



## BERTHING AND SWING MOORING PERMIT

### TERMS AND CONDITIONS (valid from 01/07/2013)

#### 1. Interpretations

In this Permit

- 1.1. **"Authorized Vessel"** means the vessel identified as such in the Permit;
- 1.2. **"Claim"** means all actions, claims, demands, losses, damages, liability, costs and expenses whatsoever (including indirect and consequential losses);
- 1.3. **"Commencement Date"** means the date from which the Permit is valid stipulated on the Permit;
- 1.4. **"Expiry Date"** means the date on which the Permit will expire stipulated on the Permit;
- 1.5. **"Gippsland Ports"** means the Manager of the Port/Waterway to which this Permit relates;
- 1.6. **"Permit"** means the certificate issued to a person, permitting him/her to berth or moor or keep an Authorized Vessel temporarily at a Site subject to compliance with these Terms and Conditions and any Special Conditions;
- 1.7. **"Permit Bond"** means the money to be deposited with Gippsland Ports as security against loss or damage incurred by Gippsland Ports pursuant to issue of a Permit;
- 1.8. **"Permit Fee"** means the money required to be paid to Gippsland Ports for use of port facilities and services consequent upon being permitted to moor/berth the Authorised Vessel at the Site described in the Permit;
- 1.9. **"Permit Holder"** means the person named on the Permit and who warrants is the lawful owner or agent of the lawful owner of the Authorized Vessel, with authority to grant Gippsland Port a lien as described at 11 below;
- 1.10. **"Regulations"** means the *Port Services (Local Ports) Regulations 2004* and any revisions or replacements to it;
- 1.11. **"Site"** means the area of port land and/or port waters designated in the permit where the Authorized Vessel is permitted to be berthed or moored or kept;
- 1.12. **"Special Conditions"** means the conditions stated as such on the Permit additional to these Terms and Conditions that apply to the Permit Holder;
- 1.13. **"Vessel"** means any kind of vessel that is used, or capable of being used, in navigation by water, however propelled or moved and includes –
  - 1.13.1. a barge, lighter, floating restaurant or other floating vessel; and
  - 1.13.2. an air cushion vehicle, or other similar craft, used in navigation by water; and
  - 1.13.3. any aeroplane that is designed for and capable of being waterborne, for so long as that aeroplane is waterborne;

#### 2. Issue of Permit

- 2.1. The applicant warrants that all information supplied to Gippsland Ports when applying for a permit, including but not limited to the particulars of the authorized vessel, is correct and true. Any breach in this respect will be a fundamental breach of the contract entitling Gippsland Ports in its sole discretion to cancel the Permit and retain all payments already made by the Permit Holder, as liquidated damages.
- 2.2. In applying for a Permit, the applicant unconditionally accepts these Terms and Conditions as governing the agreement with Gippsland Ports subject to which the Permit is issued and undertakes that in case a Permit is issued, they will be complied with fully and completely. The Permit Holder unconditionally accepts and acknowledges personal liability for any and all consequences, including liability to third parties, for failure to comply with these Terms and Conditions and for payment of monies due to Gippsland Ports.
- 2.3. When accepting an application for a Permit, Gippsland Ports retains sole and absolute discretion whether to issue a Permit or not.
- 2.4. The rights granted by this Permit merely entitle the Permit Holder to berth or moor or keep the Authorized Vessel at the Site, always subject to these and any additional Terms and Conditions specified by Gippsland Ports.
- 2.5. The Permit Holder acquires no exclusive property interest or right of possession in the Site.
- 2.6. Issue of a Permit by Gippsland Ports is strictly for the period stipulated in the Permit and creates no rights, or expectation whatsoever that upon expiry of the period, the Permit Holder will have the right to have the Permit renewed for a further period.
- 2.7. Gippsland Ports reserves the right to suspend, vary or cancel this Permit and/or to do any works or things at or on any part of a Site, at any time, at its sole discretion, for reasons of safety, security or the proper management of the port.
- 2.8. Gippsland Ports reserves the right to require that an Authorized Vessel be relocated from one Site to another, at any time, at its sole discretion, for reasons of safety, security or the proper management of the port.

