

**PARTICULARS AND CONDITIONS
OF SALE OF SHARES BY TENDER**

MHV WATER LIMITED

The shares described below are offered for the sale by tender on the terms set out in the Particulars and in the conditions of sale annexed.

MHV Water Limited (the “Company”) has been appointed to sell the shares described below (the “Shares”) on behalf of the vendor

Shares on Offer	3,995 M Class Shares
Equals constant 24/7 flow of	39.95 litres per second 24/7 flow (Note 1)
Tender Closing Date	Friday 28 th June 2019, 3pm
Tender Acceptance Date	Tuesday 30 th July 2019
Settlement Date	Thursday 1 st August 2019
Tender Deposit	10% of the purchase price tendered
Interest Rate for Late Settlement	See clause 4.5 of the Particulars.

Note 1: This flow may be restricted based on availability of water to the Company.

CONDITIONS OF TENDER

1. TENDER DOCUMENTS

1.1 The tender documents comprise:

- (a) these Particulars and Conditions of Tender (“Particulars”);
 - (b) the annexed Share Transfer Form; and
 - (c) the annexed Short Form Water Supply Agreement
- (the “Tender Documents”).

1.2 The tenderer acknowledges:

- (a) receipt of a full set of Tender Documents;
- (b) that in the event of any conflict between the provisions of the Particulars and the provisions of the Share Transfer Form then the provisions of the Particulars shall prevail;
- (c) the defined terms contained in these Particulars shall apply.

1.3 In the Tender Documents and these Particulars “the tenderer” means either the person or entity making the tender or the person or entity whose tender has been accepted by the vendor as the context requires.

2. METHOD OF TENDER

2.1 A tenderer wishing to submit a tender shall:

- (a) Complete the details on the supplementary sheet attached to these Particulars and sign the supplementary sheet and these Particulars.
- (b) Complete the Share Transfer Form by completing all fields and signing the Share Transfer Form.
- (c) Complete the Short Form Water Supply Agreement by completing the full and correct name of the purchaser where indicated, and other details, and signing the Short Form Water Supply Agreement.
- (d) provide to MHV Water Limited (the Company) a proposed Farm Environment Plan (FEP) for the property of the Tenderer that outlines the proposed farming activities.
- (e) Deliver the completed and signed Tender Documents and a cheque for the deposit made payable to MHV Water Limited (as agent on behalf of the vendor) in a sealed envelope marked “**Tender for Irrigation Shares**” to Irrigo Centre Limited, 326 Burnett Street, Ashburton 7740 no later than 3.00 p.m. on the Tender Closing Date.

2.2 All tenders must be in writing and signed. Tenders by telephone, e-mail or means other than that stipulated in this clause will not be accepted.

2.3 Referential tenders (i.e. a tender expressed as an amount exceeding any other tender received by a fixed or variable amount) will not be accepted. The tenderer may set a reserve price for the sale of the shares and determine if that reserve price is to be disclosed.

2.4 No material alteration may be made to the Tender Documents.

2.5 Each tender shall constitute an irrevocable offer which will remain open for acceptance, notwithstanding any negotiation under clause 3.4(j), by the Company until 3.00 pm on the Tender Acceptance Date, but without acceptance shall thereupon lapse and be of no further effect.

2.6 Tenders received after the Tender Closing Date for any reason whatsoever will be clearly marked "Late" but may be considered and accepted if the Company sees fit.

3. TENDER EVALUATION

3.1 Tenders will be evaluated by the Board of the Company and details provided to the vendor, with the Board in its sole discretion having the right to determine the successful tenderer and in doing so the Board may take into consideration the best interests of the Company and other shareholders.

3.2 On determining the successful tenderer that tenderer shall then have a period of 4 weeks to provide the necessary Environmental Information. This may include, but is not limited to, a nutrient discharges to ground water calculated using the latest version of Overseer™ in accordance with the Company's consistency standards. If there is any potential increase to nutrient discharge a Farm Activity Variation Application will be required and will need to be approved by the Board.

