

# Conditions of Use

## Essendon Airport Pty Ltd

### 1 These conditions

- 1.1 These are the conditions under which you use EAPL's Facilities and Services at Essendon Airport. If you use any EAPL's Facilities and Services, you accept these conditions.
- 1.2 These conditions take effect from 5 October 2009 and are current until EAPL change, replace or waive them.
- 1.3 EAPL reserves the right to replace or waive any of these conditions at any time, with or without notice.
- 1.4 Terms or words used in this document which may require defining are explained in Clause 15.

### 2 Information EAPL requires before you use EAPL Facilities and Services

Note: If you are an existing Airport user, you only need to provide EAPL with:

- information that you have not previously supplied,
- information EAPL specifically request from time to time, and
- the details of any changes to information you have previously supplied.

- 2.1 Before using EAPL's Facilities and Services at the Airport you must give EAPL:
  - (a) your name, address and contact details;
  - (b) if you operate RPT services, evidence that you have in place emergency procedures in connection with all potential threats to passengers, cargo and EAPL's Facilities and Services at the Airport, as appropriate to your operations and at least to the standard required to comply with EAPL Airport Emergency Procedures;

- (c) the names, addresses, telephone numbers, facsimile numbers and all other contact details of your key personnel EAPL can contact at any time about emergencies, security, operational or financial matters in connection with you using EAPL's Facilities and Services at the Airport;
- (d) evidence of the insurance policies you hold that are consistent with the requirements of clause 12.4 and confirmation that these policies will remain current at all times when you are using EAPL facilities and services at the Airport;
- (e) ground handling arrangements for passengers and cargo if required for your operations;
- (f) a completed Notification of Aircraft Details Form (see Schedule C) for all your RPT, general aviation and other non-regular public transport operations aircraft which are likely to be using EAPL Facilities and Services at the Airport.

### **3 Regular Information Requirements**

- 3.1 You must provide EAPL with the details of any changes made to information described in clause 2.1.
- 3.2 If you have RPT operations or use EAPL Terminal facilities you must also provide EAPL, within 5 days of the end of each month, the number of passengers you embarked and disembarked at the Airport during that month.

### **4 Information generally**

- 4.1 You can provide information to EAPL by any of the following means:
  - (a) by mail to:
    - Essendon Airport Pty Ltd
    - Essendon Fields House
    - Level 2, 7 English Street
    - ESSENDON FIELDS VIC 3041

- (b) by facsimile to: (03) 9948 9330
- (c) by E-mail: enquiries@essport.com.au
- (d) by telephone (except where EAPL requires information in writing): on (03) 9948 9300.

If possible, EAPL would appreciate receiving information electronically, either on appropriate storage media (CD or DVD-ROM) or by e-mail.

- 4.2 You must let EAPL know as soon as practicable if there is any change to the information you have provided.
- 4.3 If you request, in writing, EAPL can, if deemed appropriate, give you details of:
  - (a) Airport security contacts;
  - (b) Airport emergency procedures; and
  - (c) EAPL's Facilities and Services at the Airport, which are available for you to use.

## **5 Using EAPL's Facilities and Services**

- 5.1 When using EAPL's Facilities and Services at the Airport you must comply with:
  - a) these Conditions including, without limitation, any procedures and equipment EAPL puts in place to facilitate Safe Airside Operating Procedures, and Aviation Security;
  - b) the operational requirements of the Airport as published in ERSA and NOTAMs;
  - c) all relevant Legislation;
  - d) other conditions, instructions, orders and directions necessary for the day to day operation of the Airport, if (except in emergencies) EAPL have consulted you (either directly or through relevant industry bodies) about them and given you as much notice of them as is reasonably practicable;
  - e) local flying restrictions;
  - f) directions on security from the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government, if any; and

g) access airside area requires all persons to hold an Aviation Safety Identification Card, or a Visitor Identification Card when accompanied by a person with an Aviation Safety Identification Card unless exempted by Legislation.

