

Terms and Conditions for the hire of a Community Venue

1. General Conditions

- a) Council agrees to allow the Hirer to use the Venue for the Event during the Hire Period and the Hirer agrees to pay Council the Hire Charges for the hire of the Venue subject to the terms and conditions of this Agreement.
- b) Subject to clause 1(c), all Hirers must be a legal person or entity. Council reserves the right to ask for proof of legal entity before this Agreement may be finalised. A legal entity is a registered group or individual who has capacity to:
 - (i) enter into agreements or contracts;
 - (ii) assume obligations;
 - (iii) incur and pay debts;
 - (iv) sue and be sued in its own right ; and
 - (v) be accountable for illegal activities.
- c) Any person wishing to hire the Venue who is under the age of 18 years old must have a parent or guardian sign this Agreement and take responsibility for the booking and compliance with this Agreement, and that same person must be available to liaise with Council and supervise the Event throughout the duration of the Hire Period.
- d) Subject to clause 1(c), the person who makes the booking (or the Hirer's representative as notified in writing to Council) is required to be present for the duration of the Event.
- e) All statutory rules, regulations and bylaws applying to the Venue and/or Event shall be strictly observed by the Hirer including but not limited to the Health and Safety at Work Act 2015, the Smoke-free Environments Act 1990, and the Sale and Supply of Alcohol Act 2012.
- f) The Hirer must at the Hirer's expense obtain all licenses, permits and consents that may be required for the Event and the Hirer will provide Council with copies of these at least 14 days before the Hire Period commences and at any other time upon request by the Council. Council has signed this Agreement as the owner/operator of the Venue. This Agreement does not bind the Council in its regulatory capacity in any way, and any consent or agreement given under this Agreement is not an agreement or consent in the Council's regulatory capacity and vice versa. When acting in its regulatory capacity, the Council is entitled to act without regard to this Agreement. For the avoidance of doubt, the Council will not be liable to the Hirer or any other party if, in its regulatory capacity, the Council declines or imposes conditions on any consent or permission that the Hirer or any other party seeks for any purpose associated with this Agreement.
- g) All Community Facilities are designed for general use. The Hirer must consider the suitability of the particular venue for their Event when making a booking. Council does not warrant or represent that the Venue is suitable for the Event or the Hirer's specific purposes in holding the Event, and the Hirer acknowledges that he/she/it has relied on his/her/its own enquiries and judgement in selecting the Venue and entering into this Agreement.
- h) The Hirer must not allow any illegal activities to take place at the Venue during the Hire Period.
- i) The Hirer must contact the Police immediately if there are any safety concerns from a person(s) disorderly behaviour.
- j) Noise levels must be kept to an acceptable level at all times. Any complaints/action taken as a result of noise will be the responsibility of the Hirer.
- k) The Hirer must ensure that a parent or designated caregiver, who is at least 18 years of age, accompanies all children under 10 years of age at the Venue and/or Event.
- l) During the Hire Period the Hirer shall conduct and manage its use of the Venue in an orderly and lawful manner, and shall remain responsible for the conduct of its employees, officers, contractors, agents, invitees and ticket holders and shall ensure that none of them behave in any riotous, offensive or disorderly manner (including drunken behaviour) or in such a manner that is likely to cause danger or annoyance to other members of the public or the Council or damage the property or reputation of the Venue or the Council. The Hirer acknowledges that the Council may eject or refuse admission to any person who fails to behave in accordance with the standards required by this clause.
- m) No alcohol is to be sold, supplied or consumed at the Event without the prior consent of Council. Where that consent is granted the Hirer must obtain a special licence, applications for which are available on request from Whakatāne District Councils website. Applications for any type of special licence must be made at least 20 working days before the Event. The licence must be given to the nominated Venue representative at Council before the Event. The Council or its staff and/or representatives may close any bar and/or cease any supply of alcohol if it

considers that a breach of the Sale of Liquor Act 1989, Sale and Supply of Alcohol Act 2012, or any other legislation, regulation, licence, permit or consent is likely or it is otherwise concerned as to the safety of any person or the security of the Venue or any other property without any liability arising to the Hirer or any person claiming through the Hirer. BYO alcohol of any kind is not permitted at the Venue.