3.3 On the Board being satisfied that the Environmental Information provided under clause 3.2 is acceptable to the Board and all other policies of the Company are being met and satisfied the successful tenderer will be advised of the decision of the Board and whether there are any other conditions to be satisfied.

3.4 The Company and the Board are not obliged to accept the highest or any tender and reserves the right to:

- (a) reject all or any tenders;
- (b) accept a tender which does not strictly comply with the provision of the Tender Documents;
- (c) waive any irregularities or informalities in the tender process;
- (d) re-advertise the tender;
- (e) amend the Tender Closing Date, the Tender Acceptance Date or any other date in the Tender Documents;
- (f) amend the Tender Documents and any associated documents, by issue of a written amendment notice up to five days before the Tender Closing Date;
- (g) seek clarification of any tender at any time prior to the Tender Acceptance Date;
- (h) consider or reject any non-conforming tender, at the Company's sole discretion;
- (i) suspend or cancel, in whole or in part, this tender process;
- (j) negotiate with any one, or more, tenderer to the exclusion of any other tenderer or tenderers, at any time prior to the Tender Acceptance Date, upon any terms and conditions;
- (k) sell the Shares by private treaty before the Tender Closing Date;
- (l) withdraw some or all of the Shares from sale before the Tender Closing Date; and
- (m) open all or any of the tenders before the Tender Closing Date.

- 3.5 Acceptance of any offer is subject to each of the following:
- (a) any terms imposed by the Company for granting consent;
 - (b) the ability of the Company to deliver the water to the tenderer's property;
 - (c) payment by the tenderer of all costs associated with the delivery of water associated with the Shares including, but not limited to any alterations to scheme races, culverts or other structures deemed necessary by the Company; and
 - (d) the tenderer being able to comply with all statutory and regulatory requirements and Company policies applicable to the provision of water to the tenderer's property; and
 - (e) the tenderer satisfying the requirements of clause 3.2 and this clause.
- 3.6 The Company is under no obligation to check any tender for errors or omissions. Acceptance by the Company of a tender that contains errors or omissions will not invalidate the contract formed by that acceptance.
- 3.7 The failure and/or omission by the Company at any time to enforce or require strict or timely compliance with any provision of the Tender Documents will not affect or impair that provision in any way or the Company or vendor's right to avail the Company or vendor of the remedies it or they may have in respect of a breach of any such provision.
- 3.8 In no circumstances will the Company be obliged to provide any reasons for decisions taken during evaluation of tenders or in respect of any recommendations made as a consequence of the evaluation process.

4. CREATION OF CONTRACT

- 4.1 A contract for sale and purchase of the Shares at the amount of the accepted tender for the Shares shall be created upon communication of that acceptance to the successful tenderer ("the purchaser") by letter, facsimile transmission, or email to the address stated in the tender or to the purchaser's solicitor and on confirmation of any conditions under clauses 3.3 and 3.5.
- 4.2 The Company shall bank the purchaser's deposit cheque immediately upon acceptance of the tender and shall hold such deposit funds on trust for the vendor until the sale process is completed. Settlement shall take place two business days after all conditions have been satisfied.
- 4.3 The Company will return all deposit cheques belonging to unsuccessful tenderers immediately after the Tender Acceptance Date.
- 4.4 The purchaser appoints any director of the Company as the irrevocable attorney of the purchaser for the purposes of signing any of the documents required to settle the sale and purchase of the shares.
- 4.5 In the event that payment is not made by the purchaser on acceptance of the tender, interest shall be payable on the accepted tender price at the 90 day prime commercial bank bill rate plus a margin of 6% calculated daily.

5. VENDOR'S WARRANTIES

- 5.1 Subject to the provisions of clause 7.1 the vendor warrants that it is the legal and beneficial owner of the Shares and as at the Settlement Date, the Shares will be held by the vendor free of all security interests.

5.2 Except as specified in clause 5.1, no warranties or undertakings are given in respect of the Shares. Tenderers are required to verify the same to their own satisfaction.

5.3 Each tenderer acknowledges that its tender is made solely in reliance upon its own judgement and not in reliance upon any representation or warranty made by the Company, the vendor or their agents.