5.2 You must not do anything which puts EAPL in breach of any Legislation.

5.3 You accept that:

- (a) access to EAPL's Facilities and Services at the Airport are subject to the demands of other users of the Airport; and
- (b) use of the Airport is constrained by Legislation.

## **6 Jet Crossing**

6.1 Requests for operation of the Jet Crossing require the following minimum notification times:

- (a) For Departing Aircraft - (during hours when a duty officer is on duty) – 60 minutes prior to the estimated time of departure from the Airport;
- (b) For Arriving Aircraft (during hours when a duty officer is on duty) – 60 minutes prior to estimated time of arrival at the Airport;
- (c) Requests for Jet Crossing opening outside duty officer duty hours – 24 hours prior to requested opening time.

- 6.2 Where the aircraft operator becomes aware that the notified time advised to EAPL of a booked Jet Crossing is incorrect, amended or cancelled, EAPL's duty operations officer must be immediately notified of the change.
- 6.3 Aircraft may not use the Jet Crossing until the gates are fully open and the taxiway signal lights indicate the crossing is now open. The crossing is open only when the signal light displays only a green light.
- 6.4 Aircraft, vehicles, and pedestrians are not to tailgate through the Jet Crossing at any time without permission. Where permission is granted adequate separation from the proceeding or approaching aircraft, vehicle, or pedestrian is maintained at all times.
- 6.5 EAPL reserves the right to not operate the Jet Crossing outside duty operations officer hours.
- 6.6 EAPL does not guarantee that Jet Crossing will be serviceable at the requested time of opening.
- 6.7 EAPL reserves the right to:
  - 6.7.1 undertake Jet Crossing maintenance activities at its convenience; and
  - 6.7.2 refuse access to the Jet Crossing if an aircraft operator fails to book a Jet Crossing movement with sufficient notice, and/or has a history of not booking Jet Crossing movement or a history of failing to advise of changes to booked Jet Crossing movements.

## **7 Common User Agreement**

If You use EAPL terminal facilities for processing passengers, you must comply with EAPL current Conditions of Common Use Agreement for Terminals.

## **8 If you do not comply with these Conditions**

- 8.1 In addition to clauses 9 and 10 EAPL may, subject to EAPL obligations under Legislation, give you 14 days notice in writing not to use EAPL's Facilities and Services at the Airport if you do not comply with these Conditions.
- 8.2 Further, if you do not comply with any safety or security requirements, EAPL may give you notice to comply immediately.
- 8.3 EAPL may stop you from using EAPL's Facilities and Services at the Airport if you do not comply with EAPL notice under clauses 8.1 and 8.2.

## **9 Moving aircraft**

- 9.1 EAPL may (subject to air traffic clearances) order You to:
- (a) move an aircraft to another position at the Airport; or
  - (b) remove an aircraft from the Airport within a specified time.
- 9.2 If you do not comply with EAPL's order under clause 9.1 within the specified time, EAPL may move or remove the aircraft and:
- (a) You must pay EAPL reasonable costs of having the aircraft moved or removed; and
  - (b) You are liable for and indemnify EAPL against any loss or damage sustained in moving the aircraft.

## **10 Airport closed or services unavailable**

- 10.1 EAPL will endeavor to keep EAPL's Facilities and Services at the Airport available for You to use, subject to reasonable requirements for operational purposes, maintenance and new development or events beyond EAPL reasonable control.
- 10.2 EAPL responsibilities under clause 10.1 are subject to clauses 5.3 and 12.

## **11 Services EAPL do not provide**

EAPL does not provide:

- (a) aircraft, building, motor vehicle or other security services;

- (b) terminal navigation services;
- (c) rescue and fire fighting services;
- (d) en-route services;
- (e) meteorological services;
- (f) hangar facilities;
- (g) refuelling services;
- (h) quarantine waste disposal, customs or immigration services or;
- (i) apron services other than allocating aircraft parking bays.