- n) Where the provision or sale of food is undertaken in relation to the Event, the Food and Hygiene Regulations 1974, and/or the Food Act 2014 and its association regulations, and/or all Council requirements must be complied with by the Hirer where they apply.
- o) Nothing in this Agreement creates a landlord – tenant relationship between parties.
- p) All persons signing or accepting this Agreement (whether as an individual, or director or other authorised signatory of another legal entity) shall be bound personally to abide by all of the terms and conditions contained in this Agreement and to fulfil all of the Hirer's obligations under this Agreement as a principal.

2. Bookings

- a) No booking for hire of the Venue is confirmed until both the Hirer and Council have signed this Agreement and the Hirer has paid the Bond (if any). A booking may be offered to other prospective hirers by the Council until such time as it has been confirmed under this clause 2(a).
- b) The Hirer must precisely state the type of activity and Event to take place in the Special Conditions of Hire and use the Venue only for that purpose. The Hirer warrants and agrees that the Event has been accurately described to Council and as set out in Special Conditions of Hire and that the Venue will not be used for any performance or activity that is of an objectionable nature, is in breach of reasonable standards of public decency or is likely to create a nuisance.
- c) The Hirer must use only the area in the Venue that has been booked and confirmed for use by the Hirer.
- d) If you would like to change your booking (times on the same day, contacts, address etc.) you must contact Council on 07 306 0500. It may not be possible for Council to accommodate all requested changes. The Hirer will be notified and must agree to any additional charges and any terms and conditions applying to the grant of the Hirer's request before the changes will be agreed to by Council.
- e) The Hire Period includes Pack In and Pack Out times.
- f) The Hirer must adhere strictly to the confirmed Hire Period and shall ensure that all persons have vacated the Venue by the end of the Hire Period. In addition to the Hire Charges the Hirer will be charged for any hour or part thereof that the Hirer continues to occupy the Venue after the end of the Hire Period whether or not it has obtained Council's consent and without prejudice to the Council's other rights under this Agreement or at law, at the Run on Rate set out in the Special Conditions of Hire. During the run on period, the Hirer will otherwise continue to occupy the Venue on the terms of this Agreement. Failure to comply strictly with the confirmed Hire Period may also result in cancellation of any future booking(s).
- g) Council reserves the right to have officers, staff, and/or representatives present at the Event at any time.

3. Payment

- a) All fees quoted at the time of making a booking are GST inclusive.
- b) Regular Hirers may be invoiced monthly, and payment is due as stated on the invoice. For regular Hirers, Council reviews and sets fees and charges for all Community Facilities annually, such fees and charges to take effect on 1st July each year. The fees are published on the Council website: www.whakatane.govt.nz. Regular Hirers acknowledge that this may result in the Hire Charges increasing on 1st July each year and the Hirer agrees to pay any such increase, despite the fees quoted at the time of the initial booking. If a regular Hirer does not agree to pay the fees apply from 1st July each year the Council may cancel this Agreement without any liability to the Hirer or any third party.
- c) The Hirer shall be liable for the payment of all amounts owing to Council pursuant to this Agreement, whether or not the services of Council are supplied to the Hirer, or to some other person, firm or corporate body at the Hirer's request, and notwithstanding that the Hirer may have incurred all or any part of that indebtedness as agent for any other person, firm or corporate body.
- d) If payment is overdue for a period of 14 days or more, the outstanding amount will be a debt due to Council and may be referred to a debt collection agency or other duly authorised agent of Council for collection. In addition, Hirers may be required to pay in full within 1 month of making their booking.

- e) A bond may be required as a guarantee against potential loss or damage in the amount set out in the Special Conditions of Hire.
- f) Refund of the Bond shall only be made if all obligations under this Agreement are fulfilled by the Hirer, no extra cleaning is required and no damage to the Venue or its contents is sustained on inspection by the Council after the Event, otherwise any applicable costs will be deducted from the Bond and any shortfall will constitute a debt immediately payable to Council.
- g) Council may at its discretion and without prejudice to its other remedies:
 - (i) suspend for such period and subject to such terms as Council in its discretion determines any entitlement to credit given to the Hirer pursuant to this Agreement.
 - (ii) refuse to supply any further services or goods to the Hirer including the Venue hire until the Hirer has discharged all outstanding indebtedness to Council.

