

STALLHOLDER TERMS & CONDITIONS

1. APPLICATION

- (a) By submitting an Expression of Interest (**EOI**) as a Stallholder for the Event, Stallholders are deemed to have accepted these Terms and Conditions.
- (b) Submission of an EOI is used as an expression of interest only and does not guarantee the allocation of a stall site or inclusion of a Stallholder at the Event.
- (c) Council reserves the right to accept or reject any application and Council's decision is final and binding.
- (d) Stallholder and vendor selection is based on product or service suitability for the Event, quality and presentation, variety, environmental sustainability, compliance history, past performance generally, and conformance with current legislative requirements and standards.
- (e) Stallholders are responsible for the provision of their own stalls and/or food vending vehicles (unless otherwise specified by Council).

2. SITE LOCATION, ACCESS AND TRADING HOURS

- (a) Council cannot guarantee site preferences. It is at the discretion of Council to position the stalls in consideration of the overall market design and visitor experience. Placement may be changed at Council's absolute discretion at any time, without being liable for any claim or losses.
- (b) Stall spaces (or site spaces) will be allocated and marked at the site location. Stalls (or food vending vehicles, as the case may be) must fit within the specified space. Encroaching beyond the limits of the allocated stall space or site space will result in one warning by Council. On the second warning the permission to operate at the Event will be withdrawn, and Stallholders must cease operations and otherwise comply with the direction of Council and Event staff on vacating the stall space or site space. Requests for additional space may not be met by Council.
- (c) A detailed schedule for Stallholder bump-in and out will be provided which includes detailed information on designated Stallholder arrival and vehicle access times. Late arrival, or failure to adhere to vehicle access times may result in a withdrawal of a Stallholder's permission to operate at the Event, and the Stallholder will not be issued with a refund of the Stallholder Fee.
- (d) Stallholders must not bring their vehicle into the Event site area at any time during the Event other than during the designated time specified for bump in/out.
- (e) Stallholders are required to operate for the full duration of the Event, unless otherwise directed by Council and Event staff. Stallholders must ensure that their site is staffed during Event hours unless otherwise agreed.
- (f) Stallholder parking on the Event Site may not be available at the Event. Information on this will be provided closer to the Event date.
- (g) Stallholders must comply with any directions by Council, Event staff and security.

3. PAYMENT

- (a) As per Council's Fees and Charges detailed in the Stallholder EOI Form, Stallholder Fees are payable for the Event and will be determined based on the information provided by the Stallholder in the EOI Form. Additional fees and charges may arise if changes are made to the Stallholder requirements.
- (b) If a Stallholder's EOI is successful, Stallholders will be invoiced and required to pay all Stallholder Fees prior to the due date specified by Council. A Stallholder's position at the Event may be withdrawn if payment is not made by the due date.

4. GOODS AND SERVICES

A complete list of products and food items to be sold by Stallholders must be disclosed in the Stallholder EOI Form. No other items may be sold without the written permission of Council. Permission to operate may be withdrawn if this information is not disclosed, is inaccurate or misleading.

5. ELECTRICAL EQUIPMENT

- (a) Power will only be supplied to Stallholders who have indicated a need for power in its Stallholder EOI Form and is subject to additional fees outlined in Council's Fees and Charges. Power usage must not exceed the amount specified in the Stallholder EOI Form.
- (b) ALL electrical equipment and leads must have been inspected and tagged by a licensed electrical contractor, with an expiry date clearly labelled. Leads that have surpassed the expiry date are not to be used, and no electrical leads are to be placed on the ground. All electrical leads must be suitable for outdoor use. If Stallholders do not comply or conform to these conditions, permission for Stallholders to operate at Council's Event will be withdrawn, and the Stallholder will forfeit the Stallholder Fee.

6. LIST OF BANNED ITEMS

Unless otherwise specified by Council, Stallholders must not sell, display or have on site any of the following banned items:

- (a) Weapons of any kind, including, but not limited to:
 - (i) replica guns (including plastic guns, pellet guns, water pistols, capguns);
 - (ii) ornamental copies (e.g. Ninja swords);
 - (iii) knives and swords (including pen knives); and
 - (iv) martial art supplies (e.g. nunchuks).
- (b) Explicit and hard-core t-shirts;
- (c) Fake cigarettes;
- (d) Fuel type fire lighters (e.g. zippo);
- (e) Playing cards (nude or lurid);
- (f) Pressure pack stink gas;
- (g) Drug related goods (including cocaine kits, bongs etc.);

- (h) Alcoholic beverages of any kind;
- (i) Stink bombs;
- (j) Water bombs;
- (k) Silly string;
- (l) Fireworks / crackers;
- (m) Laser pointers;
- (n) Pop downs / throw downs;
- (o) Eight shot caps, strip caps or roll caps;
- (p) Any form of shooting projectile toys (e.g. bow and arrows);
- (q) Glass bottles (drinks can be decanted into a cup); and
- (r) Any other item that Council considers a banned item, acting reasonably.

