KING ISLAND COUNCIL

Procedure

King Island Airport - Conditions of Use

Responsible Officer:	*Airport Manager*
Date Adopted:	*8 August 2024*
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King Island Airport – Conditions of Use

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King Island Airport – Conditions of Use

KING ISLAND COUNCIL

1 INTRODUCTION

These Conditions of Use contain important terms affecting your rights and should be read carefully.

Your attention is drawn to the following terms in particular:

1.1 Use of the Airport is subject to your review of these Conditions.

1.2 By using the Airport or Services you agree to comply with these Conditions and all Relevant Laws.

1.3 If you are delinquent in paying the Charges, we may take action to recover the outstanding amount owed.

1.4 If you have unpaid charges in excess of 90 days owing from the date of invoice and your aircraft or other property remains at the Airport, we may sell your Aircraft or property to recover the outstanding amount owed.

1.5 Other than in cases of our gross negligence or wilful misconduct, we are not liable for any loss or damage you or your passengers may suffer when using the Airport or Services.

In proceeding to use the Services, you further acknowledge that you understand the substance and effect of the operation of these Conditions.

2 USE OF AIRPORT

2.1 These are the conditions under which you use our Airport and any Services at our Airport, unless we have a separate written agreement with you for the use of the Services (Access Agreement), in which case the Access Agreement prevails to the extent of any inconsistency with these conditions.

2.2 By using the Airport, you acknowledge your acceptance of these conditions. All users are required to review these conditions on the King Island Council website: kingisland.tas.gov.au prior to arrival.

2.3 You accept that:

(a) access to our Airport and those Services are subject to the demands of other users of the Airport;

(b) use of the Airport and those Services may be constrained by Relevant Law; and

(c) we may from time to time close all or any part of the Airport and withdraw all or any of the Services, for any period we consider appropriate when in our opinion it is necessary to do so in relation to aviation safety.

2.4 You accept that unless otherwise specified, these conditions prevail, to the extent of any inconsistency, over any contractual or other relationship we have had with you previously in respect of the same subject matter.

3 CURRENCY

3.1 These conditions take effect from 1 January 2023 and, as varied according to clause 9, are current until we replace them.

3.2 We may waive compliance with all or any of these conditions for a period, indefinitely or permanently. However, a waiver will only be effective if it is in writing.

4 USING OUR SERVICES

4.1 When using our Airport or any Service at our Airport you must comply with:
(a) all Relevant Laws, Air Services Australia publications, and any direction from the Civil Aviation Safety Authority and Department of Home Affairs;
(b) these conditions;
(c) other conditions, instructions, orders and directions notified by us from time to time;
(d) local flying restrictions;
(e) the YKII Aerodrome Manual; and
(f) directions from anyone entitled by any Relevant Law to give them.

4.2 You are responsible for familiarising yourself with those things.

4.3 You must not carry out any Long-Term Maintenance on any part of the Airport without our prior written approval.

4.4 You must not (and must ensure that your employees, agents, contractors, passengers, visitors or students do not) cause or contribute to any obstruction or disruption to the operation of the Airport or to the business, customers or passengers of any other party using the Airport.

4.5 You must promptly, on becoming aware of, notify us if any of our equipment, assets, facilities or other items at the Airport are not working properly or have been in any way damaged.

4.6 You must not do anything which may cause us to breach any Relevant Law or any Lease.

5 ACCESS AGREEMENT

5.1 You agree that We may, in our absolute discretion, make your use of the Airport and Services also subject to the terms of an Access Agreement, in addition to these Terms.

5.2 Entry into an Access Agreement with us may be required where:
(a) You have been late in paying the Charges on a previous occasion;
(b) Your use of the Airport and the Services is likely to be ongoing;
(c) You or any Associate has been previously refused access to the Airport; or
(d) We have otherwise determined it appropriate.

5.3 In certain circumstances, by entering into an Access Agreement, or if a Local User with an Annual Licence, it may be possible to obtain a lower rate of Charges in exchange for prepayment or the establishment a direct debit facility.

6 AIRPORT REQUIREMENTS

6.1 You must comply with any requirement of which we notify you from time to time in relation to:
(a) aviation safety;
(b) aviation security;
(c) work health & safety; and
(d) environmental management, at the Airport.

6.2 We may issue these requirements:
(a) in the form of a notice, direction, order, instruction, procedure (or similar);
(b) by letter or email, or via notification on the King Island Council website.

