

TERMS AND CONDITIONS OF TOWN OF PORT HEDLAND FACILITY & RESERVE HIRE

Please read the following terms and conditions carefully. If the Town approves your application for hire, these terms and conditions will apply to the Hire of the Facility.

If the approval is subject to Special Conditions, the Town will provide you with written notice of any Special Conditions which will relate to your Hire.

1. Definitions

Acceptance means written acceptance by the Town of the Hire Application.

Agreement means the agreement between the Town and the Hirer in relation to the Hire, on the terms and conditions of this document.

Associated Persons means:

- a) The employees, agents and guests of the Hirer; and
- b) Any other persons in anyway engaged by or associated with the Hirer (other than employees or agents or the Town).

Bond means the bond required by the Town for the hire of the Facility, as more specially set out in the Confirmation Letter

Facility means the facility the Hirer has applied to Hire, as more specifically set out in the Hire Application Form.

Hire Application means the application completed by the Hirer for the Hire.

Hire means the hire of the Facility specified according to the terms and conditions of this document.

Hire Fee means the hire fee for hire of the Facility, as more specifically set out the Acceptance.

Hire Period means the period of hire, as more specifically set out in the Hire Application Form.

Hirer means the person specified in the Hire Application Form.

Permitted Purpose means the purpose of the Hire specified on the Hire Application Form.

Special Conditions means the special conditions, if any, set out in the Acceptance

Town means the Town of Port Hedland.

2. Grant of Licence

- a) If the Town approves the Hire Application, the Town will grant to the Hirer a license to use the Facility for the Permitted Purpose for the Hire Period, on the terms and conditions of this document and any Special Conditions.
- b) This Agreement does not create any tenancy or other relationship between the Town and the Hirer, other than that of licensee and licensor.
- c) The Hirer must not sub-let any part of the Facility.

3. Payment of Hire Fee

In consideration of the Town agreeing to grant to the Hirer a license to use the Facility, the Hirer must pay the Hire Fee and any other charges required by the Town to the Town 14 days prior to the commencement date

4. Bond

- a) The Hirer acknowledges and agrees that this Agreement is conditional upon the Bond and Hire Fee being paid.
- b) The Town may draw upon the Bond for any cost, loss, expense or damage incurred or payable by reason of any breach of the Hirer's obligations under this Agreement, but prior to doing so the Town will provide the Hirer with written notice to the Hirer of the breach and the amount claimed. If the cost exceeds the Bond the Hirer will be required reimburse the Town for any additional cost, loss, expense or damage within 7 days of any claim by the Town. The Town will determine in its discretion the cost of any damage and/or extra cleaning required.
- c) The Town will repay to the Hirer the balance, if any, of the Bond within 20 working days of the inspection of the facility.

5. Use of the Facility

The Hirer must not and must not suffer or permit a person to -

- (a) (i) use the Facility for any purpose other than for the purpose as specified on the Hire Application Form;
(ii) use the Facility for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (b) do or carry out on the Facility any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Facility anything which causes a nuisance, damage or disturbance to the Town or to owners or occupiers of adjoining properties;

