

# **GLEN EIRA CITY COUNCIL ('Council')**

## **CONDITIONS OF USE**

### **TEMPORARY STALL SITE VENDORS**

#### **1. SCOPE**

These Conditions of Use apply to the use of a temporary stall site('Site') by mobile hot and cold food and/or drink vendors, market vendors, information providers and information and activity providers at a community festival or event ('Event') hosted or managed by Council.

#### **2. VENDOR**

In these Conditions of Use, the Vendor means the person or organisation that has submitted an Arts and Culture Events Expression of Interest Form('EOI') for the Event and has been formally approved by Council in writing for the use of a Site for the sale and/or provision of the Vendor's goods and/or services at the Event.

Where the Vendor is an organisation, the person who submitted an EOI is jointly and severally liable together with the organisation to ensure compliance with these Conditions of Use including the payment of any applicable fees.

#### **3. EXPRESSION OF INTEREST AND BOOKING CONFIRMATION**

3.1 The Vendor warrants:

- 3.1.1 It has submitted a properly completed EOI and any further information required by Council is true, correct and complete.
- 3.1.2 Where the EOI is submitted on behalf of an organisation, the individual submitting the EOI represents and warrants that they have full authority to submit the EOI and to enter into these Conditions of Use on behalf of that organisation.

#### **4. GOODS AND SERVICES**

Council engages the Vendor to provide the goods and/or services specified in the Vendor's EOI at a Site to be allocated by Council entirely at Council's discretion and the Vendor must attend and remain at the Event for the duration of the Event.

#### **5. EQUIPMENT**

- 5.1 Unless otherwise provided in this clause 5, the Vendor must provide all equipment as is necessary for the provision of the Vendor's goods and/or services at the Event. Equipment must be:
  - 5.1.1 compliant with any applicable Australian Standards; and
  - 5.1.2 tested and tagged within six months of the date of the Event.
- 5.2 Council may at a further cost to the Vendor provide for the Vendor's use (other than for mobile food and/or drink vendors whose vehicles are registered with <https://foodtrader.vic.gov.au/> and/or whose vehicles are required in order for them to operate) either a three (3) metre by three (3) metre marquee or six (6) metre by three (3) metre site, one (1) trestle table and two (2) chairs which the Vendor must use at the Event. If the Vendor wishes to use its own marquee at the Event, the Vendor must have already made a request to this effect in its EOI and included a minimum of one (1) photograph of the proposed marquee set-up. Council may, acting in its absolute discretion, refuse to allow the Vendor to use its own marquee or require changes to the set-up either prior to the Event or on the day of the Event.

- 5.3 The Vendor acknowledges and agrees that it is not permitted to peg into the ground any equipment or marquee whether Council-supplied or not.
- 5.4 If Council consents to the use by the Vendor of its own marquee, that marquee and any related freestanding equipment must be correctly weighted according to applicable Australian Standards.
- 5.5 Any equipment or items brought by the Vendor to the Event is brought to the Event at the Vendor's own risk and the Vendor warrants that these are safe and appropriate to be used at the Event. All such equipment and items brought to the Event by the Vendor must be removed at the end of the Event.
- 5.6 Council will provide the Vendor with access to power if it is a food and/or drink vendor where possible, and in the event power cannot be provided, Council will advise the Vendor at the time of issuing a written confirmation under clause 6.1.
- 5.7 All LPG gas bottles provided by the Vendor must bear the applicable Australian Standards approved badge. Vendors operating with gas must:
- 5.7.1 comply with the Code of Practice for the safe use of LP Gas at Public Events in Victoria; and
  - 5.7.2 must complete a gas safety checklist at the Event found at [https://www.eb.org.au/wp-content/uploads/2015/11/ESV\\_6ppA5\\_GasSafetyPublicEvents.WEB\\_.pdf](https://www.eb.org.au/wp-content/uploads/2015/11/ESV_6ppA5_GasSafetyPublicEvents.WEB_.pdf); and
- 5.8 Where the Vendor is a food and/or drink vendor, the Vendor must provide an appropriately rated fire extinguisher that is fully charged with a current and stamped service tag. The fire extinguisher must be either new or not older than 12 months, and if new, the Vendor is required to make available to Council on the day of the Event, the receipt of purchase of the fire extinguisher or a copy of it.

