

EVENT PERMIT

General Terms and Conditions

1. Interpretation

1.1 In this Permit:

'Event' means the activity authorised under this Permit and includes necessary preparation for that activity and the removal of the Event Equipment and reinstatement of the Site after that activity.

'Event Equipment' means any plant or equipment that is or may be used to conduct the Event, and includes staging, stands, signage, course markers, seating, marquees, furnishings, vehicles machinery.

'Event Participant' means any person who is taking part in the Event, and includes any person who is organising, or assisting in the organisation of the Event, any person who is in the Site during the Event, and an action by any person who is a spectator in relation to the Event or a customer or potential customer in relation to any commercial activities carried out in connection with the Event.

'Permit Holder' means the person named on the permit, whom Gippsland Ports authorises under this permit to carry out the Event.

'Permit Bond' means any amount required to be paid as security against loss or damage incurred by Gippsland Ports in connection with an Event or proposed Event.

'Permit Fee' means any sum required to be paid as consideration for authorisation or carrying out the Event in the port.

'Permit Holder' means the person named on the Permit.

'Regulations' means the Port Services (Local Ports) Regulations 2004.

'Site' means the area or part of an area of port land or port waters in which the Event is to be carried out, and includes fixtures, improvements, fittings and equipment of Gippsland Ports located in that area, or any vessel located in that area.

'Vessel' has the same meaning as in the Marine Act 1988, and includes any recreational, trading, hire and drive, fishing or government vessel; and any watercraft.

2 Effect of Permit

2.1 Any Event is authorised for the purposes of regulation 212 or 500 of the Regulations.

2.2 By issuing this Permit, Gippsland Ports authorises the Permit Holder to:

2.2.1 conduct the Event in the Site between the times permitted by Gippsland Ports, subject to these terms and conditions and any additional conditions specified by Gippsland Ports.

2.3 This Permit is not transferable. The Permit Holder must not assign or purport to assign the Permit without the written consent of Gippsland Ports.

2.4 The Permit Holder is not entitled to any refund of the whole or part of any Permit Fee paid, and the payment of a refund for a permit to hold an Event if that Event is cancelled is wholly at the discretion of Gippsland Ports.

2.5 The rights granted by this Permit for an Event are a mere permit to conduct the event and to occupy (on a non exclusive basis) the Site for that purpose. The Permit Holder obtains no proprietary interest or right of possession (exclusive or otherwise) in the Site.

2.6 Gippsland Ports reserves the right to vary or cancel this permit at any time if it considers that for reasons of safety, security or the proper management of the port, it necessary to do so. Gippsland Ports will not be liable to the Permit Holder or any other person who suffers loss as a consequence of variation or cancellation of the Permit in accordance with this clause.

2.7 At any time during the currency of this permit, Gippsland Ports may do any things at or on any part of a Site that it is required to do:

2.7.1 by law;

2.7.2 to ensure the Permit Holder's obligations are performed or carried out;

2.7.3 to ensure the safety of persons or prevent or minimise damage to property; or

2.7.4 because of an emergency.

In such circumstances, Gippsland Ports will do its best to ensure that such things do not impede or obstruct the use of the Site by the Permit Holder or the performance of the Permit Holder's obligations.

2.8 The Permit Holder breaches this permit if the Permit Holder fails to fulfill any of the Permit Holder's obligations as and when required, or if no time is prescribed, within a reasonable time.

3 Permit Holder to provide documents and information

3.1 The Permit Holder must, at such time before the commencement of the event as Gippsland Ports requires, provide to Gippsland Ports:

3.1.1 a plan which depicts and describes:

(a) the proposed layout of the Site;

(b) the proposed location of any Event Equipment;

(c) the areas in which people, vessels or vehicles are expected to gather;

(d) expected movements of people, vessels and vehicles;

- (e) proposed location of Event marshals;
- (f) a timetable or running plan for the Event; and
- (g) methods of communication between marshals, event organisers and other Event Participants; and

3.1.2 a copy of a Safety Plan for the Event; and

3.1.3 a list and description of any vehicles and vessels participating in the event and a description of the Event Equipment; and

3.1.4 a copy of the Certificate of Insurance required to be provided under clause 9; and

3.1.5 a copy of any public notice required to be given under clause 4.3;

3.1.6 if the Event is or involves a fireworks display, copies of:

- (a) the risk management assessment for the Event;
- (b) the pyrotechnician's licence,
- (c) the fireworks operator's liability insurance certificate, and
- (d) approvals obtained from Worksafe, the Country Fire Authority, the relevant shire and Victoria Police.

