

STALLHOLDER'S LICENCE AGREEMENT

BETWEEN

VICTORIAN ARTS CENTRE TRUST ABN 83 295 983 059

of 100 St Kilda Road, Melbourne, Victoria 3004

(Trust)

AND

THE STALLHOLDER

(Stallholder)

SCHEDULE

1. STALLHOLDER'S DETAILS

NAME:

ADDRESS:

PHONE: (B/H):

(A/H):

(MOB)

FAX: (B/H):

(A/H):

TRADING NAME (if applicable):

ABN (if applicable):

2. TRADING DESCRIPTION:

Full Time Trader

Part Time Trader

3. TERM: 3 years

4. COMMENCEMENT DATE:

5. PRODUCTS TO BE SOLD:

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6. **LICENCE FEE:** Per Sunday
- Site on St Kilda Road \$80.00
 - Site on Level 7 Terrace or back of lawn area \$75.00

Licence fees must be paid in advance. Fees must be paid by the last Sunday of the month for trade in the following month. Fees can be paid by cheque, EFT or credit card. Cash cannot be accepted.

7. **LICENCE FEE REVIEW DATES:** Annually as soon as practicable after 1 January each year following the Commencement Date.

8. **EQUIPMENT FEE:** \$80.00 for stall tablecloth (subject to clauses 3.4.4 and 4.3 of this Agreement)

THIS LICENCE IS EXECUTED by the parties on the date specified in Item 4

SIGNED for and on behalf of **VICTORIAN**)
ARTS CENTRE TRUST)
ACN 83 259 983 059 by)

NAME:

TITLE:

SIGNED by)
)
STALLHOLDER

TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement the terms and conditions set out in this clause shall have the following meanings unless otherwise indicated by the context.

Commencement Date means the date specified in Item 4.

Equipment means the market equipment provided by the Trust to the Stallholder including stall units, stall canopies and dividers, tables and covers, hanger stands, rubbish bins and other ancillary equipment.

Equipment fee means the fee described in Item 8 of the Schedule.

Full Time Trader means a Stallholder who trades every Sunday in a year.

GST has the same meaning given to that term in *A New Tax System (Goods & Services Tax) Act 1999* (as amended).

Item means an item in the Schedule.

Licence Fee means the amount specified in Item 6.

Market Day means each Sunday on which the Sunday Market is to be held.

Market Rules means the Market Rules that the Stallholder must comply with (attached as Annexure A).

Part Time Trader means a Stallholder who trades at least 2 weeks in a calendar month.

Permit means Permit number ESG/SM/20/2007 issued by Melbourne City Council and attached as Annexure C.

Product means any item approved by the Selection Committee in accordance with the Market Rules.

Schedule means the Schedule at the front of this licence.

Selection Committee means the committee consisting of members appointed by the Trust established to supervise the quality and standard of products sold at the Sunday Market from time to time.

Selection Criteria means the criteria used by the Selection Committee in determining the outcome of an application to become a Stallholder (attached as Annexure B).

Stall means a stall of approximately 2.4 metres by 1.8 metres located at the Sunday Market and allocated to the Stallholder.

Stallholder means the party specified in Item 1.

Sunday Market Manager means the manager appointed from time to time by the Trust.

Sunday Market means the art and craft market established by the Trust .

Term means the life of this Agreement consisting of a 3 year period commencing on the Commencement Date.

Trust means the Victorian Arts Centre Trust.

2. STALLHOLDER'S RIGHT TO OCCUPY

The Trust grants to the Stallholder a licence to occupy and use the Stall together with the Equipment from the Commencement Date until terminated by either party subject to the terms and conditions of this Agreement. This licence is granted for use in common with the Trust and any person authorised by the Trust.

The Sunday Market operates in accordance with the Permit granted by Melbourne City Council. The Stallholder must comply with the conditions set out in the Permit (attached as Annexure C). In the event that the Permit is revoked this Licence Agreement will become void. The Trust will not be held liable for any costs incurred by the Stallholder as a result of the revocation of the Permit.