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- (d) do any act or thing which might result in excessive stress or harm to any part of the Facility; or
 - (e) Display from or affix any signs, notices or advertisements on the Facility without the prior written consent of the Town.
Council approval must be obtained before any alterations or additions to playing grounds or associated buildings or facilities can take place.
6. **Keys and Access to Buildings**
- a) If the Town grants access to any building or buildings located on the Facility the Town will provide one set of keys for access to the building or buildings.
 - b) The Hirer must not have any additional sets of keys copied or cut.
 - c) The Hirer must ensure that the building or buildings, and all of the Town's fixtures and fittings, are appropriately secured at all times during the Hire Period. The Hirer will be responsible for any loss or damage to the building, and the Town's fixtures and fittings during the Hire Period, to the extent that any loss or damage was caused or contributed by an act or omission of the hirer.
7. **Hirer's Warranties**
- The Hirer warrants, at the time of entering into this Agreement and at all times during the continuance of this Agreement that:
- a) the Hirer has properly informed itself as to the suitability of the Facility for the Permitted Purpose and has not relied upon any representation or advice of the Town, its employees or agents;
 - b) the Permitted Purpose will not cause any damage to the Facility; and
it has obtained, or will obtain, prior to the Hire Period all necessary authorizations, licenses and consents for the Permitted Purpose.
8. **Responsibility for Equipment and Property**
- The Hirer is responsible for any equipment or property it brings into the Facility including any equipment supplied by a third party and the Town shall have no liability to the Hirer for any loss of or damage to any such equipment or property, unless such loss or damage is caused by the negligence of the Town.
9. **No liability**
- a) The Town will not be liable for loss, damage or injury to any person or property in or about the Facility, except to the extent that any loss, damage or injury was caused or contributed to by an act or omission of the Town.
 - b) The Hirer acknowledges it is responsible to obtain all relevant insurances to cover damage and/or theft to its property and that Town does not take any responsibility for the loss or damage of the Hirer's property, except to the extent that any loss or damage was caused or contributed to by any act or omission by the town.
10. **Damage to the Facility**
- a) The Hirer must report to the Town any damage to the Facility, or any of the equipment, facilities and services provided by the Town, sustained during the Hire Period immediately upon becoming aware of the damage.
 - b) The Hirer must pay to the Town the cost of repairing and making good any damage of the type referred to in clause 7(a) (unless caused by the negligence of the Town, its employees or agents) including the cost of labor and materials and replacement equipment, and must if required by the Town itself repair and make good any such damage.
 - c) The Hirer must pay to the Town costs incurred by the Town in repairing and making good of any such damage.
11. **Return of Facility to Town**
- a) The Hirer and Associated Persons must vacate the Facility and remove all of the Hirer's equipment at the conclusion of the Hire Period and must at the Hirer's expense make good any damage to the Facility caused by the removal of the Hirer's equipment.
 - b) The Hirer must leave the Facility in a clean, safe and proper condition.
 - c) The Hirer must return all keys and security access devices for locks providing access to and within the Facility.
 - d) Where the Hirer fails to remove its equipment, the Town may store such equipment at the Hirer's cost and dispose of such equipment where the Hirer fails to collect such equipment within a reasonable period of time.
 - e) Where the Hirer fails to vacate the Facility within the time prescribed, the Hirer must pay an additional hiring fee equal to 150% of the hourly rate for each hour over time.
12. **Insurance**
- a) The Hirer must effect and maintain with insurers approved by the Town and noting the Hirer and the Town for their respective rights and interests in the Facility adequate public liability insurance for a sum not less than ten million dollars (\$10,000,000) in respect of any one occurrence, unlimited in the aggregate.

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- b) The Hirer must not do or permit any of the Associated Persons to do anything which would render in any way unenforceable against the insurer any insurance effected by the Town or the Hirer.

13. Indemnity & Risk

- a) The Hirer hereby agrees to indemnify, to keep indemnified, and save harmless the Town, its employees and agents, from and against all claims, demands, actions, damages, costs, losses and expenses of any nature whatsoever ("Claims") which may be incurred directly or indirectly by reason of or in relation to the use of the Facility by the Hirer or the Associated Persons, including without limitation, Claims arising out of or in connection with any breach by the Hirer of this Agreement or breach of a third party's intellectual property rights; except to the extent that any Claim arises out of any act or omission of the Town or its employees, agents or contractors.
- b) The Town shall not be liable to the Hirer for any loss of life, personal injury or damage to or loss of property which may be suffered or sustained at the Facility for any cause whatsoever, save where any such loss of life, personal injury or damage to or loss of property results from a negligent act or omission of the Town, its employees, agents or contractors.
- c) The Hirer agrees to occupy and use the Facility at its own risk and releases the Town from all claims and demands of any kind and from any liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Facility, unless caused by an act or omission of the Town (except where acting on instructions of the Hirer).

14. Noise

The Hirer must comply with the *Environmental Protection (Noise) Regulations 1997*, and any conditions imposed by the Town in relation to noise levels.

