

Bendigo Airport Conditions of Use

Effective Date: **July 1, 2021**



Conditions of Use

Cancellation of previous conditions

These conditions replace and cancel all previous agreements and arrangements between *you* and *us* concerning *your* use of the *Airport* and the *Services*. However, rights that exist at the time of cancellation are not affected.

What are these conditions about?

These conditions set out the basis on which we authorise you to use the *Airport* and the *Services*. However, they

do not apply if you have a separate written agreement with *us* for the use of the *Services*.

Words that appear *like this* have the meanings given in the Meaning of Words (clause 17).

Please read these conditions carefully.

Questions?

If you have any questions about these conditions or the operation of the *Airport* you should contact the relevant person shown in the contacts list – Schedule 2.

1. USE OF AIRPORT

- 1.1. 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* (such as an ongoing licence agreement), in which case that separate written agreement prevails to the extent of any inconsistency with these conditions. By using the *Airport*, *you* acknowledge *your* acceptance of these conditions.
- 1.2. These conditions apply equally to intrastate and interstate operations.
- 1.3. *You* accept that:
 - (a) access to *our Airport* and those *Services* is 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.
- 1.4. *You* accept that unless otherwise specified these conditions prevail, to the extent of any inconsistency, over any contractual or other relationship *we* have with *you* in respect of the same subject matter.

2. CURRENCY

- 2.1. These conditions take effect from 1 July 2021 and, as varied according to clause 7, are current until *we* replace them.
- 2.2. *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.

3. USING OUR SERVICES

- 3.1. 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 *Operations Manual*; and
 - (f) directions from anyone entitled by any *Relevant Law* to give them.
- 3.2. You are responsible for familiarising yourself with those things.
- 3.3. You must not carry out any *Long-Term Maintenance* on any part of the *Airport* without *our* prior written approval.
- 3.4. 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*.
- 3.5. You must promptly on becoming aware 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.
- 3.6. You must not do anything which may cause *us* to breach any *Relevant Law*, the *Crown Lease*, or any *Lease*.

4. AIRPORT REQUIREMENTS

- 4.1. 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*.
- 4.2. 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 Bendigo Airport website, bendigoairport.com.au.

5. MOVING AIRCRAFT

- 5.1. 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.
- 5.2. If you do not comply with *our* direction under clause 5.1 within the time set out in *our* direction, we may move or remove your aircraft.

- 5.3. 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.
- 5.4. If we cannot give you advanced 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.
- 5.5. You must pay all costs associated with us moving or removing your aircraft.

6. PAYMENT OF CHARGES

- 6.1. You must pay us the charges.
- 6.2. All Charges are due and payable on an annual basis to be paid in advance.
- 6.3. You must not make any set-off against or deduction from any Charges.
- 6.4. You will be liable for Charges whether or not your aircraft was used with your permission.
- 6.5. Payments to us may be made by cheque, electronic funds transfer, credit card, cash, or by any other means as agreed between the parties.

7. VARYING CONDITIONS

- 7.1. 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*.
- 7.2. Any variation under clause 7.1 will take effect from the nominated date, provided that we have given you details of the changes at least 21 days before they take effect. We may give you that notice by letter or email, or via notification on the Bendigo Airport website, bendigoairport.com.au.
- 7.3. 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*.

8. FAILURE TO PAY

- 8.1. You must notify us immediately you become aware that you will or might be unable to pay a Charge.
- 8.2. Neither your giving, nor our receipt, of that notice, affects our rights under these conditions.
- 8.3. If you do not pay the invoice for the annual charges within the terms as stated on the invoice, we will notify you in writing that the annual charges in advance are rescinded and that you will be charged by AvData directly for airport usage on a "per use" basis for the entire year period.

- 8.4. In the event the invoice is not rescinded as described in 8.3 above, we may also, 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.
- 8.5. Interest will be calculated daily at the *Interest Rate*.
- 8.6. We may recover from you amounts you owe in relation to the use of the *Airport* or any *Service*.
- 8.7. You must pay all our costs on a full indemnity basis in recovering from you any money due to us under these conditions.
- 9. EXTENDED FAILURE TO PAY**
- 9.1. If you fail to pay a *Charge* within 30 days of the date of the invoice for it, we may:
- refuse to allow your aircraft to use the *Airport*;
 - 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*;
 - use reasonable means to physically detain any property of yours which is located at the *Airport*; and
 - refuse you or any *Associate* access to the *Airport*.
- 10. DISPUTES**
- 10.1. 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.
- 10.2. 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.
- 11. SALE OF AIRCRAFT**
- 11.1. If:
- any *Charge* is not paid within 45 days of the date of the invoice for that *Charge*; or
 - 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*.
- 11.2. 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:
- the sale may be by public auction, private treaty or by tender, for cash or on credit;
 - the sale may be for a price or prices, and any price or prices may be less than market value;
 - the sale may be with or without special provisions about title, or time, or means of payment of purchase money, or otherwise; and
 - 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.
- 11.3. We may engage anyone in connection with the sale of your aircraft or any other property as we see fit.
- 11.4. 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.
- 11.5. 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*.
- 11.6. We will apply the proceeds of a sale as follows:
- in reimbursing ourselves for any costs associated with the sale;
 - in or towards the satisfaction of any outstanding charges; and
 - if there remains any surplus, to you or anyone else entitled to it.
- 11.7. 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.
- 11.8. 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.
- 11.9. 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:
- anything we do or do not do, in exercising our right of sale under these conditions, including not obtaining a proper price; and
 - our application or payment of sale proceeds.

