

GENERAL TERMS AND CONDITIONS

relating to the use of Parks, Open Spaces, Highways, Car parks and the Coastal Park

1 Definitions

- 1.1 “Conditions” : means these terms and conditions which shall form part of the contract between the Council and the Hirer.
- 1.2 “Council” : means The District Council of Folkestone & Hythe and includes its successors in title.
- 1.3 “Council's Officer” : the Council's Head of Communities for the time being or any other officer of the Council instructed by him/her.
- 1.4 “Refundable Deposit” : means the amount paid as a security to ensure the protection of the Council's land and property. To be used in part or full as required to pay for the costs of any required remedial works. Any remaining Refundable Deposit to be repaid
- 1.5 “Due Date” : means 28 days prior to the commencement of the Event.
- 1.6 “Event” : means the purpose for which the Venue has been booked.
- 1.7 “Hire Charge” : means such figure as is agreed between the Council and the Hirer in respect of the hire of a Venue for the proposed Event, payment of which will be confirmation of the Hirer's agreement to the Conditions in force at that time.
- 1.8 “Hire Period” : means the period of time during which the Event will be held at the Venue as mutually agreed in writing by the Hirer and Council's Officer.
- 1.9 “Hirer” : means any individual, group, company or organisation (including any third party representatives) who approach the Council to book the Venue for the purposes of holding a proposed Event and such terms shall include the Licensee referred to in the event site license.
- 1.10 “Venue” : means the location owned or managed by the Council, booked for the Event, which shall for the avoidance of doubt include all immediate and surrounding areas open to the public, used by the Hirer and those attending the Event for access to and from the Land.

2 Payment

- 2.1 Payment of the Hire Charge and any Refundable Deposit must be made in full prior to the Due Date. If payment is not received the Council reserves the right to cancel the booking with immediate effect.
- 2.2 The Hirer will be liable for the full cost of the provision of any services (where available) by the Council, e.g. electricity, water, marking of pitches etc over and above the Hire Charge for the Event.

3 Refundable Deposit

- 3.1 The Refundable Deposit must be paid to the Council no later than the Due Date and shall be held on trust by the Council throughout the duration of the Event.

3.2 Following the conclusion of the Event the Refundable Deposit (less any deductions made in accordance with clause 3.3 below) shall be repaid / returned to the Hirer within 28 days. If the Refundable Deposit cannot be returned within this timescale the Council shall write to the Hirer setting out the reason for this delay.

3.3 In the event of any damage or loss whatsoever being caused or incurred to

3.3.1 the Venue, which shall include malicious damage, unintentional loss (eg. the loss of keys) and other such similar incidents;

3.3.2 the land and or any adjoining land owned by the Council, as a direct result of the Hirer's occupation and or use of the Venue, land and or adjoining Land then;

the Council shall at its sole discretion and in all cases acting reasonably be entitled to use the Refundable Deposit to offset the cost of repairing, reinstating and or undertaking any works required to return the Venue and/or the areas mentioned in clause 3.3.2 to the same or similar condition that they were in prior to the commencement of the Event and subsequently recover from the Hirer all additional sums required in excess of the Deposit and this additional cost shall be a debt due from the Hirer to the Council.

4 Refusal of Booking and Cancellation

4.1 The Council reserves the right to;

4.1.1 refuse any application for the hiring of a Venue without being required to give any reason for such refusal.

4.1.2 cancel any booked event due to poor weather or unsuitable ground conditions.

4.1.3 withdraw permission to use the Venue at any time up to and including the day of the Event.

4.1.4 immediately terminate this Agreement if the Hirer or any person has offered, given or agreed to give any gift or consideration of any kind as an inducement or reward for doing or not doing something or for showing favour or disfavour in relation to this or any other agreement with the Council? or shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 (once that Act is in force), or shall have offered or given any fee or reward to any officer of the Council which if accepted is or would be an offence contrary to s.117 Local Government Act 1972 or any amendment or re-enactment thereof;

4.1.5 immediately terminate this Agreement if the Council is of the opinion that the Event will or is likely to compromise public health or safety; or

4.1.6 terminate this Agreement if at any time the Hirer fails to comply with any of the terms and conditions of the Agreement and having been notified of such failure, continues to act (in the reasonable opinion of the Council's officer) in breach of the terms and conditions of the Agreement.

