

## COMMERCIAL PERMIT

### General Terms and Conditions

#### 1. Interpretation

1.1 In this Permit:

'Activity' means the activity or activities authorised under this Permit.

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

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

'Permit Fee' means any sum required to be paid as consideration for authorisation of the Activity.

'Permit Holder' means the person or organisation named on the Permit whom Gippsland Ports authorises to carry out the Activity.

'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 Activity 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 activity that is authorised under this Permit 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 Activity in the Site between the times permitted by Gippsland Ports, subject to these terms and conditions and any additional conditions specified by Gippsland Ports or

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 if the Activity is cancelled is wholly at the discretion of Gippsland Ports.

2.5 The rights granted by this Permit are a mere permit to conduct the Activity 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 event, 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 advise Gippsland Ports, in writing, within 14 days of any change in:

3.1.1 contact details for the Permit Holder; or

3.1.2 registration or identification mark/s for any Vessel upon which the Activity is to be carried out.

3.2 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.

#### 4 Making good the Site

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

4.1.1 remove from the Site any rubbish, litter or other materials brought onto the Site during the currency of the Permit;

4.1.2 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

4.1.3 reinstate the Site to the condition it was in immediately prior to the commencement of the Permit.

4.2 If the Permit Holder fails to comply with an obligation under condition 4.1, 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.

4.3 Gippsland Ports may deduct any costs that it reasonably incurs in reinstating the Site under condition 4.2 from the Permit Bond, or recover those costs as a debt from the Permit Holder.

## **5 Compliance**

5.1 In exercising or performing any right or obligation under this permit, the Permit Holder must comply with:

- 5.1.1 any reasonable direction of Gippsland Ports;
- 5.1.2 any direction of a harbour master engaged by Gippsland Ports;
- 5.1.3 any direction given by any government or regulatory agency;
- 5.1.4 all relevant laws, regulations, codes and instruments of any kind; and
- 5.1.5 operating principles and procedures of Gippsland Ports, in effect from time to time.

5.2 Without limiting condition 5.1, the Permit Holder must comply with:

- 5.2.1 the Marine Act 1988;
- 5.2.2 the Occupational Health and Safety Act 2005;
- 5.2.3 any relevant Australian Standards;
- 5.2.4 the Australian Code for the Transport of Dangerous Goods by Road or Rail;
- 5.2.5 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
- 5.2.6 relevant laws, regulations, codes and instruments relating to the handling, storage, discharge and carriage of dangerous goods, oils, gases, chemicals and refuse.

5.3 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.

5.4 The Permit Holder must obtain any licence, registration, permit or authorisation required to carry out the Activity.

## **6 Payments**

6.1 The Permit Holder must pay any:

- 6.1.1 Permit Fee and Permit Bond, as required by Gippsland Ports;
- 6.1.2 interest on any outstanding sum, as required by Gippsland Ports, payable at the Penalty Interest Rate;
- 6.1.3 fee or charge payable for remaining at the Site after the expiry of the permit;
- 6.1.4 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;
- 6.1.5 costs or expenses arising out of the issue of a Notice to Mariners in relation to the Activity;
- 6.1.6 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
- 6.1.7 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.

6.2 This permit is not valid unless any Permit Fees and any Permit Bond required to be paid have been paid.

## **7 Failure to pay**

7.1 If any sum or part of a sum due under condition 6.1 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.

7.2 Without limitation to condition 7.1:

- 7.2.1 Gippsland Ports may apply the Permit Bond or any part of the Permit Bond, to payment of the outstanding sum; and
- 7.2.2 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.

7.3 In order to exercise its rights under conditions 7.1 or 7.2, 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.

## **8 Insurance**

8.1 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, covering third party claims arising out of:

- 8.1.1 loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property; and
  - 8.1.2 death of, injury to, or disease of persons.
- 8.2 The insurance policies referred to in condition 8.1 must note the interests of Gippsland Ports, and must be on terms and with an insurer reasonably acceptable to Gippsland Ports.
- 8.3 The Permit Holder must, if required, provide to Gippsland Ports:
- 8.3.1 a certificate of currency for the Policy; or
  - 8.3.2 a copy of the Policy upon request by Gippsland Ports.
- 8.4 The Permit Holder must promptly notify Gippsland Ports if:
- 8.4.1 an incident occurs which may give rise to a claim under or prejudice the Policy; or
  - 8.4.2 the Policy is cancelled.
- 8.5 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.
- 8.6 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.

## **9 Warranties**

- 9.1 The Permit Holder warrants, on a continuing basis, that:
- 9.1.1 s/he has full authority or power to hold this permit and to give effect to this permit;
  - 9.1.2 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;
  - 9.1.3 all information, representations, warranties and undertakings made or given in relation to this permit are true, complete and accurate in all respects;
  - 9.1.4 s/he has not done anything in an improper or unlawful manner to induce, reward or influence the grant of this permit; and
  - 9.1.5 if the Permit Holder is not the owner of a Vessel upon which the Activity is to be undertaken, the Permit Holder has the full authority of the owner/s to bind the owner/s to each and every obligation in this permit.

## **10 Indemnity**

- 10.1 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:
- 10.1.1 any breach of this permit;
  - 10.1.2 the Permit Holder's carrying out the Activity or use or occupation of a Site;
  - 10.1.3 any negligent, careless, reckless or wrongful acts or omissions of the Permit Holder or the Permit Holder's agents
  - 10.1.4 any breach of statutory duty, licence, registration or authorisation requirement by the Permit Holder or the Permit Holder's agents; or
  - 10.1.5 the pursuit or enforcement of any outstanding sum by any available legal means, in accordance with condition 7.

## **11 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 Activity 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.

## **12 Liability**

- 12.1 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:
- 12.1.1 variation or termination of the Permit in accordance with condition 12;
  - 12.1.2 any failure by a third party to vacate or clear a Site prior to the intended commencement date of a permit;
  - 12.1.3 any circumstance or event that is beyond the control of Gippsland Ports;
  - 12.1.4 any negligent act or omission by Gippsland Ports, or by its servants or agents; or for any other reason whatsoever or howsoever arising.
- 12.2 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.

## **12 Suspension or termination of permit**

- 12.1 Gippsland Ports may, by written notice to the Permit Holder, cancel or vary this permit if the Permit Holder:
- 16.1.1 breaches or causes a breach of the permit;

- 16.1.2 conducts an activity that could place property or the safety of persons at risk;
  - 16.1.3 conducts an activity that could interfere with the orderly and efficient management of the port;
  - 16.1.4 fails to pay the Permit Fee, Permit Bond or any other sum payable under this permit;
  - 16.1.5 fails to provide documents or information required to be provided under this permit; or
  - 16.1.6 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.
- 12.2 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:
- 12.2.1 cause a significant risk of injury to any person;
  - 12.2.2 cause a significant risk of damage to any property; or
  - 12.2.3 interfere with the orderly and efficient management of the port.
- 12.3 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.
- 12.4 The Permit Holder may terminate the Permit by giving 14 days written notice to Gippsland Ports.
- 12.5 Upon the termination of the Permit, the Permit Holder must immediately:
- 12.5.1 bring the Activity or preparation for the Activity to an end in a safe and orderly manner; and
  - 12.5.2 as soon as practicable comply with the obligations under Clause 4.
- 12.6 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 12.1 or 12.2, or if the Permit Holder terminates the permit in accordance with condition 12.3, the payment of any refund will be at the sole discretion of Gippsland Ports.

**13 Miscellaneous**

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 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.
- 13.5 Gippsland Ports retains the right to supplement and/or alter the terms and conditions of this permit at any time.
- 13.6 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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