



Terms and Conditions of Seasonal and Temporary Trading

Please read and consider these conditions carefully before signing the seasonal trading application.

Whilst the best efforts have been made to address all potential applications in these terms and conditions, the City will assess each application on a case-by-case basis.

The City reserves the right to amend these terms and conditions at any time. Applicants will need to access the most recent copy. Approved traders will be notified (supplied a new copy) of any changes to the terms and conditions during the trading seasons.

1. General

- 1.1 All applications are subject to the applicant being responsible for compliance with all legislative and policy requirements including, but not limited to, City policies, local laws and regulations. For the avoidance of doubt, this includes the City's [Seasonal and Temporary Trading Policy](#) and [Access and Inclusion Plan](#).
- 1.2 After the initial application, the City may require the applicant to provide further documentation for the purposes of review and, if required and satisfied, any required approval from the City's Environmental Health, Planning and Economic Development team or any other team of the City as it considers necessary.
- 1.3 The City may request the applicant provides a risk management plan in support of the application, which it may require is compliant, among other things, with the principles and practices of the international standard in risk management (ISO 31000:2009).
- 1.4 The applicant agrees to supply correct and truthful information on any completed forms, documents, plans or other material submitted with the application or at the request of the City.
- 1.5 The City reserves the right to decline an application based on any of the following:
 - The activity does not align with the Seasonal and Temporary Trading Policy guiding principles.
 - The activity does not promote the district of Fremantle in a progressive and/or positive light.



- The activity or application does not conform with the Selection Criteria.
 - The City considers that the applicant has provided misleading or deceptive information or documentation in support of its application.
 - Any non-compliance with legislative, local law, regulation or policy requirements.
 - Any assessment criteria contained within these terms and conditions.
 - Any other consideration the City may consider necessary to take into account.
- 1.6 The right to refuse any application for any trading area extends to the City's interpretation of what it considers appropriate or otherwise in each circumstance.
- 1.7 The City may, at its absolute discretion, refuse, revoke and/or withhold any approval in the event of any special circumstances which require the refusal, revocation and/or withholding of approvals or for any other reason the City deems appropriate to do so.
- 1.7.1 Should an approval be revoked under this clause, all monies paid to the City will be refunded to the applicant within a reasonable time after revocation.
- 1.7.2 The City may, at its absolute discretion, provide one week's notice to the applicant of its intention to refuse, revoke or withhold an approval.
- 1.8 The City's Seasonal and Temporary Trading policy, schedule of fees and charges form part of these terms and conditions.
- 1.9 All approvals are non-transferrable and must be produced on request by an officer of the City or any other governing body.
- 1.10 Approved traders must comply promptly with any notices, instructions or direction from an officer of the City or other governing body.
- 1.11 Any variation or change to an approval must be submitted to the City in writing for consideration. This will be approved at the absolute discretion of the City, prior to any variation or change including, but not limited to, the activity to which the approval was given.
- 1.12 Non-compliance with any of these terms and conditions or any reasonable instruction, direction or notice given by the City, its officers or a governing body may result in immediate revocation and cancellation of an approval.



1.12.1 Should an approval be revoked under this clause, all monies paid to the City will not be refunded to the applicant and retained by the City.

2. Specific Conditions

- 2.1 The approved trader must only trade within the approved trading area.
- 2.2 The trading area and surrounding pathways or thoroughfares must be kept in a clean and tidy state during all times of operation.
- 2.3 The approved trader is not to permit or place any material that would obstruct or otherwise interfere with a surrounding pathway or thoroughfare.
- 2.4 Before vacating the trading area each day, the approved trader must remove all refuse from the trading area and surrounding pathways or thoroughfares.
- 2.5 City reserves may have specific trading requirements. Approved traders must adhere to all reserve requirements.
- 2.6 The conditions of approvals are subject to change. The City shall inform approved traders of any changes to the conditions of approvals.

3. Canvassing of elected members and officers

- 3.1 If an applicant, whether personally or by an agent, canvasses any of the Elected Members, City Officers, Contractors or their Representatives (as the case may be) in respect of their application, request or application for a varying of any approval, then regardless of such canvassing having any influence on the acceptance of such application, the City will omit the application or request from consideration.

