We will not use your content for any other purpose. You indemnify us against any claims made for breach of privacy, confidentiality or intellectual property rights in respect of your content.

At our sole discretion we may remove or disable your content if we believe your content to be in violation of our terms of use. We are not obligated to return any of your content to you under any circumstances.

### **Your account**

You may only register for one account (unless authorised in writing by us otherwise). You will enter into additional terms of service as either a buyer or seller at the time you register for your account.

You agree to honestly and completely supply all information requested by the platform to create your account. You agree to update this information if it changes.

By registering an account on the platform, you warrant you are 18 years of age or older and are legally entitled to form binding agreements. If you are registering an account or completing a trade on behalf of a legal entity, you warrant that you have the authority to legally bind that entity.

All transactions that take place on your account are your responsibility, whether you authorised them or not. Accordingly, you should select a secure password and keep it safe, logout of your account when not in use and do not allow your operating system to remember or autofill your password. You should notify us immediately if you suspect the security of your account has been compromised.

If we have concerns with your account or your compliance with these terms of use or service terms, we may, without limitation, with or without notice to you and without being obliged to do so, suspend your account, refuse services or refuse access to trading, terminate your account, remove or edit your content (for example a water licence listing) or provide your information together with our concerns to the relevant law enforcement agency.

### **Identity verification**

To open an account, the platform will prompt an identity verification process. This will occur for individuals (driver's licence or Australian or New Zealand passport) and companies (generally an ACN/ABN cross check and ASIC extract).

Any reference to a buyer, seller or company being 'verified' only refers to that party having completed the verification process. It does not in any way guarantee their identity or, in the case of a company, definitively confirm who the directors of the company are. Verification does not imply that the person or entity is a safe

or trustworthy person or entity to deal with, or that their documents or circumstances have been represented without fraud.

### **Copyright infringement**

If you believe that there is material on our platform that infringes third party intellectual property rights, please contact us using our details above with sufficient information to enable us to determine who is the owner of the intellectual property and to determine if there has been an infringement. If we form the reasonable belief that there has been an infringement, then we will remove it from our platform.

Be aware that you may be subject to liability if you knowingly make any misrepresentations when providing information to us.

### **Security**

While we utilise industry standard measures to maintain the security of our platform, we do not guarantee the security of the platform, our records, or your content. We disclaim all liability for any computer virus or technological problems that we do not intentionally cause or that are beyond our control. You are encouraged to install and maintain up-to-date security software on your computer.

Continuous accessibility to the platform is dependent upon third party services. As a result, the platform may be inaccessible from time to time.

### **Limitation of liability**

We will not be liable to you or any other person or entity for any damages whatsoever arising from your use of this platform in any way, subject to the requirements of applicable consumer law. Specifically, and without limitation, we are not responsible for delays within our business, unavailability of the platform at any time, third party actions, your inability to use the platform or indirect or consequential losses.

Where warranties or obligations are implied by law, you acknowledge and agree that our total aggregate liability is limited, at our discretion, to either the provision of those services again, or to a refund equal to the total amount paid by you to us for our fees and/or commission for the particular services that are the subject of the cause of action, even if those services were provided to you without cost.

This limitation of liability applies to the fullest extent permitted by law and survives any termination or expiration of this agreement or your use of this platform or the services found on this platform.

### **Indemnity**

You agree to indemnify and defend us and hold us, and our officers, directors, employees and contractors, harmless from any claims, demands, losses, damages, liabilities, costs, or expenses (including without limitation court costs, collection costs, and legal fees) arising out of or related to:

- any content you post via this platform,
- your use of the platform including any trade you make on the platform,
- your use, or loss of use, any water allocation, licence or similar, acquired or sold on the platform,
- your unauthorised use of this platform, or products or services included or advertised on this platform
- your breach or violation of these terms of use,
- your violation of the rights of a third party (this includes another buyer or seller using the platform).

### **Applicable law**

This agreement is governed by the laws of Western Australia and you consent to the exclusive jurisdiction and venue of courts of that place, in all disputes arising out of or relating to the use of this platform.

You may provide notice to us through the 'contact us' page on our platform (if available) or otherwise by using our contact details above and sending the notice by email or mail addressed to 'the Directors'. We may provide notice to you via email or other electronic means.

Use of this platform is unauthorized in any jurisdiction that does not give effect to all provisions of these terms of use, including without limitation this paragraph. If you are resident in a jurisdiction where the use of this platform is unauthorized, it is your responsibility to stop using this platform.

**Force majeure**

We are not responsible for any failure or delay (or loss or damage caused by the failure or delay) in the platform, our services or our obligations where the failure or delay is caused by circumstances beyond our reasonable control. This may include for example natural disaster, inclement weather, pandemic or health emergency, sabotage, electronic, telecommunication or other service failures, corruption or attacks, an increase in demand on third party or our own services or the failure by any third party including a bank or financial organisation.

**Relationship**

You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this agreement or use of this platform.

Our performance of this agreement is subject to existing laws and legal process. Nothing contained in this agreement can be used to inhibit our right to comply with governmental, court and law enforcement requests or requirements relating to your use of this platform, or with regard to information provided to or gathered by us with respect to your use.

**Validity**

If any part of these terms of use are determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the terms of use will continue in effect.

These terms of use, together with our privacy policy and any other legal notices or disclaimers displayed on our platform, form the entire agreement between you and us in respect of your use of this platform.

End.