4.2 If the booking is cancelled by the Council, the Council will use reasonable endeavours to give the Hirer the maximum practicable notice but shall not be liable for any additional expense incurred or losses sustained by the Hirer as a result of the cancellation provided in all cases the Council has acted reasonably.

4.3 Cancellation by the Hirer of a booking must be in writing and the effective date will be the receipt of such information by the Council's Officer.

4.4 On cancellation of the booking by the Hirer (without at least seven (7) days notice) or in circumstances where the Hirer does not take up their commitment for any reason or fails to notify the Council's Officer in writing of their intentions, then the Hirer shall forfeit and will be liable to the Council for the whole of the Hire Charge (if any) subject to the discretionary power of the Council's Officer to vary this provision in appropriate cases.

4.5 Under the Equality Act 2010, any event that will or may cause (either directly or indirectly) discrimination, harassment or victimisation will be refused (please refer to the Council's Equality & Diversity Policy).

4.6 Substitution and amendments affecting the nature of the booking must be notified in writing to the Council's Officer who reserves the right either to cancel the booking or amend the Hire Charge as he/she considers appropriate.

4.7 The Council accepts no responsibility for the non-arrival of any application forms, supplemental information, remittances or notices of cancellation.

5 Emergencies

5.1 The Council shall have the right to cancel any booking forthwith in the event that the Venue is affected by an emergency of any kind.

6 Use of the Venue

6.1 The Hirer shall keep the Venue clean and tidy and shall ensure that the Venue is regularly litter picked during the Event.

6.2 All litter and refuse generated by the Event shall be removed from the Venue by the Hirer.

6.3 The Hirer must at all times take good care of the Venue and will be responsible for any damage to the Venue or any part of it or to any equipment or other property of the Council whether forming part of the hire or not.

6.4 The property of the Hirer and the Hirer's agents must be removed at the end of the Hire Period and the Council accepts no responsibility for any property left on at or within the Venue before, during or after the Hire Period.

6.5 Without prejudice to clause 3.3, if the Hirer fails to perform any of its obligations set out in Clauses 6.1- 6.3, then the Council reserves the right to perform any such obligations on the Hirer's behalf and to recover any costs incurred by the Council in the performance of such obligations from the Hirer.

6.6 The Hirer is responsible for:

6.6.1 the administration, organisation and running of the Event and for having sufficient stewards and officials to fulfill these Conditions, each of whom are;

(a) aged over 16;

(b) fully and properly trained;

(c) fully briefed on all relevant health and safety issues;

(d) properly supervised and controlled;and

6.6.2 the Hirer is responsible for the supervision and control of Event participants, officials, visitors and spectators;and

6.6.3 the Hirer is responsible for ensuring that children and vulnerable adults are safeguarded. In all cases stewards/marshals or any person(s) (whether professional or volunteers) who will be responsible for the direct supervision of children or vulnerable adults during any Event must, in accordance with best practice, be subject to an enhanced disclosure check through the Disclosure and Barring Service.

6.7 The Hirer shall not without the Council's Officer's prior written consent;

6.7.1 be permitted to remove or obscure Council notices displayed on, in or near the Venue;

6.7.2 excavate or drill pinning holes into the Venue;

6.7.3 interfere with or make any alteration to the layout or arrangement of the Venue;

6.7.4 interfere with or attach anything to any item of street furniture or park furniture;

6.7.5 permit the operation or release of any high flying object. The Hirer is also responsible for obtaining the consent of the Civil Aviation Authority and the Director of London Ashford Airport (colloquially known as Lydd Airport) as appropriate;

6.7.6 bring into the Venue any article of an inflammable or explosive character or that produces an offensive smell, or CFC or any oil, electrical, gas or other apparatus;

6.7.7 bring, place or erect any sign furniture, fitting or structure nor place or fix any additional or decorative lighting in or on any parts of the Venue;

6.7.8 allow any collections (whether for charity or otherwise), games of chance, sweep stakes, lotteries or gambling of any kind to be conducted at the Venue. The Hirer must ensure that they have appropriate permission and licences in this regard;

6.7.9 allow any bonfires at the Venue.

6.7.10 use any public address system (including handheld devices and air horns) at the Event.