Council reserves the right to order the removal of any item from a stall which is considered comparable to any of the banned items. Stallholders selling any items detailed above may be asked to leave the Event and the Stallholder Fee forfeited.

7. INSURANCE

- (a) All Stallholders must hold current public liability insurance cover to the value of no less than \$20 million. For those Stallholders selling food and drinks, the policy must be extended to include goods sold under the products liability section of the required public liability policy. A copy of the Stallholder's public liability insurance certificate of currency must be attached to the Stallholder's EOI Form. It is the responsibility of all Stallholders to arrange its own public liability insurance to cover any and all claims arising out of the activities of Stallholders.
- (b) Stallholders must also have workers compensation insurance in accordance with the *Workers Compensation Act 1987* (NSW), comprehensive motor vehicle insurance (for food vending vehicles) and any other insurance it considers necessary or which a prudent stallholder would take out having regards to the nature of the goods and services.
- (c) Applications will not be considered if the relevant Certificate of Currency is not attached.

8. WORK HEALTH AND SAFETY

Stallholders:

- (a) must ensure that, at all times, it complies with all relevant work health and safety legislation (including but not limited to the *Work Health and Safety Act 2011* (NSW), the *Work Health and Safety Regulation 2017* (NSW), the *Workers Compensation Act 1987* (NSW), the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) and the regulations and codes of practice under those Acts;
- (b) are responsible for their own staff, equipment, supplies and materials; and
- (c) must ensure that that all equipment including but not limited to gas appliances and cylinders are compliant with current and all relevant standards;
- (d) must ensure that, as a minimum, a fire extinguisher and fire blanket is located in any vehicle or stall where cooking or heating processes occur; and
- (e) must comply with any emergency evacuation procedures by Council, Event staff and any other authority.

9. FOOD VENDORS

- (a) All food businesses operating as a Stallholder must comply with the *Food Act 2003 (NSW)*, *Food Regulation 2015 (NSW)* and Australia New Zealand Food Standards Code.
- (b) Where food is to be prepared and/or sold, the temporary food stalls shall be constructed and operated in accordance with the NSW Food Authority's Guidelines for Food Businesses at Temporary Events dated June 2016 and any subsequent revision approved by the NSW Food Authority.
- (c) A Food Safety Supervisor shall be appointed to inspect every stall and/or mobile food vending vehicle processing and selling food that is ready-to-eat, potentially hazardous (i.e. needs temperature control) and NOT sold and served in the supplier's original package. Further information can be obtained in the Guideline to Food Safety Supervisor Requirements published by the NSW Food Authority. A copy of the Food Safety Supervisor certificate shall be presented to Council's Authorised Officer upon request.
- (d) All mobile food vending vehicles allocated a stall space shall be constructed and operated in accordance with the NSW Food Authority's Guidelines for Mobile Food Vending Vehicles dated January 2017 and any subsequent revision approved by the NSW Food Authority.
- (e) All food businesses shall ensure that there is a sufficient supply of electricity for food handling activities, hot/cold food holding and heating water. In addition, food businesses shall provide their own facilities capable of delivering a supply of warm and hot running potable water (i.e. safe for human consumption) required for the preparation of safe and suitable food.
- (f) All food vendors must provide their own warm running potable water facilities, in accordance with NSW Health Regulations.
- (g) Council's Authorised Officers may inspect food stalls and mobile food vending vehicles operating at the Event to assess compliance with the *Food Act 2003 (NSW)*, Australia New Zealand Food Standards Code, NSW Food Authority's Guidelines for Food Businesses at Temporary Events dated June 2016, and the NSW Food Authority's Guidelines for Mobile Food Vending Vehicles dated January 2017 and any subsequent revisions approved by the NSW Food Authority.
- (h) Failure to comply with these legislative requirements may result in on-the-spot fines and/or prosecution. Council may also refuse a food stall to trade if any requirements are not met, and the Stallholder will forfeit the Stallholder Fee.
- (i) In accordance with Council's approved Fees and Charges, an inspection fee will apply to each food stall or mobile food vending vehicle inspected by Council's Authorised Officer.