3. STALLHOLDER'S OBLIGATIONS

During the Term:

3.1 Payment of Licence Fee

- 3.1.1 The Stallholder must pay to the Trust the Licence Fee in the manner specified in Item 6. The Stallholder will be liable for any bank fees or charges incurred as a result of its cheque being dishonoured.
- 3.1.2 The Stallholder must pay to the Trust on demand interest at the rate per annum equal to the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* on any money payable by the Stallholder under this Licence and remaining unpaid for 14 days. Interest will be computed from the date on which such payment became due.
- 3.1.3 The Stallholder must pay all amounts due under this Licence to the Trust without deduction or right of set-off.
- 3.1.4 The Licence Fee payable under this Agreement will be inclusive of GST.

3.2 Licence Fee Review

- 3.2.1 The Trust may review the Licence Fee at the times specified in Item 7 and determine a new Licence Fee at any amount the Trust deems appropriate.
- 3.2.2 Following a review the Trust shall give to the Stallholder notice specifying the reviewed Licence Fee.

- 3.2.3 The Trust's determination of the Licence Fee shall be final and binding and not subject to appeal by the Stallholder.
- 3.2.4 If there is no review under Clause 3.2.1 the Stallholder must continue to pay the Licence Fee payable immediately prior to the relevant year.

3.3 Market Rules

- 3.3.1 The Stallholder must comply with the Trust's Market Rules which are attached as Annexure A to this Agreement. The Stallholder acknowledges that the Trust retains the right to vary or amend the Market Rules at its absolute discretion. The Trust must provide written notice to the Stallholder if the Market Rules are amended under this clause.

3.4 Use of Stall

- 3.4.1 The Stallholder must at all times comply with all laws, regulations and requirements of local government and other statutory authorities and with all notices, orders and directions given by any statutory or public authority in respect of the Stallholder's use and occupation of the Stall including but not limited to all consumer, fair trading, sale of goods and public health laws and regulations.
- 3.4.2 The Stallholder agrees to comply with any reasonable direction given by the Sunday Market Manager in relation to the operation of the Sunday Market.
- 3.4.3 The Stallholder agrees that all products sold at the Sunday Market must be approved by the Selection Committee and comply with the Market Rules.
- 3.4.4 The Stallholder agrees to purchase a stall tablecloth from the Trust for \$80.00 prior to commencing trading. The Stallholder must return the tablecloth to the Trust within 14 days of the conclusion of trading to receive a refund under Clause 4.3 of this Agreement.
- 3.4.5 The Stallholder must not transfer, assign or sub-license any of its rights or obligations under this Licence Agreement.
- 3.4.6 The Stallholder acknowledges that anything left in the Stall at the end of the Market Day will become the property of the Trust and may be removed by the Trust at the Stallholder's cost and at the Stallholder's risk.

3.5 Insurance

- 3.5.1 The Trust may at its absolute discretion require that the Stallholder maintain insurance in the name of the Stallholder with an insurer approved by the Trust for public liability for the amount of \$10 million concerning one single event (or such greater sum as required by the Trust).

- 3.5.2 If the Stallholder is required to maintain an insurance policy a copy of the Stallholder's annual insurance cover must be provided to the Trust prior to trading.
- 3.5.3 The insurance policy must acknowledge that the Stallholder is not covered under any insurance policy of the Trust.
- 3.5.4 The Stallholder agrees to provide the Trust with a release to enable the Stallholder's insurance policy details to be passed on to the Trust's insurer if required.
- 3.5.5 The Stallholder must ensure that the insurance policies effected by the Stallholder contain a condition that the insurer will notify the Trust at least 14 days before the policies lapse.
- 3.5.6 The Stallholder must pay all insurance premiums before the due date for payment and produce to the Trust copies of the certificate of currency on or before each anniversary of the Commencement Date.

