



CYCLONE MOORING PERMIT - TERMS AND CONDITIONS

Allocated Position

1. The Permit Holder is permitted to occupy the Allocated Position:
 - (a) solely for the purpose of mooring the Authorised Vessel(s) named herein;
 - (b) for the Term identified herein unless earlier terminated; and
 - (c) for the Permit Fee.
2. The Permit Holder warrants it has made its own enquiries as to the adequateness and suitability of the Allocated Position for the Authorised Vessel(s), having had specific regard to sea room and water depth. To the extent permitted by law, DPC does not expressly or impliedly warrant that the Allocated Position is or will remain fit, suitable or adequate for all or any of the purposes of the Permit Holder.
3. The Permit Holder must ensure that only an Authorised Vessel occupies the Allocated Position. No more than one Authorised Vessel may occupy the Allocated Position at one time.
4. The Permit Holder may make application to DPC for approval to substitute an Authorised Vessel with another vessel, which approval is in the absolute discretion of DPC.

General Conditions

5. At all times while moored at the Allocated Position, an Authorised Vessel must be maintained in a seaworthy condition, be registered in the name of the Permit Holder and be in survey under the *Marine Act*.
6. The Permit Holder must not allow any person to live aboard an Authorised Vessel while moored at the Allocated Position without the express prior written consent of DPC.
7. The Permit Holder and an Authorised Vessel's crew, guests and other invitees must not do anything in or around the Allocated Position that may be annoying, dangerous, offensive or cause a nuisance to other users of the area in which the Allocated Position is located.
8. The Permit Holder must ensure that no contaminant or undesirable substance is discharged from an Authorised Vessel into Port of Darwin waters.
9. The Permit Holder must promptly advise DPC of any change to the Permit Holder's contact details in the Permit Details.
10. The Permit Holder must promptly advise DPC of entry into any agreement to sell or otherwise dispose of an Authorised Vessel.

Mooring Equipment

11. The Permit Holder must supply and install the mooring apparatus and mooring buoy to be located at the Allocated Position (**the Mooring Equipment**) at its own cost. Subject to clause 30, the Mooring Equipment remains the absolute property of the Permit Holder.
12. The Permit Holder must ensure that the Mooring Equipment is:

- (a) a swing mooring of a type consisting of block(s) or anchor(s) and chain or wire that is not affixed to nor permanently embedded in the sea floor (such as pole/post moorings);
 - (b) made of quality materials and suitable for the Allocated Position and the type and size of the Authorised Vessel(s) having regard to tidal and adverse weather conditions;
 - (c) designed and constructed to secure the Authorised Vessel(s), at a minimum, during cyclonic conditions of a severity rating of Category 3 under the Australian Tropical Cyclone Intensity Scale employed by the Australian Bureau of Meteorology;
 - (d) installed at the Allocated Position by a qualified professional mooring contractor;
 - (e) kept and maintained in good condition at all times;
 - (f) serviced annually by a qualified professional mooring contractor; and
 - (g) serviced promptly following any extreme weather event that had the potential to affect the integrity of the Mooring Equipment.
13. The Permit Holder must provide to DPC at its own cost:
 - (a) on installation of the Mooring Equipment, a report by an appropriately qualified engineer that the Mooring Equipment meets the requirements of clause 12(b) and 12(c); and
 - (b) on each anniversary of the Commencement Date, proof of servicing required by clause 12(f) and clause 12(g),
within 14 days of the request being made.
 14. The Mooring Equipment must include a mooring buoy that is highly visible, carry a quick-flash yellow light, be yellow in colour and have sufficient load capacity to withstand the peak mooring loads of the Authorised Vessel(s) (**the Mooring Buoy**).
 15. At all times, the Mooring Buoy must clearly display the Permit Number of this Permit in black characters that are at least 50 mm high.
 16. The Permit Holder must arrange to install the Mooring Equipment as soon as practicable and in any event within 12 months of the Commencement Date.

Compliance with Laws, Directions and Policies

17. The Permit Holder must comply with:
 - (a) the *Darwin Port Corporation Act*, including regulations and by-laws (**the Act**) and directions made pursuant to that Act;
 - (b) applicable DPC policies on the DPC's website at www.darwinport.nt.gov.au (**the Website**), changes to which are deemed to have been notified to the Permit Holder on publishing on the Website; and
 - (c) all other applicable laws including, without limitation, laws relating to navigation, survey, licensing, registration, dangerous cargoes, seaworthiness, the environment, water and pollution.

