



MARINE SERVICES LIABILITY

Marine Insurance Policy

Contents

About this booklet	3
General information	3
Policy terms and conditions	3
About QBE Australia	3
About NM Insurance	3
About Proteus	3
General information for Marine Services Liability Policy	4
Duty of disclosure	4
The General Insurance Code of Practice	4
Privacy	4
Resolving complaints & disputes	4
Contacting QBE's CCU, AFCA or the OAIC	5
Policy Terms and Conditions for Marine Services Liability Policy	5
Insurer	5
Our agreement with you	5
Your Policy	5
Paying your premium	5
How Goods & Services Tax (GST) affects any payments we make	5
1. Definitions	6
2. Cover	8
3. Insured services	9
4. Exclusions	9
5. General conditions	12
6. Claims	13

About this booklet

This booklet contains 2 separate parts:

- General information, and
- Policy terms and conditions.

General information

This part of the booklet contains information you need to know. Please read it carefully before taking out this insurance.

Policy terms and conditions

The Policy part of this booklet details all the Policy terms, general conditions and exclusions relating to the Policy. It forms part of your legal contract with us.

If we issue you with an insurance Policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy terms and conditions.

The Policy terms and conditions and the Policy Schedule we send to you forms your legal contract with us so please keep them in a safe place for future reference.

About QBE Australia

QBE Insurance (Australia) Limited ABN 78 003 191 035 AFSL 239545 is a member of the QBE Insurance Group Limited ABN 28 008 485 014 (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the largest insurers and reinsurers in the world.

About NM Insurance

NM Insurance Pty Ltd ('NM Insurance') holds an Australian Financial Service Licence (AFSL 227 186). NM Insurance ABN is 34 100 633 038 and can be contacted at:

Level 7, 99 Walker Street, North Sydney, NSW, 2060
Email: info@nautilusinsurance.com.au
Phone: 1300 780 533

NM Insurance is a company within the Steadfast Underwriting Agencies division of Steadfast Group Limited ABN 98 073 659 677 ('SGL').

NM Insurance acts under a binding authority from QBE Insurance (Australia) Limited ABN 78 003 191 035 AFS Licence No 239545.

About Proteus

Proteus Marine Insurance Pty Ltd ('Proteus') is an Authorised Representative of NM Insurance AR No. 001245315. Proteus ABN is 98 612 132 126 and can be contacted at:

Level 7, 99 Walker Street, North Sydney, NSW, 2060
Email: info@proteusinsurance.com.au
Phone: 1300 767 231

Authority to act on our behalf

We have given Proteus as an Authorised Representative of NM Insurance a binding authority to administer and issue policies, alterations and renewals. Under the terms of this binding authority Proteus as an Authorised Representative of NM Insurance, acts as our agent, and not yours, but liability within the terms and conditions of the policy remain at all times with us. If you have any queries in relation to your Policy, please contact Proteus.

To make a claim

Full details about what you need to do in the event of a claim. If you'd like to make a claim or to enquire about an existing claim please contact:

- Proteus by sending an email: to info@proteusinsurance.com.au

General information for Marine Services Liability Policy

The information contained in this part is general information only and does not form part of your contract with us. The Policy terms and conditions in the remainder of this booklet contain the details of your contract.

Duty of disclosure

Before you enter into an insurance contract, you have a duty, under both the *Insurance Contracts Act 1984 (Cth)* and the *Marine Insurance Act 1909 (Cth)*, to tell us anything that you know, or could reasonably be expected to know, that may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for, or
- is common knowledge, or
- we know or should know as an insurer, or
- we waive your duty to tell us about.

If you do not tell us something

Where the *Marine Insurance Act 1909 (Cth)* applies:

If you fail to comply with your duty of disclosure, we may avoid the contract of insurance from its beginning.