4. Additional charges, damages, and security arrangements

- a) Any damage to the Venue must be reported immediately to Council by calling 06 306 0500. Council may invoice the Hirer for any damages or additional charges resulting from the Hirer's use of the Venue as follows. In addition to the Hire Charges, the Hirer may be charged for any:
 - (i) damage to the Venue caused during the Hire Period or by any breach of this Agreement;
 - (ii) theft, loss, damage or destruction of Council property during the Hire Period;
 - (iii) extra cleaning, rubbish removal, repair or reinstatement of the Venue which Council reasonably considers is required after the Event;
 - (iv) costs, losses or expenses that Council incurs due to any breach of this Agreement;
 - (v) unreturned access card(s) or key(s);
 - (vi) emergency services call out for a non-emergency situation, or if an alarm is set off purposefully or through negligence, the full cost of the Fire Service or other security call-outs and alarm resetting; and
 - (vii) costs incurred if the Council is required to call a security guard.
- b) The Hirer will upon demand pay all of Council's reasonable expenses, including but not limited to cheque dishonour fees, debt collection fees and legal costs (on a solicitor/agent/client basis) in relation to the collection of all overdue moneys and/or any breach of this Agreement.
- c) The Hirer will be responsible for ensuring that the Venue is kept secure at all times during the Hire Period. Any costs incurred by the Council as a result of the Venue not being secured properly will be passed on to the Hirer.
- d) The Council may require the Hirer to provide security staff or additional security measures for the Event where any unexpected or heightened risks are identified or perceived by Council (acting reasonably) in relation to the Event, including as a consequence of the nature of the Event, and/or the Hirer's actions or omissions in relation to the Event, or arising from any default by the Hirer under this Agreement (in which case the cost of all such additional security staff or measures shall be met by the Hirer).

5. Cancellation of hire

- a) Council may terminate any booking(s), any Event and/or this Agreement in its sole discretion if it considers:
 - (i) the Event will, or might, contravene any statute, order, regulation, bylaw, rule of law or any other requirements of a public or local authority, or otherwise be in breach of this Agreement; or
 - (ii) that the management or control of the Event is deficient; or
 - (iii) the behaviour of the guests or attendees of the Event is such that it would lead to danger or injury to any person or material damage to any property, including but not limited to the Venue.
- b) Council may cancel booking(s) due to emergency situations and adverse environmental/weather conditions. Council will endeavour to provide an alternative Venue. If the alternative option is not suitable, the Hire Charges and any Bond paid will be refunded.
- c) Council shall be entitled to suspend or cancel all or any part of this Agreement, in addition to its other rights and remedies, in any of the following circumstances:
 - (i) If any cheque tendered to Council in payment of any indebtedness of the Hirer under this Agreement is dishonoured upon presentment.
 - (ii) If the Hirer fails to meet any obligation under this Agreement.

- (iii) If the Hirer ceases trading, is made bankrupt, wound up, dissolved, placed into receivership, statutory management, or liquidation, becomes insolvent, is unable to pay its debts in the ordinary course of business, or is removed, or is likely to be removed, from the register of companies.
- d) If the Hirer cancels the Event, Council will retain the Bond (if any) and the following cancellation provisions will apply. This clause applies on the basis of a genuine pre-estimate of loss to Council as Council may not be able to re-hire the Venue to another Hirer at the same or any price and Council will have taken steps to provide the Venue to the Hirer and it is not intended to operate as a penalty. Where cancellation occurs within:
 - (i) 60 days of the Event, 80% of the Hire Charges is payable; or
 - (ii) 30 days of the Event, 90% of the Hire Charges is payable; or
 - (iii) Less than 30 days prior to the Event, 100% of the Hire Charges is payable.

6. Cleaning, rubbish and lock-up

- a) The Hirer is responsible for ensuring that the hired space in the Venue is left clean and ready for the next user at the end of the Hire Period.
- b) At the end of the Hire Period the Hirer must remove all rubbish off site, and must leave the Venue, including car parks and adjacent areas, in good, clean and tidy order. Additional charges will be incurred if rubbish is not removed off-site.
- c) The Hirer acknowledges the rubbish facilities provided on Council reserves are to meet casual use only and are not intended to cater for organised events, and that the Hirer must remove and manage all waste created by the Event.
- d) The Hirer must return all access keys to the Council within 5 days after the Event (or in the case of a regular Hirer, after the last booked Event).

7. Insurance

- a) The Council does not undertake to arrange for or maintain any insurance cover, property, contents or otherwise, for the Venue or the Event for the benefit of the Hirer.
- b) The Hirer is responsible to arrange for and maintain any insurance cover the Council considers necessary and adequate. That includes any public liability insurance cover which is required for Events to protect the Hirer against claims made by third parties for damage to people or assets.