4. Rights

- 4.1 The City reserves its rights in full to close or restrict trading and or access to a location, including a trading area, for the purpose of, but not limited to, the following:
 - When a City of Fremantle approved event or activation is held within, adjacent or surrounding the trading location. This is inclusive but not limited to event duration, bump-in period and bump-out period;
 - To remove or address any hazard or any potential risk to safety;
 - Manage emergency or critical incidents;



- Respond to changes in weather, fire, or security conditions; or
 - Undertake urgent maintenance or repairs.
- 4.2 In addition or alternatively to clause 3.1, the City may, at its absolute discretion, revoke or alter an approval to:
- Allow alternative use of the space; or
 - Manage the non-compliance of any trading activity.

5. Fees and Payments

- 5.1 The applicable trading fees are payable to the City as per the terms specified on any tax invoice supplied by the City or in any case, prior to the issuing of any application approval.
- 5.2 Unless otherwise required by law, all fees and charges for trading approvals are inclusive of a 10% GST (except bonds which are GST exempt and will be detailed on a tax invoice).

6. Bond

- 6.1 The City may require approved traders to provide a contingency bond (**Bond**) if the City deems the proposed activity may affect or damage:
- 6.1.1 the equipment or the surface within and surrounding the trading area; or
 - 6.1.2 the City's infrastructure and assets.
- 6.2 The Bond may be used to cover:
- 6.2.1 the repair, restoration or replenishment of the City's infrastructure and assets caused by applicant's activities or the applicant's negligent act or omission;
 - 6.2.2 the cost of extra services which the City officers may have to supply caused by applicant's activities or the applicant's negligent act or omission;
 - 6.2.3 the cost of work required to restore the surface and equipment to its original condition prior to the seasonal trading activity, which may include, but is not limited to, re-routing irrigation for a proposed infrastructure.
- 6.3 All Bond refunds are returned via EFT. Submissions must be made via the City of Fremantle corporate website.



- 6.4 All applications which fall outside of the current financial year are charged at the rates as approved by the City in that financial year schedule of fees and charges – not at the rates at time of application.

7. Trading

- 7.1 All proposed activities must be undertaken during the hours stated within the respective approval.
- 7.2 City officers have the authority to act on the City's behalf during any trading activity or use of the trading area and are to be permitted access at any time.
- 7.3 If a City officer is required to attend to any matter outside of normal working hours, the approved trader will be charged the cost of the call out (a minimum of four hours will be charged).
- 7.4 Depending on the proposed trading activity, the City may impose restrictions on trading hours as a condition of approval and any such restrictions will be clearly communicated following an assessment by the City.

8. Cancellation

- 8.1 Cancellation of an approval is required to be submitted to the City's seasonal trading email: seasonaltrading@fremantle.wa.gov.au
- 8.2 Fees are non-refundable.

9. Waste

- 9.1 The City will not provide waste services at any trading area.
- 9.2 All seasonal trading activity must be self-sufficient to adequately and safely deal with waste, compliantly containing and disposing of all solid and liquid wastes, and must prepare for and provide an adequate waste management plan if the proposed activity generates waste.
- 9.3 All waste management plans will be assessed on a case-by-case basis and the City reserves its rights in full to refuse an application or revoke a approval for non-compliance with any requirements of a waste management plan.



10. Water

- 10.1 The City will not provide water services at any trading area.
- 10.2 All trading activity must ensure adequate provision of water supply should the trading activity require it or the City considers it necessary having regard to the activity.
- 10.3 There is to be no installation of an alternative reticulated supply to any trading area.

11. Power

- 11.1 The City will not provide power at any trading area, unless specified.
- 11.2 All seasonal trading activity is expected to be self-sufficient with power and traders must prepare and provide, as required by the City, an adequate power plan if the activity requires power.
- 11.3 All trading activities that require power will be assessed on a case-by-case basis. Generators exceeding 60dB(A) at 7 metres and that do not comply with the *Environmental Noise Regulations 2009* (WA), will not be considered for approval.
- 11.4 Any generator approved by the City must not be accessible by the public.
- 11.5 The City does not accept any responsibility for proper electricity management by the trading activity and the approved trader shall indemnify the City against any loss or damage suffered or caused by any electric run or supplied by the approved trader to the trading area at any time.