3.2 The Permit is of no effect, and the Event must not commence, until the requirement in clause 3.1 has been complied with to the reasonable satisfaction of Gippsland Ports.

4 Permit Holder's rights and obligations

4.1 The Permit Holder may bring Event Equipment into the Site and allow it to remain in the Site throughout the Event, provided that the Permit Holder complies with any direction of Gippsland Ports in relation to the location, positioning, storage, security, fencing or other protection of the Event Equipment.

4.2 The Permit Holder must at its expense obtain and comply with the conditions of any permit, approval, consent, exemption or other authorisation required to lawfully conduct the Event, including without limitation an authorisation under a Local Law; the Marine Act 1988, the Occupational Health and Safety Act 2005 or the Environment Protection Act 1970.

4.3 The Permit Holder must give notice of the Event in any local newspaper circulating in the Site, which notice must be published at least 48 hours before the event commences. A copy of the notice must be provided to Gippsland Ports.

4.4 The Permit Holder must:

- 4.4.1 ensure that the Event is conducted in a competent manner without negligence and without causing nuisance to any person;
- 4.4.2 ensure that Event Participants do not engage in conduct that is dangerous, offensive or annoying to other persons, that creates a navigation hazard or that is hazardous to the environment;
- 4.4.3 ensure, as far as is reasonably practicable, that the Event is conducted without risk to the safety or health of Event Participants or members of the public;
- 4.4.4 ensure that the Site is kept clean and tidy; and
- 4.4.5 not make any structural or other alterations to any fixtures, improvements or fittings in the Site.

4.5 The Permit Holder acknowledges that it has inspected and is familiar with Site and that the Site is suitable and safe for the conduct of the Event.

4.6 The Permit Holder must comply, and must ensure that Event Participants comply, with:

- 4.6.1 any direction given by Gippsland Ports for the purposes of ensuring the safety, security or proper management of port waters on port land;
- 4.6.2 any direction of a harbour master engaged by Gippsland Ports; and
- 4.6.3 any direction given by any government or regulatory agency in relation to the Event.

4.7 If spillage of any fuel or other dangerous substance occurs at a Site, the Permit Holder must notify Gippsland Ports, Worksafe, the Environment Protection Authority and any other relevant agency of the spillage as soon as is practicable.

5 Making good the Site

5.1 As soon as practicable after the completion of the Event or after the expiry of the Permit, the Permit Holder must, to the satisfaction of Gippsland Ports:

- 5.1.1 remove from the Site any rubbish, litter or other materials brought onto the Site during the currency of the Permit;
- 5.1.2 make good any damage to improvements, fixtures, fittings or equipment at the Site arising out of the Permit Holder's use of the Site; and
- 5.1.3 reinstate the Site to the condition it was in immediately prior to the commencement of the Permit.

5.2 If the Permit Holder fails to comply with an obligation under condition 5.1, Gippsland Ports may take such action as is necessary to reinstate the Site to the condition it was in immediately prior to the commencement of the permit, including disposing of any property of the Permit Holder.

5.3 Gippsland Ports may deduct any costs that it reasonably incurs in reinstating the Site under condition 5.2 from the Permit Bond, or recover those costs as a debt from the Permit Holder.

6 Compliance

- 6.1 In exercising or performing any right or obligation under this permit, the Permit Holder must comply with:
- 6.1.1 any reasonable direction of Gippsland Ports;
 - 6.1.2 any direction of a harbour master engaged by Gippsland Ports;
 - 6.1.3 any direction given by any government or regulatory agency;
 - 6.1.4 all relevant laws, regulations, codes and instruments of any kind; and
 - 6.1.5 operating principles and procedures of Gippsland Ports, in effect from time to time.
- 6.2 Without limiting condition 6.1, the Permit Holder must comply with:
- 6.2.1 the Marine Act 1988;
 - 6.2.2 the Occupational Health and Safety Act 2005;
 - 6.2.3 any relevant Australian Standards;
 - 6.2.4 the Australian Code for the Transport of Dangerous Goods by Road or Rail;
 - 6.2.5 relevant laws, regulations, codes and instruments relating to the protection of the environment, including but not limited to the Pollution of Waters by Oil and Noxious Substances Act 1986 and the Environment Protection Act 1970; and
 - 6.2.6 relevant laws, regulations, codes and instruments relating to the handling, storage, discharge and carriage of dangerous goods, oils, gases, chemicals and refuse.
- 6.3 If the Permit Holder uses, hires or borrows any plant or equipment from Gippsland Ports, it must and must ensure that any of its servants or agents, use that plant or equipment safely and in accordance with the manufacturers instructions and applicable procedures.
- 6.4 The Permit Holder must obtain any licence, registration, permit or authorisation required to carry out the activities authorised under the Permit.