6.7.11 allow the sale of alcoholic drinks at the Venue. It is the responsibility of the Hirer to ensure that all permissions are given by the Council's Officer under license, and that all other licences are in place.

6.8 The Hirer shall not

6.8.1 allow at the Event any exhibition, performance or form of entertainment in which animals are or might be harmed, endangered or put at any risk by either the Hirer or the animals participation in the Event;

6.8.2 offer as prizes on any sideshows attractions, tombola stalls or any other such games of chance any item or items (including live animals, such as gold fish) which may cause offence to the public or contravene any statute, rules and or regulations.

6.9 The Hirer shall ensure that:

6.9.1 any unwanted liquids are removed from the Venue and not disposed of either into the sewage system or the Venue;

6.9.2 no vehicles are parked or driven across any public footpath located within the Venue;

6.9.3 pedestrians are allowed unrestricted access along any public footpath located within the Venue and where applicable, ensure that all users have unrestricted access to the permanent public toilet facilities located within the Venue.

6.9.4 no noise nuisance shall be caused to occupiers of properties surrounding the Venue or users of the immediate surrounding area of the Venue.

6.9.5 they obtain all necessary consents and approvals for the use of generators at the Event provided that where such approval is granted the Hirer must ensure that any generators permitted are operated in a safe manner and are segregated from the public or are protected by suitable covers or barrier, so as to prevent access by members of the public to them.

6.10 In circumstances where the Council has agreed that the Venue shall be used for a small scale fun fair then the Hirer shall;

6.10.1 supply full details of all side shows and rides prior to the due date and shall comply with and ensure that the operators of the rides comply with guidance published by the Health and Safety Executive, and all other statutory Bodies.

6.10.2 ensure that each ride has a valid Independent Safety Certificate which shall be produced to the Council's Officer for inspection prior to the ride or equipment being operated.

6.10.3 provide evidence of the Hirer's membership of the Showmen's Guild of Great Britain or such equal or equivalent accreditation as required by any other EU Member State.

6.11 Unless otherwise agreed in writing by the Council's Officer, the Event must cease at the agreed times and all clearing up operations must be completed by the end of the Hire Period.

6.12 The Council reserves the right to require the Hirer to provide at his/her own expense temporary sanitary facilities as deemed reasonable by the Council's Officer.

6.13 It is the responsibility of the Hirer to liaise with the Council's Highways Engineer, Kent Highway Services and the Police regarding the impact the Event may have on traffic arrangements within the vicinity of the Venue and the Hirer agrees to comply with any subsequent requirements of the Council's Highways Engineer, Kent Highway Services and or Kent Police regarding traffic management.

6.14 Where it has been necessary to make a road closure order the Hirer shall ensure that the road closure equipment is not moved or interfered with in any way and shall at all times maintain and be responsible for the integrity of the closure.

6.15 The Hirer agrees that where the Venue is to be used during the hours of darkness then he/she will provide appropriate lighting to cover all areas to which the public are admitted or have access provided that all flood lighting temporarily erected at the Venue shall be angled in such a manner so as not to shine into any window of neighbouring properties thereby causing any nuisance or annoyance to the occupiers therein.

6.16 All necessary licences required for any of the proposed activities forming a part of the Event must be obtained by the Hirer and copies thereof provided to the Council's Officers before the Due Date.

7 Right of Entry

7.1 Authorised Council officers or elected members of the Council (who are acting in their official capacity) shall be permitted entry to the Venue at all times during the Hire Period.

7.2 The Council reserves the right to refuse admission and to remove any person from the Venue and the Hirer shall have no right to object.

7.3 The Council reserves the right to fix a maximum limit for the number of persons attending the Event.

8 Assignment

8.1 The booking shall be personal to the Hirer and the right to use the Venue shall not be sublet, assigned or otherwise transferred.

9 Event Suitability

9.1 In all cases the Event must be fit and appropriate for a community audience being held on Council owned land.

9.2 In all cases, organisers of the event must ensure it will not cause discrimination (either directly or indirectly) or disadvantage and that equality issues have been taken into consideration in the preparation of the event (please see the council's Equality & Diversity Policy for guidance).

10 Prohibition

10.1 The Hirer shall not stage or engage in any activities that might be deemed to be ancillary to the main purpose of the booking, e.g. catering, stalls, raffles and any other fund raising/income earning activities without the prior written consent of the Council.