10. ENVIRONMENTAL OBLIGATIONS

- (a) It is the Stallholder's responsibility to remove all material and rubbish from their site by the end of the Event. All Stallholders will need to bring their own garbage bags and take their rubbish away with them.
- (b) Single-use plastic bags or polystyrene packaging are strictly prohibited.

- (c) Stallholders and vendors shall not cause air pollution (including odour), offensive noise or pollution of land and/or water as defined under the *Protection of the Environment Operations Act 1997* (NSW). Failure to comply may result in on-the-spot penalties of up to \$4,000 for an individual and \$8,000 for a corporation per breach (as amended from time to time). Higher penalties may apply if the matter proceeds to Court.
- (d) It is an offence to wash or seep wastewater, oil or rubbish into storm water drains. This offence is punishable with an on the spot penalty of \$4,000 for an individual and \$8,000 for a corporation under the *Protection of the Environment Operations Act 1997* (NSW). Higher penalties may apply if the matter proceeds to court.
- (e) Stallholders and vendors shall not permit the emission into the surrounding environment of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health. Should a nuisance arise, Council reserves the right to require all smoke and odour generating activities to cease.
- (f) Stallholders must not amplify music or spruik using a microphone during the Event.
- (g) Should an Authorised Council Officer or Police Officer request for the sound level to be reduced or stopped, Stallholders and vendors shall comply with this request immediately and for the duration of the Event.

11. WASTE MINIMISATION

Stallholders must use the following as a guide to minimise its waste at the Event as well as all of Council's community events:

- (a) **Avoid Waste**
 - Reduce unnecessary packaging; and
 - Single-use plastic bags or polystyrene packaging is strictly prohibited.
- (b) **Reduce Waste**

Consider other means to serve food if possible, such as a napkin instead of a plate, or a toothpick instead of a fork.
- (c) **Recycle Waste**

Council offers event patrons and Stallholders recycling facilities for certain items. The following items can be recycled in the yellow lid bins provided:

 - Glass bottles and jars;
 - Aluminium, steel and aerosol cans;
 - Milk and juice cartons;
 - Cardboard;
 - Paper or cardboard 'coffee cups';
 - Plastic containers; and
 - Paper that is not soiled with food, oil or any other material.

All other material, including waxed cardboard, plastic wrapping, food, organic waste, and plastic utensils are NOT recyclable at Council events. These MUST be placed in the general waste (red lid) bins, or taken with the Stallholder at the end of the Event for appropriate reuse, recycling or disposal.

Stallholders should sort all recyclable and non-recyclable items on the day of the Event to ensure that all items are recycled correctly and to assist with the clean-up.

12. CANCELLATION AND TERMINATION

- (a) Council agrees to use its best endeavours to provide written notice of cancellation of the Event to the Stallholder with a minimum of seven (7) days' notice.
- (b) If the Event commences and is cancelled due to unforeseen circumstances, through an emergency or any other cause not within the control of Council, Stallholder Fees will not be refunded unless otherwise specified.
- (c) If Stallholders wish to cancel their participation in the Event, it must notify Council of cancellation in writing via e-mail to events@liverpool.nsw.gov.au (or as otherwise notified by Council from time to time). For any cancellations made less than two (2) weeks prior to the Event, the Stallholder Fee will not be refunded.

13. RELEASE AND INDEMNITY

- (a) To the extent permitted by law, Stallholders release and indemnify Council against any liability (whether actual, contingent or prospective), loss, damage, debt, cost or expense (including legal costs and expenses) of whatever nature or description) incurred or suffered by Council in connection with or arising in any way out of the Event and these Terms and Conditions, including but not limited to:
 - (i) any breach by the Stallholder of these Terms and Conditions;
 - (ii) any loss of or damage to Council's real and personal property and any other property caused or contributed to by the Stallholder and its employees and agents;
 - (iii) any accident, personal injury, disability or death,
 - (iv) any negligent act or breach of law by the Stallholder, its employees and agents;
 - (v) any claims made against Council (by any third party) arising from the Stallholders participation in the Event and the provision of its goods and services; and
 - (vi) any actual or alleged infringement of any third party's intellectual property rights, unless caused or contributed to (to the extent of such contribution) by the act or negligence of Council and that of its employees, officers and agents.
- (b) Each indemnity in these Terms and Conditions are a continuing obligation, separate and independent from the other obligations of the Stallholder and remain in full force and effect after the Event. It is not necessary for Council to incur expense or make payment before enforcing a right of indemnity under these Terms and Conditions. Stallholders must pay, as a debt due and payable, on demand any amount it must pay under an indemnity in these Terms and Conditions.