12. Infrastructure

- 12.1 All trading activity is expected to use temporary infrastructure that can be removed within 12 hours. All applicants will need to demonstrate how any proposed infrastructure will adhere to the 12-hour removal process.
- 12.2 If any proposed infrastructure is deemed by the City as more than temporary in nature, the approval may be contingent on a formal development application.
- 12.3 Vehicles are not to be driven on reserves under any circumstances without prior approval from the City or its officers.
- 12.4 The City may allow as a condition of the approval, vehicle access on the trading area for deliveries and set-up only. Vehicles must comply with all parking restrictions.



- 12.5 Approved traders are not permitted to operate or place any infrastructure within 5 metres of an any other planned activity, event or trading area.
- 12.6 No infrastructure can be mounted, placed or erected under the canopy of any trees on City reserves.
- 12.7 Any permission granted for vehicle access may be revoked in adverse weather conditions where turf or ground conditions are likely to be compromised.
- 12.8 The approved trader must not tie to or attach to any part of a tree as part of seasonal trading activity.
- 12.9 The approved trader must not cut or modify any tree or plant in any way as part of seasonal trading activity.
- 12.10 No fires are permitted as part of seasonal trading activity.
- 12.11 No balloons, confetti, bean bags or any other items comprised of polystyrene or Styrofoam are permitted to be used for any purpose.
- 12.12 The approved trader is liable for all and any damage to the trading area during the term of any approval or during any time in which the approved trader occupies the trading area, including any term in which a dispute has arisen.
- 12.13 Any damage caused by the approved trader shall be deducted from the Bond paid at the City's absolute discretion.
- 12.14 Any faults or damage to the trading area must be reported and an incident report sent to the City within 48 hours of the incident via seasonaltrading@fremantle.wa.gov.au
- 12.15 City reserves may have specific trading requirements. Approved traders must adhere to all reserve requirements provided by City officers.

13. Grounds Maintenance

- 13.1 Approved traders are required to maintain and manage the grounds within and outside the trading area.
- 13.2 The maintenance obligations are to the extent as reasonably necessary for the reserve and may include, for example, maintenance of grass in the trading area that is not able to be managed by the City therefore it must be maintained by the approved trader.
- 13.3 For certain activities, a bond, which may be in addition to the Bond paid, may be payable to ensure that any impacted grounds post trading can be restored to original condition. This may also include re-routing irrigation



to mitigate proposed infrastructure or damage to any existing infrastructure.

- 13.4 No vehicle movements are to occur within the drip line of tree canopies.
- 13.5 No vehicles are to park within the drip line of tree canopies.
- 13.6 Nothing is to be tied to or attached to any part of a tree without prior approval.
- 13.7 No structures are to be erected within the drip line of tree canopies.
- 13.8 No hot water or ice to be poured on to turf/gardens.

14. Damage and Indemnity

- 14.1 The approved trader is subject to the same responsibilities relating to persons and property to which the approved trader would be subject if during the term of the approval, the approved trader were the owner and occupier of the freehold of the trading area.
- 14.2 The approved trader indemnifies, and shall keep indemnified, the City and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the City and/or the Minister for Lands, or brought, maintained or made against the City and/or the Minister for Lands, in respect of:
 - 14.2.1 any loss whatsoever (including loss of use);
 - 14.2.2 injury or damage of, or to, any kind of property or thing; and
 - 14.2.3 the death of, or injury suffered by, any person, caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly;
 - 14.2.4 the use or occupation of the trading area by the approved trader or any of its agents, employees, officers or any other persons in connection with the approved trader;
 - 14.2.5 any work carried out by or on behalf of the approved trader on the trading area;
 - 14.2.6 the approved trader's activities, operations or business on, or other use of any kind of, the trading area;
 - 14.2.7 the presence of any Environmental Contamination or pollution in on or under the trading area or adjoining land caused or contributed to by the act, neglect or omission of the approved trader or any of its agents, employees, officers or any other persons in connection with the approved trader;