11 Broadcasting and Television

11.1 The Hirer may not carry out, allow or permit to be carried out any professional photography, filming, video recording, taping, television or radio broadcasts or any other recording of any kind of the Event during the Hire Period without the prior written consent of the Council's Officer.

11.2 If such consent is given, the Council reserves the right to be a party to any negotiations and the terms and conditions of any agreements reached and to share any income and publicity derived there from.

12 Advertisements

12.1 No advertising material may be issued nor tickets sold until such time as the Hire Charge has been received and processed by the Council and a binding agreement has been entered into.

12.2 The Council reserves the right to cancel an event where the Hirer is found to have contravened the Town and Country Planning (Control of Advertisements) Regulations 2007 or any amendments or variation thereto may be deemed a reason for the cancellation of a hiring or series of hiring.

13 Fly Posting

13.1 It is illegal to erect advertisements within the district of Folkestone & Hythe without prior consent/permission from the Council. Advertisements erected without such consent will result in removal of the advertisements, cancellation of the event and/or licenses or prosecution.

14 Permits and Licences

14.1 The Hirer shall ensure that any licence, permit or other consent which may be required is obtained, whether from the Council or otherwise, before the Event may take place and shall, where requested, produce to the Council on demand copies of such licence, permit or consent. If any such licence, permit or consent has not been obtained, the Council reserves the right to cancel the booking forthwith.

14.2 When promoting the Event, the Hirer will be responsible for exhibiting all necessary permits during the Event.

14.3 Nothing shall be done by the Hirer that shall or may contravene the terms and conditions of any licence (e.g. Public Entertainments Licence), permit and /or licences or consents issued in respect of the Venue.

14.4 Nothing shall be done by the Hirer that shall or may contravene the terms and conditions of any Restrictive Covenants and/or Byelaws.

15 Health and Safety

15.1 The Hirer agrees to undertake all necessary risk assessments for the Event and to ensure that all participants and contractors comply with all relevant health and safety legislation or any other guidelines, relevant thereto at all times during the Event and while accessing, vacating, preparing and clearing the Venue for the Event.

15.2 The Hirer agrees to risk assess and record revised arrangements including any revisions made during the Event and or the Hire Period.

15.3 Where appropriate, the Hirer shall provide at their expense First Aid services at the venue for the duration of the Event and demonstrate to the Council's Officer that an adequate plan is in place to deal with emergencies which may occur.

16 Indemnity and Insurance

16.1 The Hirer is to have in force throughout the Hire Period a policy of Public Liability Insurance effected with a reputable insurance company or with underwriters at Lloyds covering the Hire against third party risks for a sum of not less than £5 Million, and will produce to the Council prior to the Hire Period evidence of such policy.

16.2 The Council will not be liable for any loss due to any breakdown of machinery, failure of supply of electricity, leakage of water, fire, government restriction or act of God which may cause the Event to be temporarily closed or the hiring to be interrupted or cancelled.

16.3 The Council will not be liable for the death of or injury to any person attending the Event, or for any losses, claims demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Hirer in the exercise of the rights granted by the Agreement, except where such death, injury or loss is due to the negligence of the Council.

16.4 The Council will not under any circumstances accept responsibility or liability in respect of any damage to or loss of any goods, articles or property of any kind brought to or left at the Event either by the Hirer for his own purposes or by any other person, or left or deposited with any officer or employee of the Council.

16.5 The Hirer will indemnify the Council against all such liabilities as are mentioned in this Condition

17 Catering

17.1 No catering shall be undertaken during the event at the Venue without the prior written consent of the Council's Officer.

17.2 Where such consent is given pursuant to clause 17.1 the Hirer must ensure that they comply fully with the requirements of the Food Safety Act 1990, the Food Hygiene (England) Regulations 2006 (and any amendments thereto), the appropriate EC Food Hygiene Regulations; and comply with all instructions given by the Council's Officer.

18 Commercial Traders

18.1 No commercial traders will be permitted to trade at the Event without the prior written consent of the Council's Officer.

19 Property not Removed

19.1 The Council may remove, store or dispose of any property that is left by the Hirer at the Venue after the Hire Period.