7 Payments

- 7.1 The Permit Holder must pay any:
- 7.1.1 Permit Fee and Permit Bond, as required by Gippsland Ports;
 - 7.1.2 interest on any outstanding sum, as required by Gippsland Ports, payable at the Penalty Interest Rate;
 - 7.1.3 fee or charge payable for remaining at the Site after the expiry of the permit;
 - 7.1.4 costs or expenses arising out of damage to the Site, or to any plant or equipment at the Site during the currency of the permit, but not including any fair wear or tear;
 - 7.1.5 fee or charge payable to relocate a Vessel from a Site to another location, in the event that Gippsland Ports reasonably considers the relocation necessary; and
 - 7.1.6 costs or expenses arising out of the issue of a Notice to Mariners in relation to the Event;
 - 7.1.7 penalty or fine which may be payable as a result of breach of any Act, regulation or other instrument howsoever imposed during the use and occupation of the Site or any of Gippsland Port's facilities.
- 7.2 This permit is not valid unless any Permit Fees and any Permit Bond required to be paid have been paid.

8 Failure to pay

- 8.1 If any sum or part of a sum due under condition 9.1 remains unpaid, Gippsland Ports may seek to recover the outstanding sum from the Permit Holder, including by enforcing its rights in contract, tort, by exercising any rights of lien or otherwise.
- 8.2 Without limitation to condition 8.1:
- 8.2.1 Gippsland Ports may apply the Permit Bond or any part of the Permit Bond, to payment of the outstanding sum; and
 - 8.2.2 the Permit Holder will pay all reasonable legal costs and other expenses whatsoever incurred by Gippsland Ports, either directly or indirectly, from pursuing payment of the outstanding sum.
- 8.3 In order to exercise its rights under conditions 8.1 or 8.2, Gippsland Ports may board or relocate the Permit Holder's Vessel. In that circumstance, the Permit Holder must not obstruct, hinder or prevent Gippsland Ports from accessing, boarding or relocating the Vessel.

9 Insurance

- 9.1 For the duration of the Permit, the Permit Holder must effect and maintain public liability insurance, with an insurer acceptable to Gippsland Ports, in a sum as required by Gippsland Ports but of not less than the \$5 million in respect of any single claim arising out of the activity authorised under the Permit, covering third party claims arising out of:
- 9.1.1 loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property; and
 - 9.1.2 death of, injury to, or disease of persons.

- 9.2 The insurance policies referred to in condition 9.1 must note the interests of Gippsland Ports, and must be on terms and with an insurer reasonably acceptable to Gippsland Ports.
- 9.3 The Permit Holder must, if required, provide to Gippsland Ports:
- 9.3.1 a certificate of currency for the Policy; or
 - 9.3.2 a copy of the Policy upon request by Gippsland Ports.
- 9.4 The Permit Holder must promptly notify Gippsland Ports if:
- 9.4.1 an incident occurs which may give rise to a claim under or prejudice the Policy; or
 - 9.4.2 the Policy is cancelled.
- 9.5 The Permit Holder must effect and maintain all other insurances in a manner and to such extent that is reasonable and customary for a person engaging in activities of the kind referred to and permitted by this Permit.
- 9.6 If after being requested to provide satisfactory evidence of compliance with the requirements of this clause the Permit Holder fails to do so, Gippsland Ports may insure, and the cost thereof shall be due and payable by the Permit Holder.

10 Warranties

- 10.1 The Permit Holder warrants, on a continuing basis, that:
- 10.1.1 s/he has full authority or power to hold this permit and to give effect to this permit;
 - 10.1.2 s/he holds all licences, registrations, permits, consents and authorisations required under any law in relation to this permit and will continue to do so at all times during the currency of the permit;
 - 10.1.3 all information, representations, warranties and undertakings made or given in relation to this permit are true, complete and accurate in all respects;
 - 10.1.4 s/he has not done anything in an improper or unlawful manner to induce, reward or influence the grant of this permit; and
 - 10.1.5 if the Permit Holder is not the owner of any Vessel upon which the Event is to be carried out, the Permit Holder has the full authority of the owner/s to bind the owner/s to each and every obligation in this permit.