Permit Fee

18. The Permit Holder must pay the Permit Fee during the Term in advance as follows:
- (a) the first payment will be that proportion of the Permit Fee up to the next 1 July and is due and payable on the Commencement Date; and
 - (b) subsequently, the Permit Fee is payable annually on 1 July each year, save that the final payment will be that proportion of the Permit Fee from the last 1 July during the Term up to the date of expiry of this Permit.
19. The Permit Holder acknowledges and agrees that:
- (a) the Permit Fee is subject to change on 1 July each year in accordance with the Schedule of Port Charges (available on the Website or otherwise on request);
 - (b) changes to the Permit Fee are deemed to have been communicated to the Permit Holder on publishing the Schedule of Port Charges on the Website; and
 - (c) if the Permit Fee is not paid within 14 days of the date it is due for payment, the Permit Holder shall pay to DPC default interest on the unpaid amount at the rate of 15% per annum calculated daily from the date the Permit Fee became due and payable until it is actually paid.

Risk

20. The Permit Holder acknowledges and agrees that:
- (a) it uses the Allocated Position at its own risk;
 - (b) DPC does not accept any risk in connection with the Authorised Vessel(s), the Mooring Equipment or the Allocated Position;
 - (c) it is responsible at all times for damage, loss or injury to any vessel, property or person caused by the Authorised Vessel(s) and/or the Mooring Equipment; and
 - (d) it releases and indemnifies DPC from all costs or claims against DPC whatsoever and howsoever arising in connection with the Permit Holder's occupation of the Allocated Position by the Authorised Vessel(s) and/or the Mooring Equipment or breach of this Permit.
21. The Permit Holder must hold a current marine insurance policy for the Authorised Vessel(s) during the Term and provide DPC with a copy of that policy on the Commencement Date and each anniversary of the Commencement Date thereafter during the Term.

Relocation

22. DPC may require the Permit Holder to:
- (a) temporarily relocate the Authorised Vessel(s) to another mooring at any time for any reason; or
 - (b) on 28 days notice, permanently relocate the Authorised Vessel(s) and the Mooring Equipment to another position, for the purpose of better regulating, managing, operating or controlling the Port, without compensation to the Permit Holder.
23. In the event that the Permit Holder fails to remove the Authorised Vessel(s) and/or Mooring Equipment when required to do so under clause 22, DPC may remove and or procure the removal of it from the Allocated Position and:
- (a) the costs incurred by DPC associated with removing, storing or otherwise dealing with the Authorised Vessel(s) or Mooring Equipment become a debt due

and payable to DPC by the Permit Holder on demand; and

- (b) the Authorised Vessel(s) and/or Mooring Equipment will remain at the risk of the Permit Holder in all respects and DPC will not be liable for any loss, damage or liability suffered or incurred by the Permit Holder or any third party in connection with the removal.

Suspension

24. If a Permit Holder breaches this Permit, DPC may suspend this Permit with immediate effect by serving a written notice on the Permit Holder, which suspension will continue until DPC:
- (a) notifies the Permit Holder that it is satisfied that the breach has been remedied; or
 - (b) this Permit is lawfully terminated.

Remedy Breach

25. If the Permit Holder breaches this Permit in a manner that, in the opinion of DPC, has the potential to impact the environment, the safety and security of property or people or Port operational efficiency, then:
- (a) without prejudice to DPC's other rights or remedies, DPC may do anything it considers necessary to remedy or rectify the breach, including the performance of any of the Permit Holder's obligations under this Permit; and
 - (b) the costs incurred by DPC in remedying, rectifying or addressing the breach become a debt due and payable to DPC by the Permit Holder on demand.

Renewal

26. If the Permit Holder is not in breach, and has not during the Term materially breached, these Terms and Conditions then, on expiry of the Term, the DPC may, in its absolute discretion and on application by the Permit Holder, renew this Permit on the same terms and conditions, save that:
- (a) the term of the renewed permit will be at the discretion of DPC and must not exceed 5 years; and
 - (b) the Permit Fee will be that contained in the Schedule of Port Charges applicable as at the date the permit is renewed by DPC.