## 12 Release and indemnity

### 12.1 EAPL is not liable for:

- (a) loss or damage caused for any reason to an aircraft, its equipment, its load or the property of its crew or passengers at the Airport; or
- (b) loss or damage caused for any reason to a Vehicle, its equipment, its load or the property of its driver or passengers on the Airport; or
- (c) personal injury caused for any reason to the crew or passengers of, or persons servicing an aircraft at the Airport or the driver or passengers of a Vehicle on the Airport unless caused by EAPL with the intent to cause loss, damage or injury, or recklessly or negligently with the knowledge that loss, damage or injury would probably result;

### 12.2 EAPL are also not liable for:

- (a) any loss you suffer for any reason because the Airport or any part of it is closed or if any service or facility at the Airport (including an EAPL's Facilities and Services) is unavailable;
- (b) any loss You suffer, or any person claiming through you, suffers, for any reason because of delays in the movement or scheduling of your aircraft; or
- (c) any loss You suffer, or any person claiming through you, suffers, for any reason because of delays in the movement of your Vehicle; or
- (d) any consequential injury, loss or damage in connection with the use, or closure, of the Airport (including anything referred to in (a), (b), or (c) of this clause 12.2).

### 12.3 You are liable for, and indemnify EAPL against,:

- (a) any damage your aircraft or Vehicle may cause to EAPL property; and

- (b) claims for personal injury, death, loss or damage to property caused or contributed to by You or your employees or agents unless and then only to the extent caused by EAPL negligence or the negligence of EAPL employees or agents.
- (c) loss or damage caused for any reason to an aircraft, its equipment, its load or the property of its crew or passengers at the Airport if EAPL is required to take action to secure an aircraft which is not or sufficiently secured in EAPL's opinion to prevent unpowered movement of the aircraft at the Airport.

12.4 You must take out a Public Liability insurance policy covering each aircraft, which uses EAPL's Facilities and Services at the Airport as follows:

- (a) For at least the sum of \$5,000,000 (or such other sum as EAPL may alternatively agree to in writing) against all claims which may be brought against either you or EAPL for bodily injury (including death) and/or damage to property arising out of the use of the aircraft by you or any other party you authorise to use the aircraft; and
- (b) You must at all times, when required by EAPL, produce evidence showing that the insurance is in force for the amount stated in clause 12.4(a) or other agreed amount; and
- (c) If you fail to insure your aircraft as required by this clause, EAPL may deny your aircraft use of EAPL's Facilities and Services at the Airport until such insurance is in force.

The amount of insurance stated in clause 12.4(a) or as otherwise agreed is not the limit of your liability, but merely a reasonable minimum amount of insurance, which must be maintained.

12.5 You must ensure that the insurance policies required under the Airside Vehicle Control Handbook for or in respect of your Vehicle are current at all times.

## **13 Exclusion of warranties and conditions**

13.1 EAPL do not make any representation or warranty in connection with the use of the Airport or the use of EAPL's Facilities and Services at the Airport

and all implied warranties and conditions that can be excluded are excluded.

13.2 If a warranty or condition is implied under any legislation in connection with EAPL's Facilities and Services at the Airport, can be excluded, EAPL exclude it and if EAPL cannot exclude it, then EAPL's liability for breach of that warranty or condition 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 Governing law

These Conditions are governed by the law of Victoria. You and EAPL agree to take legal proceedings in connection with these Conditions only in Victorian courts.

## 15 Meaning of words

15.1 In these Conditions of Use the following words have these meanings:

**Airport** means Essendon Airport, at Essendon Fields, Victoria, Australia, and includes all hangars, other buildings, roads and other areas and facilities within the boundaries of the Airport

**Air Operator's Certificate** means the certificate of that name issued under Division 2 of Part 111 of the Civil Aviation Act 1988.