3.6 Stallholder's Liability

- 3.6.1 The Stallholder is responsible for any loss or liability for property damage and/or injury to any person which arises directly or indirectly out of negligent or wilful conduct by the Stallholder, or any person for whom the Stallholder is legally responsible.
- 3.6.2 The Stallholder is responsible for any costs, charges and expenses incurred in connection with the conduct referred to in Clause 3.6.1.

3.7 Electrical Equipment

- 3.7.1 All electrical equipment (including leads) used in the Market must be tested and tagged by a qualified electrician prior to use. The cost of testing is at the stallholders own expense.
- 3.7.2 Piggy-back plugs and double adaptors are prohibited. Only power boards with an overload cut-out switch will be permitted.
- 3.7.3 Stalls are not to exceed 300 watts of power, unless approved by the Market Manager.

4. TRUST'S OBLIGATIONS

The Trust shall:

- 4.1 on each Market Day provide to the Stallholder the Stall and the Equipment;
- 4.2 provide the Stallholder with a tablecloth subject to receiving payment under Clause 3.4.4;
- 4.3 pay the Stallholder \$35.00 if the Stallholder returns its tablecloth in accordance with Clause 3.4.4;

- 4.4 provide to the Stallholder four (4) weeks notice of any extra Market Day which is to be held or the cancellation of any Market Day; and
- 4.5 provide to the Stallholder reasonable notice of the Trust's intention to cease to operate the Sunday Market on any Market Day or for certain hours on any Market Day as a result of weather conditions or any other reason beyond the control of the Trust or the Operator.

5. TERMINATION

- 5.1 The Trust may terminate this Agreement:
 - 5.1.1 if the fees payable by the Stallholder under clause 3.1 remain unpaid at any Market Day;
 - 5.1.2 if the Stallholder is in breach of any of its obligations under this Agreement and the Stallholder has failed to remedy the breach within two (2) weeks of receiving notice from the Trust of the breach;
 - 5.1.3 at any other time by giving to the Stallholder two (2) months notice of the Trust's intention to terminate the Agreement.
 - 5.1.4 if the Stallholder is in breach of any of the Market Rules.

- 5.2 The Stallholder must give the Trust written notice 2 weeks in advance of an intention to cease trading earlier than the end date specified in this Licence. If the Stallholder fails to provide such notice, the Trust may continue to charge rent under this Licence.

6. GRANT OF LICENCE ONLY

The Stallholder agrees with the Trust that:

- 6.1 the Stallholder is not entitled to exclusive occupation of the area in which the Stall operates and that the Trust may use, or permit other parties to use, the area; and
- 6.2 this Licence does not constitute a lease at law and the Stallholder will not claim before a court or tribunal that this Licence constitutes a lease at law.

7. PERFORMANCE REVIEW

The Trust shall review the Stallholder's performance and the quality and standard of the Products every three (3) months from the Commencement Date. The Stallholder shall assist the Trust in its review by providing to the Trust any information required by the Trust in conducting the review.

In the event that the Trust is not satisfied as to any of the following matters:

- 7.1 the performance of the Stallholder;
- 7.2 the quality or standard of the Products;
- 7.3 the Products are made by the Stallholder; or

7.4 the Products are made in Australia

7.5 the quality of stall presentation

The Trust shall notify the Stallholder of its concerns and if the Stallholder fails to address the Trust's concerns to the Trust's satisfaction within a period of 14 days from the date of the notice, the Trust shall be entitled to terminate this Agreement pursuant to Clause 5.

8. COMPLAINTS

In the event of the Trust receiving a complaint with respect to the Stallholder or any Product:

8.1 the Trust shall immediately notify the Stallholder of the complaint;

8.2 the Trust shall investigate the cause of the complaint and the Stallholder shall provide any assistance required by the Trust in carrying out its investigations;

8.3 once the Trust has determined whether or not the complaint is valid, the Trust shall notify both parties of its decision in writing;

8.4 the Trust's decision shall be final and binding on all parties; and

8.5 the Trust reserves the right to reopen any investigation.