- 2.9. Gippsland Ports reserves the right to suspend, vary or cancel this Permit, at any time, at its sole discretion, in case of breach of any of the terms and conditions of the Permit by the Permit holder.
- 2.10. **The Permit Holder must remove the Authorized Vessel and all mooring lines, tackle and fittings used to secure the Authorized Vessel at the site, immediately upon expiry or notification of cancellation of the Permit by Gippsland Ports, failing which, Gippsland Ports may do so and the Permit Holder acknowledges liability for all costs as provided in sub-section 3.5 below. The Permit Holder acknowledges and accepts that upon expiry or cancellation of the Permit, as long as the Authorised Vessel continues to remain at the Site, it will fall within the meaning of Uncollected Goods as described in s.54 of the Australian Consumer Law and Fair Trading Act 2012 and may be dealt with by Gippsland Ports in accordance with the provisions of that Act, in addition to any other lawful avenues available.**

### 3. Payments

- 3.1. A Permit will only be issued after receipt by Gippsland Ports of the Permit Fee, Permit Bond and any other payments required for issue of the Permit.
- 3.2. In case a Site is temporarily vacated as described under 6 below, and Gippsland Ports allocates it temporarily to a third party, Gippsland Ports may charge a fee for this temporary reallocation and retain such fee in full.
- 3.3. In case Gippsland Ports agrees to an application pursuant to 7.2 below, a fee may be charged by Gippsland Ports for the service.
- 3.4. In case an Authorized Vessel is required to be relocated pursuant to 2.8 above, a fee may be charged by Gippsland Ports for the service.
- 3.5. The Permit Holder is liable to pay all costs incurred in case Gippsland Ports incurs same in respect of the Authorized Vessel or the Site for any reason, including but not limited to costs of relocating or securing a vessel and costs incurred removing tackle laid at a Site. In general, in case any action is required to be taken in respect of the Authorized Vessel or the Site for any reason, Gippsland Ports will as far as possible give the Permit Holder **two weeks'** notice to carry out the necessary work or take action. If the Permit Holder fails to do so, one calendar month after expiry of the two weeks' notice period Gippsland Ports may do the works and incur costs for which the Permit Holder will become liable. This provision is without prejudice to Gippsland Ports rights stated at 2.7 above.
- 3.6. The provision at 3.5 above will not relieve the Permit Holder of his/her obligations and liability to Gippsland Ports or third parties for any loss or damage arising from the Permit Holders failure to carry out the necessary work or take action.
- 3.7. All fees and charges imposed under this section are debts due to Gippsland Ports by the Permit Holder.

### 4. Information to be provided by Permit Holder

- 4.1. In addition to the information required on the Application Form, every application must have attached:
  - 4.1.1. certified true copies of the current registration and/or survey certificate for the Authorized Vessel (if applicable);
  - 4.1.2. a recent photograph of the Authorized Vessel, with salient markings and distinguishing features, clearly shown;
  - 4.1.3. a certified true colour copy of the Permit Holders photo ID (current driving licence or passport) showing photograph, full name, date of birth and address.
- 4.2. Upon request by an authorized officer of Gippsland Ports, the Permit Holder must produce a copy of the current registration and/or survey certificate for the Authorized Vessel, with a reasonable time.
- 4.3. The Permit Holder **MUST** (failing which will be in breach of these Terms & Conditions) inform Gippsland Ports, IN WRITING, within 14 calendar days of any change to-
  - 4.3.1. contact details for the Permit Holder (address, phone, email); and/or
  - 4.3.2. registration or identification marks for the Authorized Vessel.

### 5. Permit Holders Rights and Obligations

- 5.1. The Permit Holder may berth, moor or keep the Authorized Vessel at the Site during the currency of the Permit.
- 5.2. The Permit Holder acknowledges that Permits are only issued with maximum validity until 30<sup>th</sup> June next, with renewal being in the sole discretion of Gippsland Ports (irrespective of whether the vessel is used as a residence by the Permit Holder or other persons).
- 5.3. At the sole discretion of Gippsland Ports, the Permit Holder may attach a tender (not exceeding 3.6 meters LOA and 400 kg total mass) to the Authorized Vessel, but always maintained so as to not cause risk to or impede the berthing of other vessels.
- 5.4. The Permit Holder must be aware of and comply with all Local, State and Federal laws and regulations including directions issued by Gippsland Ports, relevant to the berthing or mooring or keeping of the Authorized Vessel at the Site.
- 5.5. The registration number and/or identification marks must be clearly displayed on the Authorized Vessel at all times it is at the Site.
- 5.6. The Authorized Vessel must be maintained in a seaworthy condition and all mooring lines, tackle and fittings used to secure the Authorized Vessel at the Site must be suitable and in good condition, at all times the authorized Vessel is at the Site.