- 14.2.8 any default by the approved trader in the due and punctual performance, observance and compliance with any of the approved trader's covenants or obligations under these terms and conditions;
- 14.2.9 an act or omission of the approved trader; or
- 14.2.10 an act or omission of any third-party on or to the trading area and in relation to the seasonal trading activity provided and conducted by the approved trader.
- 14.3 Nothing in this clause shall require the approved trader to indemnify the City, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the City, or its servants, agents, contractors or invitees.
- 14.4 The approved trader:
 - 14.4.1 agrees to occupy and use the trading area at the risk of the approved trader; and
 - 14.4.2 releases to the full extent permitted by law, the City and the Minister for Lands from:
any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Trading area or arising from the approved trader's use or occupation of the Trading area by the approved trader;
 - 14.4.3 loss of or damage to the trading area or personal property of the Approved trader; and
 - 14.4.4 any loss (including loss of profit) in anyway related to unavailability, breakdown, failure or defective operation of a mechanical service or any other service or in any way related to the repair and maintenance of the trading area or the City's fixtures and fittings, if any;
 - 14.4.5 all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Environmental Contamination or pollution in, on or under the Trading area or surrounding area except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the City, or its servants, agents, contractors or invitees.
- 14.5 The release by the approved trader continues after the expiration or earlier determination of the approval in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of the approval.



- 14.6 Any person found to be damaging any equipment or part of any trading area will be requested to vacate the trading area.
- 14.7 Any damage caused by the approved trader shall be deducted from the Bond paid at the City's absolute discretion.
- 14.8 Any faults or damage to the reserve or equipment should be reported and an incident report sent to the City via seasonaltrading@fremantle.wa.gov.au within 48 hours of the incident.

15. Food and drink

- 15.1 Food operators are only permitted at certain sites as stipulated within the Seasonal and temporary trading policy.
- 15.2 Food operators are required to remove trading vehicle and all infrastructure at the end of each trading day.
- 15.3 Food operators must be registered in the local authority where the vehicle is garaged and shall at all times comply with the requirements of the Food Act 2008 and associated legislation.
- 15.4 Vehicles associated with food trailers shall be used to transport and park the vehicle only. Once the trailer is in place, the vehicle shall be detached and legally parked away from the trailer.
- 15.5 If a vendor is operating a wood-fired pizza oven; the fire in the pizza oven must be extinguished prior to the oven being transported to or from any trading location.
- 15.6 Seating should be provided for patrons in trading locations where there is sufficient space (between 4 – 15 seats only).
- 15.7 The City of Fremantle shall be advised in writing of any changes to the vehicle or changes in food business details.
- 15.8 If the City of Fremantle determines that a food operator has traded in a non-approved trading location the trading vendor's trading permissions may be terminated.
- 15.9 No cooking oil/fat to be discarded in or around a trading area.
- 15.10 No ice is to be discarded on grassed areas.

16. Aesthetics

- 16.1 The design and appearance of infrastructure or equipment associated with trading activity should complement Fremantle's character and the streetscape of the trading area.
- 16.2 Third-party advertising is strictly prohibited on, within and surrounding the trading area.



- 16.3 The City must be notified of any new signage during the trading season via seasonaltrading@fremantle.wa.gov.au.
- 16.4 The City or its officers may instruct an approved trader to remove any advertising.
- 16.5 Non-compliance with instructions to remove advertising will result in immediate revocation and cancellation of the approval.

17. Other

- 17.1 The operation of lasers will require approval from the City and the laser/s used must comply with the provisions of Australian Standard AS 2211, 'Laser safety', and must be operated by a licensed Laser Safety Officer (LSO). The approved trader must deliver to the City copies of all applicable licenses and laser registrations.
- 17.2 Any filming for commercial use at the trading area will require a filming permit from the City of Fremantle.
- 17.3 The operation of drones or RPAs (remotely piloted aircraft) for filming purposes must be done with appropriate licenses issued by CASA. The City will require copies of any licenses issued prior to any filming by drones or RPAs.
- 17.4 The *Tobacco Products Control Act 2006* (WA) restricts the sale of tobacco products at sporting, cultural or other events, such as music festivals or market stalls and as such no tobacco sales are permitted at any seasonal trading area.

18. Security

- 18.1 The City will not provide a duty caretaker or security officer.
- 18.2 If a security presence is required, it is the responsibility of the applicant or approved trader to make appropriate arrangements and cover all associated costs.

19. Protection of people and property

- 19.1 To comply with the requirements of the trading conditions, the approved trader must:
 - take all measures necessary to protect people and property; and
 - prevent nuisance and unreasonable noise and disturbance.