11 Indemnity

- 11.1 The Permit Holder indemnifies Gippsland Ports and keeps it indemnified against all actions, claims, demands, losses, damages, costs and expenses whatsoever (including in relation to indirect and consequential losses) for which Gippsland Ports is or may be or become liable to any person in relation to or arising out of:
- 11.1.1 any breach of this permit;
 - 11.1.2 the Permit Holder's carrying out of the Event or use or occupation of a Site;
 - 11.1.3 any negligent, careless, reckless or wrongful acts or omissions of the Permit Holder or the Permit Holder's agents or Event Participants;
 - 11.1.4 any breach of statutory duty, licence, registration or authorisation requirement by the Permit Holder or the Permit Holder's agents; or
 - 11.1.5 the pursuit or enforcement of any outstanding sum by any available legal means, in accordance with condition 8.

12 Release

The Permit Holder releases Gippsland Ports from all actions, claims, demands, losses, damages, costs and expenses whatsoever (including in relation to indirect and consequential losses) which arise out of the conduct of the Event or in any way relate to this Permit, including any actions, claims, demands, losses, damages, costs and expenses whatsoever brought by the Permit Holder or by any other person.

13 Liability

- 13.1 Gippsland Ports is not liable in any way for any loss, damage or liability suffered or incurred by the Permit Holder or persons claiming through the Permit Holder in any way arising out of:
- 13.1.1 refusal of an application, for any reason, carry out the Event;
 - 13.1.2 refusal of an application to renew a permit to carry out the Event;
 - 13.1.3 variation or termination of the Permit in accordance with condition 14;
 - 13.1.4 any failure by a third party to vacate or clear a Site prior to the intended commencement date of a permit;
 - 13.1.5 any circumstance or event that is beyond the control of Gippsland Ports;
 - 13.1.6 any negligent act or omission by Gippsland Ports, or by its servants or agents; or for any other reason whatsoever or howsoever arising.
- 13.2 If this permit attracts the operation of any provisions of the Trade Practices Act 1974 (Cth) or the Goods Act 1958 (Vic) or any similar legislation of any other State or Territory, any liability that may be imposed on Gippsland Ports under those laws will be limited to the full extent permissible by law.

14 Suspension or termination of permit

- 14.1 Gippsland Ports may, by written notice to the Permit Holder, cancel or vary this permit if the Permit Holder:

- 14.1.1 breaches or causes a breach of the permit;
 - 14.1.2 conducts an activity that could place property or the safety of persons at risk;
 - 14.1.3 conducts an activity that could interfere with the orderly and efficient management of the port;
 - 14.1.4 fails to pay the Permit Fee, Permit Bond or any other sum payable under this permit;
 - 14.1.5 fails to provide documents or information required to be provided under this permit; or
 - 14.1.6 fails to comply with a direction of Gippsland Ports or a harbour master given in accordance with this Permit, the Regulations or the Marine Act 1988.
- 14.2 Gippsland Ports may, by written notice to the Permit Holder, immediately suspend this permit if Gippsland Ports reasonably believes that the continuation of the permit could:
- 14.2.1 cause a significant risk of injury to any person;
 - 14.2.2 cause a significant risk of damage to any property; or
 - 14.2.3 interfere with the orderly and efficient management of the port.
- 14.3 The Permit Holder breaches this Permit if the Permit Holder fails to fulfill any of the Permit Holder's obligations as and when required, or if no time prescribed, within a prompt and reasonable time.
- 14.4 The Permit Holder may terminate the Permit by giving 14 days written notice to Gippsland Ports.
- 14.5 Upon the termination of the Permit, the Permit Holder must immediately:
- 14.5.1 bring the Event or preparation for the Event to an end in a safe and orderly manner; and
 - 14.5.2 as soon as practicable comply with the obligations under Clause 4.
- 14.6 The Permit Holder is not entitled to any refund of the whole or part of any Permit Fee, Permit Bond or other sum paid. If the permit is suspended or revoked in accordance with condition 14.1 or 14.2, or if the Permit Holder terminates the permit in accordance with condition 14.4, the payment of any refund will be at the sole discretion of Gippsland Ports.

15 Miscellaneous

- 15.1 Any claim made in relation to this permit, whether in contract, tort, bailment or otherwise, will be null and void unless suit is brought in a court of competent jurisdiction and notice given thereof to Gippsland Ports within nine months of the date the cause of action arose.
- 15.2 This permit is governed by the law of the State of Victoria. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts, either for forum non conveniens or on any other basis.
- 15.3 In this permit, a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 15.4 Any rights and obligations arising under this permit do not in any way limit or restrict the rights of Gippsland Ports either at common law or by statute.
- 15.5 Gippsland Ports retains the right to supplement and/or alter the terms and conditions of this permit at any time.
- 15.6 The Permit Holder cannot supplement and/or alter the terms and conditions of this permit except with the prior written agreement of Gippsland Ports, or as otherwise specified in this permit.

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