- 5.7. REFUELING or TRANSFER OF FUEL at the Site is STRICTLY PROHIBITED without prior written approval of Gippsland Ports.
- 5.8. No works of any kind, including but not limited to repair, maintenance, installation, modification or construction works to any vessel, equipment or fixture, which would require or result in the deposit or discharge of any materials or waste onto land, into the atmosphere, or into the water at the Site, may be carried out without the prior approval in writing of Gippsland Ports. In case approval is given, all conditions stipulated in the approval must be strictly complied with.
- 5.9. The Permit Holder must ensure that any person engaged to perform any works at a Site is properly qualified and licensed and the works are carried out in full compliance with all applicable laws and regulations.
- 5.10. The Permit Holder acknowledges that any approval given by Gippsland Ports pursuant to application by the Permit Holder for works to be carried out at the Site, is without assumption of any responsibility by Gippsland Ports for the manner in which the works are carried out and does not relieve the Permit Holder from his/her obligation to ensure that the works are carried out safely and in full compliance with all relevant requirements.
- 5.11. The Permit Holder must ensure that the berthing or mooring or keeping of the Authorized Vessel at the Site, at all times;
  - 5.11.1. is conducted in a competent manner without negligence; and
  - 5.11.2. does not cause nuisance or risk of, or damage to any person or property; and
  - 5.11.3. does not cause risk of or an actual, navigation hazard or pollution of the environment, including visual and noise pollution.
  - 5.11.4. **whether or not any of the risks referred to in 5.11.2 and 5.11.3 above, including whether risk of or actual visual or noise (e.g. from operation of generators, other equipment or entertainment appliances) pollution is caused, will be determined in the sole discretion of Gippsland Ports. The Permit Holder must remedy the situation to the satisfaction of Gippsland Ports within a reasonable time of receiving written notification and in any case within 14 calendar days, failing which will be in breach of these Terms and Conditions.**
- 5.12. Whenever the Authorised Vessel is moored or berthed stern to the wharf/wall/bank engines must not be run to avoid risk of causing erosion of the bank. If it is necessary to run engines for recharging batteries or other purposes, the vessel should be re-moored/berthed bow to the wharf/wall/bank, subject at all times to the provisions of 5.11.4
- 5.13. The Permit Holder must ensure that the Site is kept clean and tidy at all times.
- 5.14. No construction at or on the Site, structural modifications or other alterations to any fixtures, improvements or fittings at the Site is permitted without the prior written approval of Gippsland Ports
- 5.15. At all times when an Authorized Vessel is at the Site, a copy of a current Permit must be available on board available for immediate production in case of request for inspection by an authorized officer of Gippsland Ports or a member of the police force.
- 5.16. Prior to the expiry of the Permit, the Permit Holder must, to the reasonable satisfaction of Gippsland Ports return the Site to the same condition it was in at the start of the permit period.

## 6. Temporary vacation of a Site

- 6.1. If the Site is to be unoccupied for more than 14 continuous days, the Permit Holder must inform Gippsland Ports in writing, of the period during which the Site will be temporarily vacant. Failure to do so will constitute a breach of these Terms and Conditions entitling Gippsland Ports to cancel the Permit and reallocate the Site to another applicant and/or vessel. Under no circumstances will the Permit Holder be entitled to any refund of fees for the period the Site is temporarily vacated.
- 6.2. Gippsland Ports may allocate a Site temporarily vacated to another applicant and/or vessel for the duration of any temporary vacation.