6. TENDERER ACKNOWLEDGEMENTS AND WARRANTIES

6.1 Each tenderer acknowledges that:

- (a) **Agreement to Particulars:** All of the terms and provisions contained in these Particulars are agreed to and shall be applied as determined by the Company and its directors.
- (b) **Information:** While every effort has been made to ensure that any information relating to the Tender Documents supplied by the Company, the vendor or his agents, employees or consultants is correct, such information has been supplied on an indicative basis only. No tenderers will have any claim for compensation or damages upon the grounds that any information so supplied is incorrect, incomplete, inaccurate or misleading.
- (c) **Own Judgement:** Each tenderer relies solely upon its own judgement, after such investigation as it thinks fit, and not upon any representations, warranties or statements made by the Company, the vendor or any agent employee or consultant of the Company or the vendor.
- (d) **No Company or Vendor Liability:** Neither the Company nor the vendor shall be liable for any information provided or for any cost or loss to any Tenderer (or any other person) if their tender is not considered beyond the tendering stage or if this process is delayed or cancelled for any reason whatsoever.
- (e) **No Obligation to Advise:** Subject to any Act or regulation of the New Zealand Parliament, neither the Company nor the vendor will be bound to give any reason for any rejection of a tender or for any suspension or cancellation of this tender process.
- (f) **No Liability:** Neither the Company nor any director of the Company shall be liable for any default by the Vendor or for any direct or indirect consequences or loss arising from that default.
- (g) All references to the Company shall include each director of the Company.

6.2 The tenderer acknowledges that by submitting its tender it authorises the Company and/or the vendor, pursuant to subclause 2 of Principle 2 of Section 6 of the Privacy Act 1993 to:

- (a) Verify with any third party information included with the tender or disclosed to the vendor in connection with the tender.
- (b) To carry out a credit check.

6.3 The Company may publish from time to time the range of prices for sales of Shares and the tenderer agrees that the Company may do so with respect to the sale of the Shares to the tenderer (if successful).

7. ENCUMBRANCES

7.1 Should there be at any time up until settlement has been effected, any security interest or other encumbrance registered against the Shares or any part thereof or injunction or other court order or any other restriction affecting Shares and the vendor is unable, or believes that it will be unable, by the settlement date to remove or obtain a release or satisfaction of

the same, then the Company or the vendor may, in its discretion by notice in writing to the purchaser, cancel the Agreement.

8. MISCELLANEOUS

- 8.1 **Entire Agreement:** The provisions of the Tender Documents constitute the entire agreement between the parties and supersede and extinguish all prior agreements, discussions and arrangements (if any) between the parties and/or any agent to the parties.
- 8.2 **Non-Waiver:** Failure or omissions by a party at any time to enforce or require strict or timely compliance with any provision of the Tender Documents will not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of any such provision.
- 8.3 **Non-Merger:** The agreements obligations and warranties of the parties contained in the Tender Documents in so far as the same have not been fulfilled at the time of possession shall not merge with the giving and taking of title to the Shares.

9. COMMUNICATION

- 9.1 All communication regarding tenders must in the first instance be directed to:

MHV Water Limited
c/- Irrigo Centre Ltd
326 Burnett Street
Ashburton 7740

Telephone: (03) 975 8547

SIGNED by the tenderer(s) named in the Supplementary Sheet

Signature(s)

SUPPLEMENTARY SHEET

1. Tenderer's Details

Name: _____

Address: _____

Telephone number: _____

Mobile phone number _____

Email address: _____

Details of land already under irrigation (please attach a copy of the title(s):

- Address: _____

- Legal description: _____

Proposal for irrigation delivery: _____

Tender Amount \$ _____ (per share) for _____ shares

Total Tender \$ _____

Deposit \$ _____ (10% of purchase price)

2. Tenderer's Solicitor's Details:

Name of firm: _____

Individual acting: _____

Address: _____

Telephone number: _____

Dated this _____ day of _____ 2019

Signed by each of the abovenamed Tenderer/s