8. Liability

- a) Nothing in this Agreement is intended to limit or modify any rights that the Hirer may have under the Consumer Guarantees Act 1993.
- b) Subject to clause 8(a):
 - (i) the Hirer will indemnify Council, its officers, employees, and agents against all claims, demands, losses, damages, costs and expenses arising from the Event, the Hirer's use of the Venue, or any breach of this Agreement by the Hirer;
 - (ii) Council will not be liable for the loss of or damage to any of the Hirer's property or any third party's property in or around the Venue. Any equipment/property brought into the Venue is at the Hirer's own risk;
 - (iii) Council will not be liable for any loss or expense that the Hirer incurs if the Council is not able to make the Venue available to the Hirer as a result of any fire, flood, earthquake or similar catastrophic event, seismic or volcanic activity, outbreak of state of emergency, act of God, warlike hostilities, an Act of Parliament, regulation or direction or any strike or industrial action or epidemic (together "Force Majeure Event") which is beyond the reasonable control of Council. Where the Event is cancelled or does not take place in accordance with this Agreement due to a Force Majeure Event then all payments already made by the Hirer will be returned to the Hirer; and
 - (iv) to the fullest extent permitted by law, the Council shall not be liable to the Hirer for any loss arising under or in connection with this Agreement, including in relation to a Force Majeure Event, whether in contract,

tort or otherwise, and in any event, the maximum amount of the Council's liability under or in relation to this Agreement for any loss, damage, claim or expense is limited to the Hire Charges.

9. Health and Safety

- a) The Hirer must ensure that access and egress for residents, businesses or emergency vehicles are available at all times and that the public is not inconvenienced by the Event. This includes public and private access ways which must be kept clear at all times.
- b) The Hirer will comply with the Venue's health and safety policies and procedures and the requirements of the Health and Safety at Work 2015 (and any amendments). In particular, the Hirer will:
 - (i) be prepared for an emergency evacuation;
 - (ii) evacuate the Venue if there is a fire or other emergency and direct all persons to the assembly area;
 - (iii) keep fire and emergency exit doors clear from obstruction at all times;
 - (iv) provide first aid facilities during the Hire Period; and
 - (v) provide a cell phone for emergency purposes.
- c) The Hirer will consult, cooperate and coordinate activities and facilitate engagement with the Council and any other persons (including without limitation all other hirers, users, suppliers, service providers, and contractors to the Venue) to the extent that the parties have overlapping duties in relation to health and safety, including in relation to ticket holders and invitees to the Venue. The Hirer will ensure that during the Hire Period it acts in accordance with and at all times complies with:
 - (vi) the Venue's "house rules" and policies and procedures regarding health and safety and building security and access, including but not limited to evacuation procedures, maximum number of persons at the Venue, no smoking policy, etc; and
 - (vii) all of the Council's directions.
- d) The Hirer will immediately notify the Council of any risk or hazards which the Hirer observes or becomes aware of at the Venue and/or any near miss, notifiable event, incident, injury, illness, or accident it becomes aware of at the Venue whether or not the same involves any equipment or any of the Council's employees. The Hirer will provide the Council with such assistance as may be necessary to conduct any health and safety review or investigation.
- e) The Council will comply with the requirements of the Health and Safety at Work Act 2015 and in particular will:
 - (i) maintain a fit-for-purpose health and safety management system;
 - (ii) train the Council's employees and contractors to do their job safely;
 - (iii) maintain its Venue and equipment appropriately;
 - (iv) ensure that there is appropriate supervision of the Council's employees and contractors to ensure compliance with health and safety requirements;
 - (v) develop procedures to be adopted in cases of emergency;
 - (vi) regularly audit systems and practices against relevant Worksafe NZ Codes or guidelines of best practice;
 - (vii) regularly monitor existing and potential risks and hazards in the workplace and develop and implement appropriate control measures;
 - (viii) implement regular reviews of health and safety management systems and procedures; and
 - (ix) consult, co-operate and co-ordinate activities with the Hirer to the extent that the parties have overlapping duties in relation to health and safety, including but not limited in relation to ticket holders and invitees to the Venue.
- f) During the Hire Period the Hirer must ensure that no firearms, explosives, flammable liquids or other hazardous or dangerous substances (including dry ice, smoke machines, fireworks or pyrotechnics), nor any heavy plant, machinery or other equipment which may cause damage or injury to property or persons are brought into the Venue.