9. PROBATIONARY PERIOD

All new Stallholders, as selected by the Trust Selection Committee, will be subject to a three (3) month probationary trial period. At the end of the first 3 months trading, the Trust may terminate this agreement if the Trust is not satisfied with the stall, pursuant to Clause 7.

Annexure A

Market Rules

Market Operation

1. The Stallholder must open for business on each Market Day between 10:00 am to 5:00 pm.
2. Stalls are to be set up by 9:30 am on each Market Day. A Stallholder must notify the Sunday Market Manager by 9:00 am on Market Day if the Stallholder is going to be late or unable to trade. Fees will be charged regardless.
3. If a Stallholder fails to set up the stall by 10:00 am on any Market Day the Sunday Market Manager is entitled to allocate that Stall to another Stallholder.
4. Stalls must remain trading until 4:00 pm on each Market Day, unless the Stallholder obtains the Sunday Market Manager's approval to finish trading earlier. Packing up is to take place between 4:00 pm and 6:00 pm on Market Day.
5. The Market trades in all weather conditions. No refund is payable on site fees due to inclement weather conditions, or inability to attend the Market.
6. The Stallholder must personally attend the Stall for the duration of the advertised operating hours of the Sunday Market.
7. A Full Time Trader may elect a representative to attend the Stall on their behalf on 6 occasions in a calendar year.
8. The Sunday Market Manager retains the right from time to time to alter the trading hours of the Sunday Market. The Sunday Market Manager must provide reasonable notice of any changes in trading hours to the Stallholder.
9. A Stallholder must not share its Stall with another person without obtaining the approval of the Sunday Market Manager.
10. In the event that a permanent stall is held by multiple stallholders, the stall must be tenanted on all trading days of the month.
11. A maximum of 2 Stalls may be licensed to any one Stallholder.
12. Stallholders must stay within their site boundaries, allowing enough space to enter and exit their own stall without compromising the space allocated to neighbouring stalls.
13. The Trust will not disclose the contact details of a Stallholder to a member of the public without the express written permission of the Stallholder (as per Permission to Publish Form). Any requests received by the Trust for a Stallholder's details will be forwarded directly to the Stallholder.
14. Any stallholder who breaches any clause of the Licence Agreement on 3 occasions within a 12 month period, and receives formal notification of the breaches, will have their Licence Agreement terminated.

Product Requirements

15. All products sold at the Sunday Market must:
 - 15.1 be made by the Stallholder;
 - 15.2 be made or produced in Australia; and
 - 15.3 comply with the Selection Criteria set out in Annexure B
16. A Stallholder must not sell or display any products other than those approved by the Selection Committee.
17. A Stallholder must obtain the consent of the Selection Committee prior to varying products displayed or sold. If a Stallholder wishes to vary its products, the Stallholder must complete and submit a Stallholder Application (available from the Sunday Market Manager). The Selection Committee may in its absolute discretion grant or withhold its approval to the variation. Upon the Selection Committee granting approval, the Stallholder Application will form part of the License Agreement.
18. In the event that a Stallholder fails to comply with the Market Rules in respect of its products, the Sunday Market Manager may require that unapproved items be removed from the Stall immediately. If the Stallholder is repeatedly in breach of the Market Rules the Trust may terminate the Stallholder's licence pursuant to Clause 5 of the Licence Agreement.
19. The Stallholder is responsible for ensuring that it conforms to any Australian standards pertaining to their product.

Food and Skincare Products

20. A Stallholder trading in food or food products must obtain, and provide to the Trust, a current copy of its food handling permit prior to commencement of trade.
21. A Stallholder who manufactures the food or food product in their preparation premises is required to provide the Trust with a current Certificate of Registration of Food Premises prior to commencement of trade. City Of Melbourne Temporary Food Permit must also be provided.
22. A Stallholder who is required to obtain a permit or certificate under Market Rules 20 – 23 must provide the Trust with current copies of the permit or certificate on each anniversary of the Commencement Date.
23. Stallholders who sell food or skincare products must have Public Liability insurance of \$10M, as well as Product Liability insurance of \$10M.