20. Insurance

- 20.1 The approved trader must effect and maintain with insurers approved by the City (noting the City's and the approved trader's respective rights and interests in the trading area) for the time being:
 - 20.1.1 adequate public liability insurance for a sum not less than \$20,000,000.00 in respect of any one claim or such greater amount as the City may from time to time reasonably require;
 - 20.1.2 employers' indemnity insurance including workers' compensation insurance in respect of all employees of approved trader's employed in, about or from the trading area; and
 - 20.1.3 personal accident insurance including insurance in respect of all volunteers of the approved trader's employed in, about or from the trading area.
- 20.2 In respect to the insurance required in **clause 20.1**, approved traders must promptly pay all premiums and produce to the City each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers.
- 20.3 Approved traders must notify the City immediately:
 - 20.3.1 when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - 20.3.2 when a policy of insurance is cancelled.

21. Copyright and public performance of music

- 21.1 The applicant is wholly responsible for any infringement of copyright in connection with the performance of any musical, literary or dramatic works on any City reserve.
- 21.2 If performances will take place on the reserve, approved trader may be required to obtain an Australasian Performing Rights Association (APRA) and Phonographic Performance Company of Australia (PPCA) live performance licenses. (Contact APRA (08) 9382 8299 and PPCA on (02) 9267 7877).
- 21.3 All music must be managed such that noise from the music is restricted to background levels, should not be audible outside of the relevant reserve and must comply with the *Environmental Protection (Noise) Regulations 1997*.



22.Safety

- 22.1 An approved trader acknowledges and agrees that it is fully responsible, at its cost, for ensuring that the trading area, and any equipment located on the trading area, are regularly tested, maintained and inspected to ensure that the trading area and such equipment comply with all statutory requirements or otherwise and are safe for use.
- 22.2 To comply with its obligation pursuant to **clause 22.1** above, an approved trader acknowledges that it will be required to, amongst other things:
 - 22.2.1 comply with the requirements of the *Work Health and Safety Act 2020* (WA), including without limitation the requirement for all portable plug-in electrical equipment and residual current devices to be safe and appropriately inspected, tested and maintained by a competent person; and
 - 22.2.2 comply with all relevant requirements of the Department of Fire & Emergency Services (**DFES**), including without limitation the requirement to ensure that all fire protection and firefighting equipment located, or installed at or on the trading area, is tested regularly for compliance with Australian Standards and DFES's requirements.
- 22.3 Should the City require it, an approved trader must provide to the City a certificate confirming that all equipment located on the trading area has been tested by an appropriately qualified person and all such equipment complies with all statutory requirements or otherwise and are safe for use.

23.Default and Breach

- 23.1 In the event the City considers or otherwise determines that the approved trader has or is in breach of any of these terms and conditions or any condition imposed under an approval, the City may provide notice in writing of the breach.
- 23.2 On the City giving the approved trader a breach notice, the City may, at its absolute discretion, specify the either of the following:
 - 23.2.1 The term of the approval is terminated immediately and specify a time for the approved trader to vacate the trading area; or
 - 23.2.2 Specify the breach and provide a time by which the approved trader is allowed to rectify the breach with details of how the City may terminate the approval should the approved trader fail to rectify the breach.



- 23.3 The City's discretion to provide notice in accordance with clause 24.2 or otherwise in respect of any breach of the terms of these terms and conditions or an approval is not limited by the operation of clause 24.2 and the City reserves its rights and discretion in full in respect of any breach by an approved trader.
- 23.4 In the event of termination of an approval under this clause, the terms of clause 24 of these terms and conditions applies.

24. Termination

- 24.1 Prior to or on termination of an approval, the approved trader, at the approved trader's expense, must restore the trading area to its condition prior to occupation.
- 24.2 Prior to termination, unless otherwise agreed by the City, a approved trader must, within 12 hours of termination, remove from the trading area all property of the approved trader and promptly make good, to the satisfaction of the City, any damage caused by the removal.
- 24.3 If the approved trader fails to remove all property within 12 hours from termination, the City may:
- 24.3.1 remove all property and recover the cost of doing so from the approved trader as a debt payable on demand and may commence recovery proceedings in a court of competent jurisdiction for such recovery;
 - 24.3.2 rehabilitate and restore the Land and recover the cost of doing so from the approved trader as a debt payable on demand and may commence recovery proceedings in a court of competent jurisdiction for such recovery; or
 - 24.3.3 remove and retain the property; as the ownership shall transfer to the City, the approved trader agrees to forfeit any and all claim to the property and the approved trader acknowledges and agrees this includes the right of the City to sell or otherwise dispose of such property and retain any purchase price if sold.