7 MOVING AIRCRAFT

7.1 We may direct you at your cost to:
(a) move your aircraft to another position at the Airport; or
(b) remove your aircraft from the Airport. In each case within a period that we consider to be reasonable in the circumstances.

7.2 If you do not comply with our direction under clause 7.1 within the time set out in our direction, we may move or remove your aircraft.

7.3 If we are required to move or remove your aircraft for any reason, we will give you as much notice as we reasonably can in the circumstances:
(a) that we intend to move or remove your aircraft;
(b) of the proposed location to which your aircraft is to be moved or removed;
(c) of the means by which we intend to move or remove your aircraft; and
(d) of what you must do to recover your aircraft.

7.4 If we cannot give you advance notice, we will notify you as soon as we can after we have moved or removed your aircraft:
(a) that we have moved or removed your aircraft;
(b) of its location; and
(c) of what you must do to recover your aircraft.

7.5 You must pay all costs associated with us moving or removing your aircraft.

8 PAYMENT OF CHARGES

8.1 You must pay us the Charges.

8.2 You must not make any set-off against or deduction from any Charges.

8.3 You will be liable for Charges whether or not your aircraft was used with your permission.

8.4 Payments to us may be made by electronic funds transfer, credit card, cash, or by any other means as agreed between the parties.

8.5 The payment instructions are provided on the King Island Airport's webpage for your convenience.

9 VARYING CONDITIONS

9.1 We may vary these conditions (including by imposing additional Charges or varying existing Charges) at any time, but we must comply with all Relevant Laws.

9.2 Any variation under clause 9.1 will take effect from the nominated date, providing we have given you details of the changes at least 21 days before they take effect. Notice of such changes will be indicated on the King Island Council website which we advise users to review frequently.

9.3 We may, at your request, vary these conditions as they apply to you, but that variation must be agreed in writing and must comply with all Relevant Laws.

10 FAILURE TO PAY

10.1 You must notify us immediately you become aware that you will or might be unable to pay a Charge.

10.2 Neither your giving, nor our receipt, of that notice, affects our rights under these conditions.

10.3 In the event the invoice is not rescinded, we may at our sole discretion, charge you interest on the amount of the invoice from and including the date that it was first due and payable to and including the day you pay it and all interest accrued on it.

10.4 Interest will be calculated daily at the Interest Rate.

10.5 We may recover from you; amounts you owe in relation to the use of the Airport or any Service.

10.6 You must pay all our costs on a full indemnity basis in recovering from you any money due to us under these conditions.

11 EXTENDED FAILURE TO PAY

11.1 If you fail to pay a Charge within 30 days of the date of the invoice for it, we may:

(a) refuse to allow your aircraft (whether chartered or owned) to use the Airport;

(b) use reasonable means to physically detain your aircraft until you have paid the Charges, all interest on the Charges, the administration fee and any other costs we have incurred as a result of you not paying the Charges;

(c) use reasonable means to physically detain any property of yours which is located at the Airport; and

(d) refuse you or any Associate access to the Airport.

12 DISPUTES

12.1 If you notify us within 10 days of the date of an invoice that you dispute all or any part of that invoice, and in our reasonable opinion you have grounds to dispute it, we will negotiate with you in good faith with a view to resolving the dispute. If only part of an invoice is disputed, you must pay the remainder by the due date.

12.2 If, in our reasonable opinion, you have no reasonable grounds for disputing an invoice, you must pay the invoice by its due date or, if that has passed, immediately.

13 SALE OF AIRCRAFT

13.1 If:

(a) any Charge is not paid within 90 days of the date of the invoice for that Charge; and

(b) your aircraft is left abandoned at the Airport for a period of at least 120 days, and we have used our best endeavours to contact you using the contact details you have provided to us, we may sell your aircraft, or any other property of yours at the Airport.

13.2 If we exercise our power of sale under these conditions, we may sell or agree to sell your aircraft (and any of its parts or accessories) or other property of yours on such terms and conditions we think fit. They will include but not be limited to the following:

(a) the sale may be by public auction, private treaty or by tender, for cash or on credit;

(b) the sale may be for a price or prices, and any price or prices may be less than market value;

(c) the sale may be with or without special provisions about title, or time, or means of payment of purchase money, or otherwise; and
(d) the sale may allow the purchase money to remain secured by a mortgage or charge over the property sold, or secured by other security, or without security, and on any other terms, without us being responsible for loss.