## 6. BOOKING, BOOKING FEE AND CANCELLATION BY THE VENDOR

The Vendor acknowledges and agrees that:

- 6.1 receipt of Council's written confirmation that the Vendor has been approved for the Event constitutes a booking of a Site at the Event and the Vendor must then pay the applicable fees (Site fees) and meet the requirements stipulated by Council at Stage 2 of the booking process which is completed by the Vendor on-line in accordance with Council's directions;
- 6.2 submission of the Vendor's EOI and any supporting documentation required by Council constitutes an acceptance of these Conditions of Use on the part of the Vendor and does not constitute a booking of a Site at the Event;
- 6.3 if the Vendor cancels a confirmed booking following receipt of Council's written confirmation under clause 6.1:
- (a) **Cancellation two (2) or more weeks prior to the Event:** the Vendor will be entitled to receive a full refund of the Site fee.
  - (b) **Cancellation less than 14 days prior to the Event:** Subject to Clause 6.4, the Vendor is not entitled to any refund of the Site fees. If fees have not yet been paid, the Vendor will be invoiced for 100% of the applicable Site fee.
- 6.4 Despite Clause 6.3(b), if Council can secure a substitute booking for the Site by another Vendor following the Vendors cancellation, Council will refund the full Site fee paid by the original

Vendor.

- 6.5 At the Vendors request, Council may, at its absolute discretion, agree to provide the Vendor with a credit equivalent to the Site Fee to be applied toward a future Event. This credit may be agreed to even where the Vendor is not otherwise entitled to a full or partial refund under this Clause 6.3. Any such credit must be confirmed in writing by Council and will be subject to any conditions Council considers appropriate, including time limitations for use and availability for future Events.
- 6.6 Notification of a change to a booking or cancellation of a booking must be made in writing by or emailvents Team Leader Arts and Culture, Glen Eira City Council, PO Box 42 Caulfield South, VIC 3162 or events@gleneira.vic.gov.au

## **7. CANCELLATION BY COUNCIL**

Council may at its discretion either cancel the Event or the engagement of the Vendor. In such circumstances Council will give the Vendor as much notice as is reasonably practicable. Council's liability to the Vendor arising from such cancellation is limited to a full refund of the Site fee.

## **8. INSURANCE**

- 8.1 If the Vendor is an individual, company, association, organisation, club or group (whether incorporated or not) and has an Australian Business Number ('ABN'), the Vendor must hold and maintain current public and/or product liability insurance (as applicable) with minimum coverage per event of \$20,000,000 (twenty million dollars) in respect of the provision of the Vendor's goods and/or services at the Event.
- 8.2 The Vendor must submit copies of its certificates of currency for public and/or product liability insurance (as applicable) prior to the Event.
- 8.3 The Vendor is responsible for insuring all equipment or other property it brings to the Site.
- 8.4 If the Vendor is an individual without an ABN, Council may, at the request of the Vendor, and in its unfettered discretion, arrange for the Vendor to be covered under a Council-purchased public liability insurance policy, subject to the policy's terms, conditions and exclusions. The Vendor will be advised whether or not a request for such insurance has been successful prior to the issue of Council's written confirmation under clause 6.1 if applicable.
- 8.4.1 If Council informs the Vendor that their request for such insurance is not successful, the Vendor will need to arrange their own public and/or product liability insurance with minimum coverage per event of \$20,000,000 (twenty million dollars).
- 8.5 Where Council does arrange for the Vendor to be covered under a Council-purchased policy as referred to in clause 8.4 and an incident occurs which may give rise to a claim, the Vendor should in the first instance contact Council's Events Team Leader.
- 8.6 For the purposes of any claim made by a third party against the Vendor, the Vendor acknowledges and agrees that Council's responsibility will only extend to facilitating the lodgement of a claim and that Council will not be obliged to participate in any dispute the Vendor may have with the insurer of the policy referred to in clause 8.4. Council will not under any circumstances either reimburse the Vendor for the payment of any deductible or pay the Vendor a sum equivalent to the amount of any amount denied or reduced under the Vendor's claim.

## 9. INDEMNITY AND LIABILITY

- 9.1 To the extent permitted by law, and without limiting any rights the Vendor may have under Australian Consumer Law, the Vendor (and its employees/staff, agents or representatives, collectively known as the “Vendor”), releases Council (and its Councillors, employees/staff or agents, collectively known as “Council”) from all losses, expenses, claims or damages which the Vendor incurs or is liable for in connection with:
- 9.1.1 injury or death to any person;
  - 9.1.2 damage to, or loss of property;
  - 9.1.3 the exercise by Council of a right under these Conditions of Use;
  - 9.1.4 services provided at the Event, or the Vendors use or occupation of the temporary Site;
- except to the extent that such loss, expenses, claim or damage is caused or contributed to by, the negligent or wilful acts or omissions of Council.
- 9.2 To the extent permitted by law, and without limiting any rights the Vendor may have under Australian Consumer Law, the Vendor indemnifies Council from and against foreseeable losses, expenses, claims or damages which Council incurs or is liable for in connection with:
- 9.2.1 personal injury or death caused or contributed to by the Vendor;
  - 9.2.2 any breach or failure by the Vendor to perform an obligation under these Conditions of Use;
  - 9.2.3 the Vendors use, or occupation of the temporary stall;
- except to the extent that such loss, expense, claim or damage arises is caused or contributed by the negligent or wilful acts or omissions of Council.

