Details:

|  |  |  |
| --- | --- | --- |
|  | **School Council's Name & Address** | **Mount View Primary School Council** |
|  | **Stall Holder's Name**  **Stall Holder Product Description**  **Stall Holder’s Email address**  **Stall Holder’s Phone Number** |  |
|  | **Stall Area** | **On synthetic field near Year 5 classrooms** |
|  | **Hire Fee** | **$50.00** (provide school with credit card payment or cash) |
|  | **Permitted Use** | **To display and sell Market Stall holder’s goods** |
|  | **Date and Time of Use** | **Friday 1 October 2023**  **3:30pm – 8:30pm** |
|  | **Insurance** | Public and Products Liability Insurance of $10 million for each event. |
|  | **School Council Representative** | Authorised Officer: **Bianca Gatherum** Address: **Mount View Primary School, Shepherd Road, Glen Waverley** Tel: **9560 0471** Email: **Bianca.gatherum@education.vic.gov.au** |
|  | **Stall Holder Representative** | Authorised Officer: **Bianca Gatherum** Address: Tel: **9560 0471** Email: **Bianca.gatherum@education.vic.gov.au** |
|  | **Special Conditions**  <If additional special conditions are needed, insert details > |  |

Terms and Conditions:

# Hire of Stall Area

### The School Council grants the Stall Holder a right to use the Stall Area, subject to the terms and conditions of this Agreement.

# Hire Fee and Use of Stall Area

### The Stall Holder:

### pay the Hire Fee to the School Council within 14 days of receipt of the School Council’s invoice;

### may use the Stall Area on the date and time listed in Item 6;

### must not use or allow the Stall Area to be used for any purpose other than the Permitted Use;

### acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the School Council regarding the suitability of the Stall Area for the conduct of the Permitted Use otherwise than as expressly contained in this Agreement, or for any other use;

### must at its own cost in all respects observe and comply with all Laws that apply to this Agreement and all directions, notices and requirements (including lawful notices, orders or directions) of any government agency relating to its use and occupation of the Stall Area;

### must keep available for inspection by the School Council upon request, all licences, permits and registrations required for the carrying on of any activity by the Stall Holder in or upon the Stall Area;

### must ensure the Stall Area is kept secure, clean and free from debris and rubbish;

### must not do anything in or near the Stall Area or it its vicinity which is noxious, offensive or a nuisance and not cause any injury or nuisance to neighbours;

### must comply with all Department policies and guidelines which deal with the safety or health of persons on the Stall Area or otherwise under its control;

### must observe fire precautions;

### must at all times exercise due care, skill and judgement and act with the utmost good faith; and

### must not install any signs, fixtures or fittings; and

### will be responsible for the cost of any damage to the Stall Area, or its surrounding areas (including but not limited to any building, fixture, fitting or equipment) if such damage is caused by or contributed to the Stall Holder or the Stall Holder's breach of this Agreement.

# Cancellation or Postponement

### If, for any reason, the Stall Holder is unable to proceed with any date and/or time of use under clause 3 then the Stall Holder must immediately notify the School Council in writing. The Hire Fee will remain payable unless:

#### the Stall Holder gives the School Council 7 days prior written Notice to the relevant date of use under clause 3; or

#### the Stall Area is re-hired for that same period.

### If, for any reason, the School Council is unable to provide the Stall Area to the Stall Holder at the date and/or time of use specified in Item 6 and under clause 3, then the School Council will give the Stall Holder Notice of cancellation or postponement.

### If the School Council provides Notice of cancellation or the Stall Holder does not agree to the proposed postponement, then if the Stall Holder has paid the Hire Fee (whether in part or in full), then the School Council will refund to the Stall Holder that part (of whole) of the Hire Fee paid by the Stall Holder, which the School Council, acting reasonably, represents the unused portion of that amount. Other than the refund of Hire Fee (if any) payable under this clause the Stall Holder will not be entitled to any other payment and/or compensation for the School Council’s cancellation or postponement under this clause.

# Parties’ Representatives

### The School Council and Stall Holder each nominate the person specified in Item 8 as their respective representative (**Representative**) in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement. Either party may nominate a replacement Representative by Notice in writing to the other party.

### A Notice must be in writing, signed by or on behalf of the party giving it and delivered to the Representative of the other party set out in Item 8.

# Requirements For Working with Children and Police Checks

The Stall Holder must ensure that all persons engaged or used by it to work at the Stall Area and/or carry out the Permitted Use under this Agreement:

### if required by the *Working with Children Act 2005*, have undertaken a satisfactory working with children check;

### if required by the School Council, have undertaken a satisfactory police records check; and

### (c**)** have met any additional relevant legal requirements and policies of the School Council, School and/or Department in relation to the suitability of persons to work with children or within the precinct of the School as advised by the School Council.