Conduct

24. The Stallholder must conduct itself and ensure that its employees conduct themselves in a proper and orderly manner and not do anything to damage the reputation of the Sunday Market or the Arts Centre.
25. The Stallholder must leave the stall in a clean and proper manner at the end of each Market Day to the satisfaction of the Sunday Market Manager.

26. The Stallholder must not do anything which may cause a nuisance or may interfere with any other person.
27. The Stallholder agrees not to use any equipment or display units in the Stall other than the Equipment and certain specialised display units approved by the Sunday Market Manager.
28. The Stallholder agrees to use the stall tablecloth purchased in accordance with Clause 3.4.4. The use of any other tablecloths will not be permitted without the prior approval of the Sunday Market Manager.
29. The Stallholder is not permitted to smoke whilst attending its Stall as the Arts Centre and its surrounds is a non-smoking environment.
30. The Stallholder is prohibited from selling raffle tickets in the Sunday Market.
31. Loud product promotion is prohibited in the Sunday Market.
32. No electric appliances (other than lighting) may be used by the Stallholder unless approved by the Sunday Market Manager. This includes particularly heaters.
33. The Trust reserves the right to withdraw the Stallholder's right to trade in the event of a dispute with the Trust, the Sunday Market Manager, a member of the public, the Selection Committee or another Stallholder. The right to trade will only be reinstated if the dispute is resolved to the satisfaction of the Trust.
34. The Stallholder must obtain the prior consent of the Sunday Market Manager before displaying or affixing signs, advertisements or notices to any part of the Stall.
35. The copying of ideas or work of other Stallholder's within the Premises may be in breach of copyright laws and will not be tolerated. Any disputes in relation to this rule must be provided in writing to the Sunday Market Manager.
36. In the event that the Trust receives a complaint in relation to the Stallholder or the Stallholder's product, the Trust shall notify the Stallholder immediately. The Stallholder must assist the Trust with any investigation carried out into the cause of the complaint. The Trust will make a determination on the complaint and advise all parties of its decision in writing. Any such decision by the Trust will be final and binding on all parties. The Trust reserves the right to re-open any investigation.

Annexure B

Selection Criteria

Objectives of the Sunday Market

The key feature of the Sunday Market is that all craft products offered for sale are of a high quality, both in design and production. A high standard of display is required of Stallholders in the presentation of their products and the use of display units.

The Sunday Market aims to:

- Serve the artists and craftspeople of Victoria in providing an outlet for high quality works;
- Serve the people of Victoria and tourists in making high quality products available to the public in association with other attractions at the Arts Centre;
- Encourage and improve visitation to the Arts Centre & its environs;
- Enliven & invigorate the environs of the Arts Centre; and
- Contribute to the promotion of the Arts Centre and its environs as a centre of excellence in the Arts.

Sunday Market Selection Process

The Sunday Market is managed by the Sunday Market Manager. All issues regarding the application process or operation of the market must be addressed to the Sunday Market Manager.

Potential Stallholders are required to apply to trade at the Sunday Market using the Stallholder Application Form available by contacting the Sunday Market Manager.

A Selection Committee approves all new applicants. The Selection Committee meets once a month to assess new applicants. All applicants will be contacted by mail regarding the outcome of their application. No further correspondence will be entered into and the Selection Committee reserves the right not to explain why an application was unsuccessful.

Product Selection Criteria

The Selection Committee considers the following when evaluating each application:

- The uniqueness of the product;
- The function and design of the product;
- The level of skill required to make the product;
- The quality of the product, including the finish, presentation and packaging; and
- The 'wow' factor;
- The overall stall presentation.

The Sunday Market is a 'makers market' and as such products which are made in Australia by the Applicant are considered favourably. Products which are mass produced or are widely available are considered less favourably.

Applications to trade cigarettes or alcohol will not be accepted so as to comply with the terms and conditions of the Melbourne City Council permit under which the Sunday Market operates.