Termination

27. The Permit Holder may terminate this Permit by notice to DPC:
- (a) without reason on 28 days written notice to DPC, in which case any proportion of the Permit Fee paid in advance that is applicable to the period following the date of removal of the Mooring Equipment by the Permit Holder will be refunded by DPC to the Permit Holder; or
 - (b) immediately where DPC has remained in breach of this Permit for not less than 14 days after the Permit Holder served DPC with a written notice requiring the breach to be remedied or rectified, in which case any proportion of the Permit Fee paid in advance that is applicable to the period following the date of termination will be refunded by DPC to the Permit Holder.
28. DPC may immediately terminate this Permit by notice to the Permit Holder where:
- (a) the Permit Fee or any other debt owing to DPC under this Permit remains unpaid for more than 28 days after the payment falls due;

- (b) the Permit Holder fails to comply with clauses 5, 8, 12, 14, 16, 22 or 37;
- (c) the Authorised Vessel(s) is no longer owned by the Permit Holder and DPC has not consented to assign or transfer this Permit to the new owner;
- (d) in the opinion of the Harbourmaster, the Authorised Vessel(s) or the Mooring Equipment has or is likely to become a navigation hazard;
- (e) the Permit Holder becomes insolvent; or
- (f) the Permit Holder is otherwise in breach of this Permit and has remained in breach for not less than 14 days after DPC served the Permit Holder with a written notice requiring the breach to be remedied or rectified,

and DPC will not be liable to refund the Permit Fee or any part of it to the Permit Holder.

Removal of Authorised Vessel(s)/Mooring Equipment

- 29. Unless otherwise agreed with DPC in writing, on expiry or sooner lawful termination of this Permit, the Permit Holder must remove the Authorised Vessel(s) and the Mooring Equipment from the Allocated Position within 14 days of the date of expiry or termination.
- 30. Failure to comply with clause 29 will result in the Mooring Equipment being deemed abandoned and:
 - (a) the Permit Holder will be deemed to have unequivocally and irrevocably waived their right to assert any proprietary rights in the Mooring Equipment;
 - (b) DPC may, in its absolute discretion, deal with the Mooring Equipment as if it were the owner including, without limitation, move, remove, store, gift, sell, dispose of, retain, use or rent the Mooring Equipment; and
 - (c) DPC will not be liable to the Permit Holder or any third party for any costs or losses or any proceeds of sale or rental.
- 31. Notwithstanding clause 30, the Permit Holder must pay to DPC on demand all costs incurred by DPC associated with moving, removing, storing, selling or otherwise disposing of the Mooring Equipment.

No Limitation

- 32. Without prejudice to DPC's obligations under this Permit, the Permit Holder acknowledges and agrees that:
 - (a) nothing in this Permit fetters the exercise of the Harbourmaster's or DPC's rights or powers under the Act; and
 - (b) pursuant to the Act, DPC is subject to the directions of the Minister and, notwithstanding DPC's obligations under this Permit, DPC is entitled to enforce or comply with any requirement imposed on it by the Minister.

- 33. The Permit Holder acknowledges that pursuant to section 46 of the Act, DPC shall have a lien on a vessel in respect of which a fee, rate, due or charge for storage is due and payable under the Act and may seize, attach and detain the vessel until fully paid or, if unpaid, may sell the vessel to recover the amount owing to it.

No Tenancy

- 34. Nothing in this Permit is intended to create any tenancy, estate or proprietary interest in the Allocated Position.

No Assignment, Transfer or Sub-letting

- 35. The Permit Holder acknowledges that the Permit is particular to the Permit Holder and the Authorised Vessel(s).
- 36. Neither this Permit, nor the Permit Holder's rights, entitlements or interests under this Permit are capable of being assigned or transferred, without the express prior written consent of DPC.
- 37. The Permit Holder must not sub-let or otherwise pass possession of the Allocated Position to a third party without the express written consent of DPC.

Notices

- 38. Notice given in accordance with this Permit is to be in writing and is deemed to be effected if:
 - (a) given to the Permit Holder, when delivered to the Permit Holder's registered office;
 - (b) sent by mail to the mailing address specified in the Permit Details, on the second business day following the date of posting;
 - (c) where this Permit provides for notice by posting on the Website, on publishing of the notice on the Website.

Special Conditions

- 39. The Special Conditions in the Permit Details form part of the Terms and Conditions of this Permit and will take precedence over these Terms and Conditions to the extent of any inconsistency.