## 7. Transfer of Permit

- 7.1. The Permit Holder is not permitted to and must not assign or purport to assign this Permit to another person or to berth, moor or keep another vessel at the Site. Breach of this condition will constitute a fundamental breach giving rise to the provisions in 2.9, 2.10 and 3.5 above.
- 7.2. At any time during the currency of the Permit, the Permit Holder may request Gippsland Ports to cancel the Permit and issue another Permit for the remainder of the validity period of the original Permit, to another person who must make an application to be named as the Permit Holder and/or for another Authorized Vessel to be berthed, moored or kept at the Site.
- 7.3. Any application under 7.2 above will be invalid if a breach described at 7.1 above has already occurred and is subject to the obligations listed in 4 above, the reservation stated in 2.3 above and payment of any additional fees.

## 8. Swing Moorings

- 8.1. In case of a Site, where the Authorized Vessel is moored at a swing mooring, the Permit Holder is solely responsible for ensuring and warrants that, at all times, the tackle used and its installation/laying is adequate for the purpose taking into account all relevant factors including but not limited to the particular characteristics of the Authorized Vessel, the location, the nature of the seabed, proximity of other property, traffic, potential hazards and the worst case effects of wind, weather and tides.
- 8.2. The Permit Holder expressly and unconditionally exonerates from any liability whatsoever and indemnifies, Gippsland Ports for any loss or damage suffered by the Permit Holder, Gippsland Ports or third parties, as a consequence of failure or inadequate/improper installation of the swing mooring facility at the Site.
- 8.3. Before a swing mooring is laid, the Permit Holder must produce to Gippsland Ports drawings of the mooring configuration planned at the Site together with specifications of the tackle and calculations showing suitability of the arrangement for the safe mooring of the Authorized Vessel at the Site. Gippsland Ports may at its sole discretion require that the planned arrangement be certified as suitable by a marine surveyor or other competent person.
- 8.4. The Permit Holder acknowledges that acceptance by Gippsland Ports of the submissions listed at 8.3 above or compliance by the Permit Holder with any further requirements by Gippsland Ports does not in any way relieve the Permit Holder from the warranty and indemnity stated in 8.1 and 8.2 above respectively.
- 8.5. The Permit Holder must:
  - 8.5.1. have the mooring tackle inspected at no less than 12 monthly intervals and more frequently if circumstances warrant and make any necessary adjustments and repairs to comply with the warranty in 8.1 above; and
  - 8.5.2. within 7 days after completion of the inspection, produce to Gippsland Ports a signed declaration giving the date of the inspection, the name of the person who carried out the inspection and that the mooring is sound and that the tackle is in good and serviceable condition: and
  - 8.5.3. ensure that the mooring buoy is fitted with the Site identification number.
- 8.6. Mooring tackle remains the property of the Permit Holder and must be removed from the Site at the expense of the Permit Holder at the expiry of the Permit, in case a new Permit is not issued for a subsequent period, failing which the provisions of 3.5 above will apply.

## 9. Indemnity

- 9.1. The Permit Holder indemnifies Gippsland Ports and keeps it, its directors, officers and employees, indemnified against all actions, claims, demands, losses, damages, costs and expenses whatsoever (including indirect and consequential losses) for which Gippsland Ports is or may be or become liable, to any party in relation to or arising out of:
  - 9.1.1. any breach of the terms and conditions of this Permit by the Permit Holder; and/or
  - 9.1.2. the Permit holders use and/or occupation of the Site; and/or
  - 9.1.3. any negligent, careless, reckless, accidental or wrongful acts or omissions of the Permit Holder or the Permit Holders agents.

## 10. Denial of Liability

- 10.1. Gippsland Ports does not accept and denies liability to the maximum extent permitted by law, for any loss, damage or liability suffered or incurred by the Permit Holder, applicant for a permit or any other person as a consequence of:
  - 10.1.1.refusal by Gippsland Ports of an application for a Permit; and/or
  - 10.1.2.refusal by Gippsland Ports of an application to renew a Permit; and/or
  - 10.1.3.refusal by Gippsland Ports of an application made pursuant to the provision in section 7 and/or
  - 10.1.4.exercise by Gippsland Ports of its rights, including those listed herein and/or
  - 10.1.5.any mistake, negligent act or omission made by a director, officer, servant or agent in connection with the issue, variation or cancellation of a Permit or in any way in connection with any application for or grant of a Permit.
  - 10.1.6.action by any other person or party, including but not limited to robbery, malicious damage, vandalism or any other cause to the authorized vessel, other property or persons while at the Site.
- 10.2. If this Permit attracts the operation of any provisions of the *Consumer and Competition Act 2010 (Cth)*, the *Fair Trading Act 1999 (Vic)*, the *Goods Act 1958 (Vic)* or any other legislation of any State or Territory any liability imposed on Gippsland Ports will be limited to the fullest extent permitted by law.