14. MISCELLANEOUS

- (a) **Council's rights preserved:** Stallholders acknowledge and agree that:
- (i) nothing in these Terms and Conditions will in any way affect the unfettered discretion of Council to exercise any of its functions and powers under any law; and
 - (ii) without limiting the foregoing, anything which Council does or purports to do pursuant to its powers and functions under any law or any failure of Council to exercise its functions under any law,
- will be deemed not to be an act or omission by Council and will not of itself entitle Stallholders to make any claim or demand or take any action, suit or proceeding against Council arising out of the subject matter of these Terms and Conditions.
- (b) **Compliance with all laws:** Stallholders must comply with all requirements of legislation and public or other authorities relevant to the matters the subject of these Terms and Conditions and the provision of the goods and services.
- (c) **Consents and Authorisation:** Stallholders must obtain all necessary consents, licenses and authorisations which are required by any relevant authority and necessary to operate and/or trade from their stall or food vending vehicles.
- (d) **Income Generated:** Council will not be held responsible for loss or lack of income generated on the day of the Event, or if any pre-held expectations have not been met. Stallholders warrant that it has not been induced to enter into the EOI and these Terms and Conditions by any express or implied statement, warranty or representation.
- (e) **Images and Videos:** images or videos of Stallholders either submitted by Stallholders or captured by Council during the Event may be used by Council for marketing and promotional purposes. Stallholders expressly give their consent for this use.
- (f) **Subletting Prohibited:** Stallholders are not permitted to share, part with or sublet their stall or the site space allocated at the Event to another business, person or third party.
- (g) **Disrepute:** Stallholders must not do anything which, in the reasonable opinion of Council would bring Council's reputation into disrepute or deemed detrimental to the success of the Event;
- (h) **Limited Relationship:** nothing contained or implied in these Terms and Conditions constitutes a party the partner, agent or legal representative of the other party for any purpose, or creates any partnership, employment, agency or trust. Neither party has the authority to bind the other party in any way;
- (i) **Variations:** Council may vary these Terms and Conditions at any time in its absolute discretion;

- (d) **Breach of Terms and Conditions:** Council may terminate a Stallholder's participation in the Event for any material breach of these Terms and Conditions, and Stallholders will not be entitled to make any claim for any loss or liability whatsoever.
- (j) **Prior Breaches:** the conclusion of the Event does not affect any right in connection with a breach of these Terms and Conditions before then;
- (k) **Continuing Effect:** each representation, covenant and obligation under these Terms and Conditions continue in full force and effect until such representation, obligation or covenant is satisfied or completed;
- (l) **Waiver:** a single or partial exercise or waiver of a right relating to these Terms and Conditions do not prevent any other exercise of that right or the exercise of any other right. No failure or delay by Council to exercise any right or remedy under these Terms and Conditions may be construed or operate as a waiver or be evidence of delay or acquiescence in equity or law in respect of such right or remedy. A waiver or consent by Council of any default or breach of any term of these Terms and Conditions do not constitute a waiver of succeeding defaults or breaches of the same or any other term;
- (m) **Further Assurance:** each party must promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of these Terms and Conditions;
- (n) **Severability:** if any term of these Terms and Conditions or its application to any party or circumstance is or becomes invalid, void, voidable or otherwise unenforceable for any reason, then that term or its application to such party or circumstance is severed from these Terms and Conditions and the remainder of these Terms and Conditions excluding the severed part remains in force and any term which includes a severed part applies to such party or circumstance without reliance on the part severed;
- (o) **Approvals and Consents:** subject to any express provision in these Terms and Conditions to the contrary, Council may give or without any approval or consent to be given under these Terms and Conditions in its absolute discretion and subject to conditions or unconditionally;
- (p) **Governing Law and Jurisdiction:** these Terms and Conditions are governed by and construed in accordance with the laws in force in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.