# Insurance and Release

### The Stall Holder must take out and maintain the insurances set out in Item 7 in force during the Agreement.

### The Stall Holder must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.

### The Stall Holder will occupy, use and keep the Stall Area at the risk of the Stall Holder and releases, to the fullest extent permitted by Law, the School Council and its Associates from all Claims and demands of any kind for or resulting from any accident, damage, loss or injury occurring in or on the Stall Area, except to the extent that any damage, injury or loss is caused by the negligent or unlawful act omission or default of the School Council.

# Indemnity

### The Stall Holder must indemnify and keep indemnified the School Council and its Associates from and against all Claims that the Stall Holder or its Associates suffer or incur in respect of or arising from:

#### any negligent act or negligent omission of the Stall Holder;

#### any loss, injury, illness or damage to persons (including death) including any member of the public or any third party to the extent it is caused by the act or omission of the Stall Holder;

#### any loss of or damage to property of any kind to the extent it is caused by the act or omission of the Stall Holder; or

#### the Stall Holder's breach of this Agreement.

### The Stall Holder will not be liable under the indemnity in clause 7(a) to the extent that a Claim results from any fraudulent, negligent or deliberate act or omission of the School Council or its Associates or any breach of this Agreement by the School Council or its Associates.

# Default and Termination

If the Stall Holder fails to pay the Hire Fee on the due date or fails to perform or observe its obligations (whether express or implied) under this Agreement, then, without limiting any other right of action or remedy of the School Council in respect of any prior breach of any of the Stall Holder's covenants, the School Council may, by Notice in writing to the Stall Holder:

### remedy the breach or default at the cost of the Stall Holder; and/or

### terminate this Agreement.

# Stall Holder's Obligations on the Expiry or End of Agreement

### At the expiration or the earlier determination of this Agreement, the Stall Holder must remove all its property from the Stall Area and ensure that the Stall Area is in a condition consistent with the requirements in this Agreement.

### The expiry or termination of this Agreement does not affect:

#### the School Council's rights in relation to a breach of this Agreement by the Stall Holder before the expiry or termination; and/or

#### the Stall Holder's obligation to make a payment under this Agreement for periods before the expiry or termination.

# Special Conditions

### Any special condition set out in Item 10 binds the parties. If there is an inconsistency between a special condition in Item 10 and any other provision of this Agreement, the special condition prevails.

# GST

### In this clause, expressions set out in italics have the same meaning as those expressions in the GST Act.

### An amount payable under this Agreement by a party to the other party, in respect of a supply which is a *taxable supply*, represents the GST exclusive value of the *supply*.

### The party who receives a *taxable supply* under this Agreement from the *supplier* must, upon receipt of a *tax invoice* from the *supplier*, pay GST to the *supplier* in addition to the GST exclusive value of the *supply*.

# General

### The School Council may set off against any sum owing to the Stall Holder under this Agreement any amount then owing by the Stall Holder to the School Council.

### This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

### The Stall Holder must not assign any right under this Agreement without the prior written consent of the School Council.

# Definitions

In this Agreement, unless the context otherwise requires:

**Agreement** means this agreement and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

**Associates** means any officer, employee, agent, delegate, contractor, subcontractor, consultant, advisor, invitee, Stall Holder or servant to the extent that such person or entity is performing an act or a function directly related to the Agreement.

**Claim** includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding and right of action.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

**Hire Fee** means the amount specified in Item 4.

**Item** means an item of the details section of this Agreement.

**Law** means:

### the law in force in the State and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and

### ordinances, regulations and by-laws of relevant government agencies.

**Notice** means a notice, consent, approval or other communication given under this Agreement.

**Permitted Use** means the permitted use of the Stall Area as specified in Item 5.

**School** means the school that the School Council represents and within which the Stall Area is located.

**School Council** means the school council set out in Item 1 and includes, where appropriate, its employees or agents or other authorised persons.

**Stall Area** means part of the School described in Item 3.

**Stall Holder** means the person or entity set out in Item 2 and includes, where appropriate, its employees or agents or other authorised persons.

# Interpretation

Unless expressed to the contrary, in this Agreement:

### 'includes' means includes without limitation;

### no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

### a reference to:

#### a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

#### a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

#### any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

#### if the date on or by which any act must be done under this Agreement is not a business day, the act must be done on or by the next business day.

**Executed as an agreement**

**School Council**

**Date of signing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |  |
| --- | --- | --- |
| **Signature of President** |  | **Signature of Witness** |
| **Name of President (print)** |  | **Name of Witness (print)** |

**Stall Holder**

**Date of signing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |  |
| --- | --- | --- |
| **Signed** bythe **Hirer** in the presence of: |  |  |
| **Signature of witness** |  | **Signature of Hirer** |
| **Name of witness (print)** |  | **Name of Hirer (print)** |