- g) The Venue is a strictly 'no smoking' Venue and the Hirer must strictly adhere to and enforce this policy and the requirements of the Smoke Free Environments Act 1990, and Smoke Free Environments Amendment Act 2003 at all times.
- h) The Hirer must not connect any electrical installation or equipment or fitting to the electricity supply of the Venue without obtaining the prior approval of the Council to such connection or installation and provided always that such installation or connection as approved by the Council is carried out at the Hirer's cost by a suitably qualified and certified person as required by current New Zealand legislation.
- i) The Hirer shall not construct or erect any rigging, scaffolding or other temporary structure or suspend any object or thing from the ceiling or walls of the Venue without obtaining the prior approval of the Council.
- j) Decorations must be approved by the Council before being installed in the Venue. Any approved decorations are to be completely removed by the Hirer as part of the pack-out.

10. Parking

- a) The Hirer shall ensure that no vehicle obstructs access or egress routes in any way, or contravenes any restricted parking signs.
- b) Council cannot guarantee parking availability as it is limited at all Venues.

11. Sports Fields

- a) **Surface and Quality** The Hirer shall take all necessary steps to ensure the grounds are not unduly damaged through inappropriate use by the Hirer. "Inappropriate use" includes use of the grounds when they have been closed by the Council for any reason.
- b) **Goal Posts/Nets** Goal posts and nets are to be provided by the Hirer. The Hirer will erect and remove all goal posts at season start and end.
- c) **Equipment** Any equipment used by the Hirer for training or games is the sole responsibility of the Hirer.
- d) **Ground Markings** Clubs are responsible for arranging and maintaining ground markings during the Hire Period.

12. Miscellaneous matters

- a) No waiver or any breach, or failure to enforce any provision of this Agreement at any time by either party shall in any way effect, limit or waive such party's right to enforce and compel strict compliance with the provisions of this Agreement.
- b) Subject to clause 2(b), this Agreement constitutes the entire agreement, understanding and arrangement (express or implied) between the parties and supersedes all prior and contemporaneous communications and any prior agreements between the parties regarding the subject matter of this Agreement.
- c) The Hirer shall not be entitled to directly or indirectly assign or otherwise dispose of (including by way of subcontract) any of its rights or interests in, or any of its obligations or liabilities under, or in connection with or arising out of this Agreement, except with the prior written consent of the Council, which consent may be withheld in the Council's absolute discretion.
- d) If at any time any part of this Agreement is held by a court of competent jurisdiction to be unreasonable, illegal, invalid or unenforceable for any reason whatsoever, that term will be enforced to the maximum extent permissible so as to affect the parties' intent, and the remainder of the Agreement will continue in full force and effect.
- e) Where the Council collects any personal information in relation to the Hirer, the Hirer authorises the:
 - (i) collection of such personal information;
 - (ii) use of such personal information for the purposes of enabling the Hirer to hire the Venue and for Council and/or the Council to perform this Agreement; and
 - (iii) disclosure of the personal information by Council and/or the Council to such third parties as is necessary for the purposes of enabling Council and/or the Council to administer and manage the hire of the Venue by the

Hirer, and perform this Agreement, including but not limited to recovery of any monies owed by the Hirer under this Agreement.

f) Personal information will be held by Council in accordance with the Privacy Act 1993. Should a Hirer wish to access or request correction of any personal information held by Council, he/she should contact the Council on 07 306 0500 or email information@whakatane.govt.nz

In this Agreement, unless the context otherwise requires:

Agreement means the agreement between Council and the Hirer in regards to the Event and agreed Venue and includes the Special Conditions of Hire, these General Terms and Conditions, the application/booking form relevant to the Event, any attachments to this Agreement, and any confirmation letters/emails from Council.

Venue means the Council owned/operated venue listed in the Special Conditions of Hire and its facilities identified in the application form or the Special Conditions of Hire.

Council means Whakatāne District Council.

Event means the purpose for which the Venue is hired as described in the application/booking form or the Special Conditions of Hire.

Hire Charges means the fee charged for the hire of the Venue only as specified in this Agreement.

Hirer means the person(s) or legal entity named as Hirer in the application/booking form relevant to the Event.

Hire Period means that period during which the Hirer will hire the Venue as specified in the Special Conditions of Hire.