## 10. FOOD AND ALCOHOL

- 10.1 The Vendor must be registered with Food Trader at <https://foodtrader.vic.gov.au/> and lodge a statement of trade for the Event.
- 10.2 The Vendor must comply with all applicable obligations under the *Food Act 1984 (Vic)* and the *Australia New Zealand Food Standards Code*. Food must not be prepared, served, or offered for sale at the Event unless in full compliance with those obligations.
- 10.3 *Food Act 1984 (Vic)*.
- 10.4
- 10.5 The sale and/or supply of alcohol at the Event is not permitted unless Council has confirmed the Event is a licensed Event and the Vendor has:
- 10.5.1 obtained any liquor licence required under the *Liquor Control Reform Act 1998 (Vic)* from the Victorian Liquor Commission; and
  - 10.5.2 obtained any permit or other form of written consent from Council, an Authorised Officer or a member of Council staff required under Council’s *Community Local Law 2019*; and

10.5.3 provided a copy of any licence, permit or consent required under this clause 10 to Council at least seven (7) days before the Event Start Date.

10.6 The Vendor is responsible for making its own enquiries to ensure compliance with this clause 10.

## **11. LIAISON**

The Vendor must take directions from Council staff and comply with any Council requirements at the Event.

## **12. BREACH**

Any breach of these Conditions of Use may, at the discretion of Council, result in the Vendor's use of the Site being withdrawn and/or further bookings by the Vendor at this Event or future Council events not being accepted. Council may pursue any other rights it has against the Vendor as a result of the breach.

## **13. BUSINESS PROMOTION AND PERMITTED SIGNAGE**

- 13.1 The Vendor agrees that the promotion of its own business at the Event will be limited to the Site and the immediate vicinity of the Site unless otherwise agreed in writing by Council.
- 13.2 Subject to clause 13.4, permitted Vendor-supplied signage is limited as follows:
  - 13.2.1 marquee signage may be up to three metres in length and up to 30 centimetres high, must hang below the marquee canopy at the front of the marquee and must be attached via cable ties through neatly constructed eyelets;
  - 13.2.2 A3 or A4 size posters may be attached to the marquee frame (which must be robust) and must be attached via cable ties through eyelets in the posters; and
  - 13.2.3 teardrop-style banners may be located at the front of the site and must be professionally printed and weighted according to applicable Australian Standards.
- 13.3 Vendor signage that is not permitted includes:
  - 13.3.1 any form of barrier whether professionally printed or otherwise; and
  - 13.3.2 any form of A-frame or other standing sign (other than teardrop-style referred to in clause 13.2.3).
- 13.4 Signage must not be offensive or inappropriate and must not promote gambling. For the purpose of this paragraph, "gambling" has the same meaning as the *Gambling Regulation Act 2003* (Vic)
- 13.5 Council reserves the right to exclude any Vendor signage at its discretion.

## **14. PHOTOGRAPHY AND VIDEOGRAPHY CONSENT**

The Vendor acknowledges that as part of our Event, you consent to your photograph or videography being taken by our staff or contractors which may be used for promotional purposes for the Event and other future events at Glen Eira City Council.

## 15. COMPLIANCE WITH LEGISLATION

The Vendor must comply with Council's *Occupational Health, Safety and wellbeing Policy*, all relevant Australian Standards and all Acts, Laws, Orders or Regulations in force including Council's Local Law 2019, must obtain all consents, licences and permits required and pay all applicable fees.

## 16. WORKING WITH CHILDRENS CHECK AND CHILD SAFE STANDARDS

Council is committed to creating and maintaining a child safe environment where all children are valued and protected from harm and abuse and will promote a whole of community approach to keeping children safe. All Vendors, regardless of their activities, are expected to prioritise the health, safety and wellbeing of children.

If you are an organisation required under the Child Safety and Wellbeing Act 2005 to implement child safe standards, you warrant that you are compliant with these standards and this legislation. To determine if the Standards apply to you, visit [The Commission for Children and Young People](#).

Where required by law or where specified by Council as a requirement for the Event, the Vendor is responsible for ensuring compliance with all applicable obligations under the *Workers Screening Act 2020* (Vic), including the requirement for a valid Working with Children Check (WWWC) for any person engaged by, or arranged through the Vendor to assist with or participate in the Event. The Vendor must provide evidence of compliance to Council upon request.

## 17. PRIVACY

17.1 The Vendor agrees that it will comply with the Privacy and *Data Protection Act 2014* (Vic) and Council's *Privacy and Health Records Policy* available at: [www.gleneira.vic.gov.au/Privacy](http://www.gleneira.vic.gov.au/Privacy).