19.2 Where any item of significant value warrants being stored the Council reserves the right to recover any costs associated with removal, storage and disposal of the property by retention of all or part of the refundable deposit as is necessary.

19.3 The Council accepts no responsibility for any damage to or theft of property during its removal or storage.

19.4 The Council shall be entitled to dispose of any property left at the Venue not claimed by the Hirer within 28 days of the end of the Hire Period provided that the Hirer has received notice that the item is being stored by the Council, in such a manner as it thinks fit.

19.5 For the avoidance of doubt the Council is entitled to keep the proceeds of the sale of items disposed of.

20 Variations

20.1 The Council reserves the right to vary the content of this agreement at any time.

21 Special Conditions relating to Events held at The Lower Leas Coastal Park and Amphitheatre ("the Park")

Without prejudice and in addition to the Conditions referred to above, these Special Conditions shall also apply to the Park

21.1 Premises Licence

- a. The Park is covered by a full premises licence covering the land from the eastern entrance (adjacent to the Leas Lift) to the Toll House barrier at the western end of the Park under the Licensing Act 2003. The Act permits licensable activities from Monday-Saturday 09:00hrs-23:00hrs & Sunday 09:00 hrs- 22:30hrs. Licensable activities include: films, live music, making music, performance of dance, plays, recorded music, provision of facilities for dancing, and any similar regulated entertainment.
- b. Details of the terms of the premises licence including the extent of the licensed areas can be obtained from the Council's Officer prior to the Event taking place.

21.2 Financing the Event

- a. The Hirer shall be responsible for all costs associated with the event.
- b. No event shall be subject to an entry fee and all events must remain free to the public at all times.
- c. Nominal fees may be levied for participation in pre-notified activities subject to details of the nominal fee requiring the Council Officer's written consent. In making these decisions the Council's Officer shall take into account any restrictive covenants affecting the Venue.
- d. With the Council's written consent the Hirer may receive donations from the audience, but does so without coercion or request of the audience.

21.3 Site Visit

- a. The Hirer is required to attend a site visit in the presence of the Council's Officer to discuss their application, agree any amendments and assess any requirements they may have regarding the use of the Park prior to the submission of their final Application Form, even if they have used the Park before.

21.4 Staffing

- a. In all cases stewards/marshals (whether professional or volunteers) who will be responsible for the direct supervision of children during any Event should, in accordance with best practice, be subject to an enhanced disclosure check through the Disclosure and Barring Service.

21.5 Vehicular Access

- a. A maximum of two (2) vehicles will be permitted to gain access to the Park at any one time, however, where there is a genuine requirement to have additional vehicles, permission will be granted subject to the prior written agreement of the Council's Officer on a case by case basis for each and every vehicle movement in excess of the maximum (2) two specified above.
- b. After unloading, vehicles are to be moved to a safe area to be agreed by the Council's Officer during the initial site visit (clause 20.3 above) and confirmed in writing within a reasonable period of time thereafter.

c. All vehicles are to be driven through the Park at a maximum speed of 5 mph, accompanied by a "walking flag" (marshal in high visibility vest/jacket, walking in front of the vehicle). Hazard lights are to be on and in all cases priority and the right of way shall be given to pedestrians using the Park.

d. On approval of the application, the Hirer is to liaise with the Council's Officer regarding arrival and access and departure times to ensure that the key holder can be on hand to facilitate entry and exit from the Park.

21.7 Power Supply

a. Generators may be used in areas of the Park where there is no power supply, subject to prior permission of the Council's Officer in accordance with any instructions given.

21.8 Equipment

a. The Hirer will be responsible for making their own arrangements for bringing all equipment required to the Event with them.

b. Should staging or other sundry items be required, the Hirer should discuss this with the Council's Officer who may, subject to adequate notice, agree to provide some or all of the requested items for an additional charge.

21.9 Promotion within the Park

a. Promotion within the Park may be via either the distribution of leaflets and or use of the dedicated information boards.

21.10 Evening Events

a. Where an Event needs to be staged in the evening or early morning, separate arrangements and staff costs implications will need to be discussed and agreed in writing with the Council's officer prior to the submission of an application form.

Miscellaneous

22 A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

23 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

If you have any queries regarding this Licence Agreement, please e-mail events@folkestone-hythe.gov.uk