13.3 We may engage anyone in connection with the sale of your aircraft or any other property as we see fit.

13.4 We may enter into, rescind, or vary a contract for sale, and resell without being responsible for loss, and execute assurances of the property sold in your name and on your behalf.

13.5 Without limiting any other provision herein, in consideration of our allowing you or your aircraft to use the Airport and the Services, you irrevocably appoint us severally as your attorney for the purposes of exercising our rights under the terms herein, including selling or transferring the aircraft (and any of its parts or accessories) or other property of yours at the Airport.

13.6 We will apply the proceeds of a sale as follows:
(a) in reimbursing ourselves for any costs associated with the sale;
(b) in or towards the satisfaction of any outstanding Charges; and
(c) if there remains any surplus, to you or anyone else entitled to it.

13.7 If the proceeds of sale are less than the amount you owe us, the outstanding balance remains owing by you to us according to these conditions, and all of our rights against you to recover any debt outstanding through any legal processes through any appropriate Court or relevant Tribunal with jurisdiction, remain unaffected.

13.8 No one dealing with us on a sale of any aircraft (or any of its parts or accessories) or other property of yours under these conditions is bound to inquire what our rights and powers to deal in that way are or whether those rights or powers have been properly or regularly exercised. If we have exercised those rights or powers improperly or irregularly no one (other than us) is affected and the sale to them is valid.

13.9 To the full extent allowed by law we are not liable for any loss, liability or expense you incur arising out of or in any way connected with:
(a) anything we do or do not do, in exercising our right of sale under these conditions, including not obtaining a proper price; and
(b) our application or payment of sale proceeds.

14 LIABILITY & INSURANCE

14.1 Except to the extent required by law, we do not make any representation or warranty in connection with the Airport or any Service.

14.2 To the full extent allowed by law, we are not liable, in contract, tort (including negligence), bailment or otherwise, except in the case of our gross negligence or wilful misconduct for:
(a) any loss of or damage to an aircraft, its equipment, or its load;
(b) any loss of or damage to any of your property;
(c) any loss of or damage to the property of the Crew or passengers of an aircraft;
(d) any loss or damage you suffer for any reason because the Airport or any part of it is closed or any Service at the Airport is unavailable;
(e) any personal injury or death in any way associated with your aircraft or your use of the Airport;

(f) any loss or damage in relation to our exercise or purported exercise of rights conferred on us by these conditions; and
(g) any indirect, special, or consequential loss or damage, arising out of or in any way connected with your use of the Airport or any Service or our exercise of any powers under these conditions or any Relevant Law.

14.3 At all times while you are using the Airport or any Service, you must:
(a) take out and maintain aviation liability insurance for at least $20 million (or such higher amount as we notify from time to time); and
(b) produce evidence of that insurance whenever we ask.

15 STATUTORY TERMS

15.1 To the full extent allowed by law, we exclude all conditions, warranties and representations in connection with the use of the Airport or any Service which would otherwise be implied by the Relevant Law.

15.2 If we are liable for breach of any non-excludable condition or warranty implied by any Relevant Law in connection with any goods or services supplied, then, to the full extent allowed by law, our liability is limited to:

(a) in the case of goods, any one or more of the following:

i. the replacement of the goods or the supply of equivalent goods;

ii. the repair of the goods;

iii. the payment of the cost of replacing the goods or of acquiring equivalent goods;

iv. the payment of the cost of having the goods repaired; or

(b) in the case of services:

i. the supplying of the services again or

ii. the payment of the cost of having the services supplied again.

16 INDEMNITIES

16.1 You indemnify us against any loss, liability or expense arising out of a third-party claim in any way connected with your use of, or presence on, the Airport (or that of your aircraft) or our exercise of any power under these conditions, whether arising in contract, tort (including negligence), bailment or otherwise.

16.2 You indemnify us against loss, liability, or expense we incur as a result of your negligence or breach of any of these conditions.

16.3 You indemnify us against loss, liability or expense arising out of:

(a) any damage your aircraft causes to the Airport or Services or any other property of ours;
(b) our moving, removing or detaining any of your aircraft;
(c) claims for personal injury, death, loss, liability, or expense caused or contributed to by you.

16.4 You indemnify us against any loss, liability or expense arising out of a claim in any way connected with the sale of your aircraft or any other property of yours which is conducted in accordance with these conditions.