**Airside Safety Operating Procedures** means the procedures at Schedule D.

**Airside Vehicle Control Handbook** means the Essendon Airport Airside Vehicle Control Handbook as amended from time to time.

**Certificate of Registration** means for an aircraft the certificate of registration issued by the Civil Aviation Safety Authority under the Civil Aviation Regulations. For foreign aircraft this means that the aircraft is registered on a national register of aircraft other than the Australian Register of Aircraft.

**Charter Operations** means air service operations in which aircraft are used:

- (i) for the carriage of passengers or cargo for hire or reward to or from any place, but which are not conducted in accordance with fixed schedules to and from fixed terminals; or
- (ii) for the carriage, in accordance with fixed schedules to and from fixed terminals, of passengers or cargo or passengers and cargo in circumstances in which the accommodation in the aircraft is not available for use by persons generally.

**Conditions** means these Conditions of Use.

**Day** means a period of 24 hours commencing at midnight, and references to time of day are references to local time at the Airport.

**Domestic Operations** means the operations that are not International operations.

**EAPL** means Essendon Airport Pty Ltd (formerly Essendon Airport Limited) ACN 082 907 980.

**ERSA** means En-route Supplement Australia.

**Facilities and Services** includes EAPL's Movement Area, airside passenger processing facilities and services and airside roads.

**Foreign Aircraft** means an aircraft that is registered on a national register of aircraft other than the Australian Register of Aircraft.

**International Operations** means operations that involve departure from a point outside Australia or arrival at a point outside Australia.

**Jet Crossing** refers to the Aircraft and Motor Vehicle access way located on Wirraway Road, Essendon Fields, VIC 3041 that connects the Northern Apron and associated Hangars with Airport runways.

**Legislation** means all Commonwealth and State Acts of Parliament, regulations, rules, orders, by-laws, ordinances and any other orders or directions of any government or statutory body relevant generally or specifically to the Airport or any aircraft using it.

**Movement Area** means that part of the Airport used, or to be used, for the take-off, landing and taxiing of aircraft and the aprons.

**MTOW** means the maximum take-off weight for an aircraft as specified by the manufacturer.

**NOTAM** means Notice to Airmen.

**Operator of the Aircraft** means the person by whom, or on whose behalf the aircraft is operated at or otherwise uses the Airport.

**Person** includes a corporation or other organisation or enterprise.

**Registered** (in relation to an aircraft) means that the aircraft is registered on the Australian Register of Aircraft or is a Foreign Aircraft capable of being lawfully flown in Australia.

**RPT or Regular Public Transport Operations** means air service operations where, for a fee, the aircraft is operated according to fixed Schedules over specific routes and is available to the general public on a regular basis, and includes any such services, which may be diverted from another airport to Essendon Airport.

**Use** means use of any of EAPL's Facilities and Services including, but not limited to, aircraft landing, taking off, taxiing or parking, or discharging or taking on passengers or cargo.

**Vehicle** has the meaning in section 72 of the Airports Act 1996 (Cwth).

**You** means, in the case of RPT aircraft, the holder of the Air Operator's Certificate at the time EAPL facilities and services at the Airport are used or in the case of general aviation and other non-regular public transport operations aircraft, the person who is identified as "Owner" in the Notification of Aircraft Details form or if no one is so identified, the holder of the Certificate of Registration at the time EAPL's Facilities and Services at the Airport are used and includes your executors, administrators, successors and assigns.

- 15.2 The singular includes the plural and the plural includes the singular.
- 15.3 If you consist of more than one person or company, then each person or company is jointly and severally liable under these conditions with each of the others.
- 15.4 If any part of these conditions is unenforceable, these Conditions are taken to be modified to remove that part. The rest of these Conditions are not affected by that part being removed.
- 15.5 These Conditions are in aid of, and do not derogate from, the requirements of the Airside Vehicle Control Handbook.