12. LIABILITY & INSURANCE

- 12.1. Except to the extent required by law, we do not make any representation or warranty in connection with the *Airport* or any *Service*.
- 12.2. 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*.
- 12.3. 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 \$10 million (or such higher amount as *we* notify from time to time); and
 - (b) produce evidence of that insurance whenever *we* ask

13. STATUTORY TERMS

- 13.1. 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*.
- 13.2. 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.

14. INDEMNITIES

- 14.1. *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.
- 14.2. *You* indemnify *us* against loss, liability or expense *we* incur as a result of *your* negligence or breach of any of these conditions.
- 14.3. *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*.
- 14.4. *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.
- 14.5. An indemnity in *our* favor is also given for the benefit of *our* officers, employees, agents or contractors.
- 14.6. *We* need not incur expense or make payment before enforcing any right of indemnity under these conditions.
- 14.7. *Your* liability to the entities indemnified under this clause 15 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.
- 14.8. Each indemnity in these conditions is a continuing obligation, separate and independent from *your* other obligations and survives termination of these conditions.

15. GST

- 15.1. 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.
- 15.2. 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.

16. MISCELLANEOUS

- 16.1. Nothing in these conditions limits any action against *you* that *we* may take to recover amounts *you owe us*.
- 16.2. These conditions are governed by the laws of the Victoria. *You* and *we* agree to take legal proceedings in connection with these conditions only in the courts of Victoria and courts of appeal from them.
- 16.3. All notices and other communications from *us* to *you* in connection with these conditions must be in writing.
- 16.4. They must be:
- left at *your* address last known to *us*;
 - sent by prepaid ordinary post to that address;
 - sent by email to *your email address* last known to *us*; or
 - given in any other way permitted by law.
- 16.5. They take effect from the time they are received unless a later time is specified.
- 16.6. If sent by post, they are taken to be received 3 days after posting.

17. MEANING OF WORDS

Airport means the Bendigo Airport site at 35 Victa Road, East Bendigo, which includes the *Services*. Where these conditions refer to:

- the *Airport* and the *Services*; or
- 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*.

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 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.

Crown Lease means *our* lease of the *Airport* site from the Commonwealth of Australia.

Flight training means a school for teaching students to fly airplanes

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 be a Bendigo Flying Club financial member or a person whom resides in the City of Greater Bendigo municipality as their primary place of residence.

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

MTOW means the maximum take-off weight of an aircraft.

Operations Manual means the aerodrome manual produced by *us* in accordance with the *Civil Aviation Safety Regulations 1998* (Cth).

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

- in relation to *us*, with which *we* must comply in respect of the *Charges*, the *Airport*, *Services* and these conditions;
- in relation to *you*, with which *you* must comply in respect of *your aircraft* or their use, the *Airport* and the *Services*; or
- 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*.

RPT, Freight & Charter Operator means an aircraft operator (whether international or domestic) who:

- operates an aircraft having a *MTOW* of 3,000kg or more; and
- has not entered into a separate agreement in relation to charges for such operations.

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 Greater Bendigo City Council ABN 7414 9638 164 and includes *our* respective successors and assigns.

you and *your* includes:

- the legal owner of an aircraft which uses the *Airport* or any *Service* provided at the *Airport*;
- the operator of an aircraft which uses the *Airport* or any *Service* provided at the *Airport*;
- the pilot of an aircraft which uses the *Airport* or any *Service* provided at the *Airport*;
- the pilot of an aircraft which uses the *Airport* or any *Service* provided at the *Airport*;
- any person or company which has any type of interest in an aircraft which uses the *Airport* or any *Service* provided at the *Airport*;
- 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.

Schedule 1: Fees and Charges

IMPORTANT NOTES:

The charges in this Schedule 1:

- apply to all users of the Services provided by us at the Airport.
- do not apply if we have a separate written agreement with you for the use of the Services (such as an Airport Services Agreement); and
- exclude all charges for terminal, passenger processing and security-related services, as these are not part of the Services provided under these conditions.

| Fee Type | Charge applied | Unit of measure | Fee (GST inclusive) |
|---|----------------|-----------------|----------------------|
| Landing fee ^A | Per landing | \$p/1,000kg | \$11.20 per 1,000kg |
| Local user fee ^{AB} | Annual | \$p/1,000kg | \$334.95 per 1,000kg |
| Non local user fee ^{AB} | Annual | \$p/1,000kg | \$558.25 per 1,000kg |
| Passenger fee | Per passenger | Per passenger | \$13.40 |
| Flight training - Bendigo Airport leaseholder | Annual | Per aircraft | \$1,116.50 |
| Flight training - non local | Annual | Per aircraft | \$2,233 |
| Hardstand parking ^C | Per day | Per aircraft | \$12.30 |
| Grassed/gravel parking | Per day | Per aircraft | \$5.60 |
| Grassed/gravel parking | Annual | Per aircraft | \$1,116.50 |

^A Aircraft with a Maximum Take Off Weight (MTOW) below 1,000kg will be charged at a 1,000kg minimum. ^B Aircraft with a MTOW over 3,000kg cannot apply for an annual option. ^C First three nights of aircraft parking per calendar month are free for non-locals.

Schedule 2: Contacts

Airport Address:

Bendigo Airport
35 Victa Road
East Bendigo VIC 3550

For queries concerning:

Conditions and the Charges, contact:
+61 3 5434 6078 or airportmanager@bendigo.vic.gov.au

Use of the aprons, safety and security, contact:
+61 499 700 128 or Duty ARO (outside Business Hours for emergencies only) airport@bendigo.vic.gov.au