## **11. Lien**

11.1. Gippsland Ports shall have a lien over the authorized Vessel, any chattels on board and any mooring tackle remaining at the Site for all debts owed by the Permit Holder. Gippsland Ports may exercise its lien at any time and any place in its sole discretion, through the action of any servant, agent or subcontractor. Gippsland Port's lien shall also extend to cover the cost and legal expense of recovering any sums due. Nothing herein shall prevent Gippsland Ports from recovering from the Permit Holder the difference between the debt owed to Gippsland Ports by the Permit Holder and the any amount realized pursuant to exercise of the lien.

## **12. Consequences of Breach of Terms and Conditions by Permit Holder**

- 12.1. If monies payable by the Permit Holder are overdue, Gippsland Ports may apply the Permit Bond towards the outstanding monies.
- 12.2. Without limiting the effect of 12.1 above, if outstanding monies payable by the Permit Holder remain unpaid for more than 14 days or if the Authorised Vessel remains at the Site after expiry or revocation of the Permit (as a consequence of breach of the Terms and conditions by the Permit Holder), without further notice to the Permit Holder, Gippsland Ports may detain and/or impound:
- 12.2.1. the Authorised Vessel; and/or
- 12.2.2. any fixtures, gear and any other things on or in the Authorised Vessel.
- 12.3. Gippsland Ports may board an Authorised Vessel to enforce its rights under the Permit and must not be obstructed or hindered in this endeavour by the Permit Holder, his/her guests, servants or agents.
- 12.4. If Gippsland Ports detains or impounds an Authorised Vessel or other item of property and the outstanding sum remains unpaid, after sixty (60) calendar days and without further notice to the Permit Holder, Gippsland Ports may sell the Authorised Vessel or other things and apply the proceeds of sale in the following order of preference:
- 12.4.1. Firstly in payment of any enforcement, sale and other expenses incurred by Gippsland Ports including legal costs;
- 12.4.2. Secondly towards payment of the outstanding debt including interest costs;
- 12.4.3. Any remaining money will be returned to the Permit Holder
- 12.5. Any Vessel or other item of property detained or impounded by Gippsland Ports under these Permit Terms and Conditions remain at the risk of the Permit Holder.
- 12.6. Gippsland Ports' rights hereunder are supplementary to any statutory and common law rights it may have.
- 12.7. The Permit Holder will remain personally liable for the whole outstanding sum plus interest and expenses incurred by Gippsland Ports in recovering the outstanding sum (including legal costs and costs incurred in impounding and disposing of the assets) until that sum is paid in full.

## **13. Severability**

13.1. These terms and conditions shall be separable and if any term or provision hereof or any part of any term or provision shall be invalid to any extent, it shall be invalid to that extent but no further and such circumstance shall not affect the validity or enforceability of any other term or provision hereof.

## **14. Law & Jurisdiction**

- 14.1. This Permit is governed by the law of the State of Victoria and the parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts for any reason whatsoever.
- 14.2. In this Permit, a reference to any law or legislation provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

## **15. Miscellaneous**

- 15.1. Any rights and obligations arising under this Permit, to any party, do not in any way limit or restrict the rights of Gippsland Ports either at common law or by statute.
- 15.2. Gippsland Ports retains the right to supplement and/or alter the terms and conditions of this Permit at any time, subject that those variations and alterations only become binding upon the Permit Holder after a reasonable period has elapsed after Gippsland Ports has brought notice of the changes to the Permit Holders attention.
- 15.3. The Permit Holder cannot supplement and/or alter the terms and conditions of the Permit except with the prior written agreement of Gippsland ports, or as otherwise specified in this Permit.