15. Town's rights

The Town reserves for itself the right:

- a) to have access to all areas of the Facility at all times for the purpose of carrying out its normal functions;
- b) if necessary and applicable, to direct crowd control measures, safety and security systems and procedures; and
- c) to suspend or control the Hire if in the reasonable judgment of the Town, the Hire it is not in accordance with this Agreement.

16. Occasional licenses and consumption of liquor on a recreation reserve or council owned or managed facility

Alcohol may only be consumed on the Facility with the prior written approval of the Town. If a proposed event is to be conducted on a Council reserve, facility or in a public open space, Council will review the application taking into consideration the nature of the function, venue, social aspects, public safety and any other unique features. If approval is considered for consumption of Liquor on a Council Recreation Reserve or Managed Facility the following conditions will apply.

1. Consumption of liquor is not permitted unless an application to consume liquor form has been completed and written approval has been granted by the Director Community Services.
2. Permission to sell liquor must be obtained from the Clerk of Courts by issue of a liquor permit following receipt of written approval from Council.
3. No liquor is to be consumed at junior sports events.
4. Consumption is restricted to one hour prior to and two hours after an approved event or match time and up to a maximum of six hours or otherwise as approved by the Chief Executive Officer. On all occasions extending over three hours food services must be available.
5. No liquor consumption is permitted before 11.00am or after 11.00pm unless approved by the Chief Executive Officer.
6. Consumption of liquor must only be undertaken in the licensed areas identified in the approval, unless otherwise specifically approved by the Chief Executive Officer.
7. Where it is known or anticipated that more than 100 patrons will be in the licensed area then the permit holder is responsible for providing security at a rate of two registered security persons per one hundred patrons. Proof of contract to hire security persons must accompany the application.
8. **Glass containers are not permitted on any recreation reserve unless approved by the Chief Executive Officer and only for special events whereby additional conditions will be in place on the hirer. Products in glass containers may be served (into plastic containers) by bar staff at the bar area.**
9. Up to 10 applications for Occasional Licenses per year for any one club/hirer will be supported for events, fixtures matches or training.
10. On all occasion's bottled water, non-alcoholic drinks and low alcohol products not greater than 3.5% must also be available.

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11. Council will provide accredited Liquor Licensing training for club members on two occasions each calendar year. Club/Associations must have two representatives with accredited training or application to consume alcohol will not be considered. (Effective September 2003)
12. All applicants who are granted licenses or permission to consume alcohol must comply with the Environmental Protection (Noise) Regulations 1997 and take all necessary steps to reduce excessive noise/disturbances, under the Liquor Licensing Act 1988.

Under the Liquor Licensing Act (WA):

- It is an offence to undertake drinking contests, discounted or all you can drink admission tickets.
- Children under the age of 18 years are not permitted into the approved consumption areas unless accompanied and supervised by their parents or legal guardian over the age of eighteen.
- Council may make additional recommendations to the Director of Liquor Licensing that special conditions be imposed on any licence.
- The Liquor Licence permit and the Council approval form must be produced on demand to Council Ranger or Police Officer.

17. Liquor licence

If a license or permit is granted under the Liquor Control Act 1988 for the Hire Period or event, the Hirer agrees to:

- a) comply with any requirements attaching to the license or permit at its cost;
- b) provide a copy of the license or permit to the Town as soon as practicable after the date of grant; and
- c) Indemnify and keep indemnified the Town from and against any breach of the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Control Regulations 1989 or the license or permit or any conditions imposed thereupon for which the Town may be liable as the owner of the Facility.

18. Default

If at any time:

- a) the Hirer commits a breach of any condition of this Agreement;
- b) in the Town's reasonable opinion, there is a likelihood that damage may be caused to the Facility by the Hire; or
- c) there has been a material change in the information provided by the Hirer to the Town;

then notwithstanding any prior waiver, or indulgence granted by the Town to the Hirer, the Town may, after providing a reasonable opportunity to the Hirer to remedy the default, or if in the reasonable opinion of the Town the default is capable of being remedied, terminate this Agreement by giving the Hirer notice in writing, whereupon this Agreement and any licence hereby granted to the Hirer shall be at an end but without prejudice to any right or remedy of the Town for any breach by the Hirer of this Agreement.