16.5 An indemnity in our favour is also given for the benefit of our officers, employees, agents or contractors.

16.6 We need not incur expense or make payment before enforcing any right of indemnity under these conditions.

16.7 Your liability to the entities indemnified under clause 16.5 will be reduced proportionally to the extent that any wilful misconduct or grossly negligent act or omission of those indemnified caused or contributed to the relevant loss.

16.8 Each indemnity in these conditions is a continuing obligation, separate and independent from your other obligations and survives termination of these conditions.

17 GST

17.1 All amounts payable under these conditions are GST exclusive.

17.2 If GST is imposed on any supply made by us under these conditions, you must pay to us the amount imposed at the same time in addition to, and without setoff to, the amount you are required to pay us for the supply.

17.3 If GST is imposed on any supply by us under these conditions, we must give to you a tax invoice for the supply at the same time as you pay to us the full amount of the consideration payable for the supply in question.

18 MISCELLANEOUS

18.1 Nothing in these conditions limits any action against you that we may take to recover amounts you owe us.

18.2 These conditions are governed by the laws of Tasmania. You and we agree to take legal proceedings in connection with these conditions only in the courts of Tasmania and courts of appeal from them.

18.3 All notices and other communications from us to you in connection with these conditions may be published on our website at kingisland.tas.gov.au, or where required by the Relevant Law, provided to you in writing.

18.4 If a notice is required to be in writing, it must be:

(a) left at your address last known to us;

(b) sent by prepaid ordinary post to that address;

(c) sent by email to your email address last known to us; or

(d) given in any other way permitted by law.

18.5 They take effect from the time they are received unless a later time is specified.

18.6 If sent by post, they are taken to be received 3 days after posting.

19 DEFINITIONS

Airport means the King Island Airport site at Morrison Ave, Loorana, which includes the Services. Where these conditions refer to:

(a) the Airport and the Services; or

(b) the Airport or the Services, they do so to give emphasis to the Services in that context and do not in any way limit the meaning of Airport.

Annual Licence means a licence for Local Users to regularly use the Airport and Services without being separately invoiced on each occasion.

Associate means a person or company whose relationship to you, or whose arrangements or understandings with you, are such that, in our reasonable opinion, that person or company should, in relation to the Airport or any Services, be treated in all relevant respects in the same way as you.

Charges means charges for all users of the Services provided by us at the Airport, the charges described in schedule 1, and any other amount due and payable to us.

Crew means flight crew and cabin crew.

GST has the meaning given in the GST Law.

Interest Rate means the rate of 10% per annum.

Lease means an agreement in writing with us under which you, or anyone else, occupies any part of the Airport on any basis.

Local User means you have a current hangar lease, approved sublease or a person whom resides on King Island as their primary place of residence.

Long Term Maintenance means maintenance which will take more than 3 days to complete.

Aerodrome Manual means the aerodrome manual produced by us in accordance with the Civil Aviation Safety Regulations 1998.

Relevant Law means any present or future law, or any lawful obligation arising under such law directly or indirectly:

(a) in relation to us, with which we must comply in respect of the Charges, the Airport, Services and these conditions;

(b) in relation to you, with which you must comply in respect of your aircraft or their use, the Airport and the Services; or

(c) in relation to the Airport and the Services or their use. This includes all laws relating to aviation safety, aviation security, work health & safety and environmental management at the Airport.

Services means the use of the runways, taxiways, aircraft parking areas and other aeronautical services and facilities at the Airport directly connected with those things. However, Services does not include any terminal, hangar, or freight facilities, which (if you require them) will be the subject of a separate agreement.

We, us, ourselves, and our means King Island Council ABN 47 537 189 282 and includes our respective successors and assigns.

You and your includes:

(a) the legal owner of an aircraft which uses the Airport, or any Service provided at the Airport;

(b) the operator of an aircraft which uses the Airport, or any Service provided at the Airport;
(c) the pilot of an aircraft which uses the Airport, or any Service provided at the Airport;
(d) any person or company which has any type of interest in an aircraft which uses the Airport or any Service provided at the Airport;
(e) the holder of the Certificate of Registration for an aircraft which uses the Airport, or any Service provided at the Airport, jointly and severally, and your legal personal representatives, successors and assigns. your aircraft means an aircraft in respect of which you are a person described in the previous definition.