Where the *Insurance Contracts Act 1984 (Cth)* applies:

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed

The General Insurance Code of Practice

QBE Australia is a signatory to the General Insurance Code of Practice. The Code aims to:

- Commit us to high standards of service
- Promote better, more informed relations between us and you
- Maintain and promote trust and confidence in the general insurance industry
- Provide fair and effective mechanisms for the resolution of complaints and disputes between us and you
- Promote continuous improvement of the general insurance industry through education and training.

Privacy

QBE and Proteus each have a privacy policy which sets out personal information they collect and how they collect, disclose, store and use it. In this Privacy Notice, the use of 'we', 'our' or 'us' means QBE and Proteus unless specified otherwise.

We will collect personal information when you deal with us, our agents, other companies in the QBE group or suppliers acting on our behalf. We use your personal information so that we can do business with you, which includes issuing and administering our products and services and processing claims. Sometimes we might send your personal information overseas. The locations we send it to can vary but include the Philippines, India, Ireland, the UK, the US, China and countries within the European Union.

Our Privacy Policies describe in detail where and from whom we collect personal information, as well as where we store it and the full list of ways we could use it. To get a free copy of QBE's Privacy Policy please visit www.qbe.com.au/privacy or contact our customer care unit. To get a free copy of Proteus' Privacy Policy please visit www.proteusinsurance.com.au or contact the Privacy Officer for Proteus on 1300 767 231. It's up to you to decide whether to give us your personal information, but without it we might not be able to do business with you, including not paying your claim.

Resolving complaints & disputes

At QBE we're committed to providing you with quality products and delivering the highest level of service.

We also do everything we can to safeguard your privacy and the confidentiality of your personal information.

Something not right?

We know sometimes there might be something you're not totally happy about, whether it be about our staff, representatives, products, services or how we've handled your personal information.

Step 1 – Talk to us

If there's something you'd like to talk to us about, or if you'd like to make a complaint, speak to one of our staff. When you make your complaint please provide as much information as possible. They're ready to help resolve your issue.

You can also contact our Customer Care Unit directly to make your complaint. Our aim is to resolve all complaints within 15 business days.

Step 2 – Escalate your complaint

If we haven't responded to your complaint within 15 days, or if you're not happy with how we've tried to resolve it, you can ask for your complaint to be escalated for an Internal Dispute Resolution (IDR) review by a Dispute Resolution Specialist.

The Dispute Resolution Specialist will provide QBE's final decision within 15 business days of your complaint being escalated, unless they've requested and you've agreed to give us more time.

Step 3 – Still not resolved?

If you're not happy with the final decision, or if we've taken more than 45 days to respond to you from the date you first made your complaint, you can contact the Australian Financial Complaints Authority (AFCA). AFCA is an ASIC approved external dispute resolution body.

AFCA resolves insurance disputes between consumers and insurers, at no cost to you. QBE is bound by AFCA decisions - but you're not. You can contact AFCA directly and they'll advise you if your dispute falls within their Rules.

Disputes not covered by the AFCA Rules

If your dispute doesn't fall within the AFCA Rules, and you're not satisfied with our decision then you may wish to seek independent legal advice.

Privacy complaints

If you're not satisfied with our final decision and it relates to your privacy or how we've handled your personal information, you can contact the Office of the Australian Information Commissioner (OAIC).

Contacting QBE's CCU, AFCA or the OAIC

How to contact QBE Customer Care

Phone	1300 650 503 (Monday to Friday from 9am to 5pm, Sydney time, except on public holidays). Calls from mobiles, public telephones or hotel rooms may attract additional charges.
Email	<ul style="list-style-type: none"> complaints@qbe.com, to make a complaint. privacy@qbe.com, to contact us about privacy or your personal information. customercare@qbe.com, to give feedback or pay a compliment.
Post	Customer Care, GPO Box 219, Parramatta NSW 2124

How to contact AFCA

Phone	1800 931 678 (free call)
Email	info@afca.org.au
Online	www.afca.org.au
Post	Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

How to contact the OAIC

Phone	1300 363 992 Calls from mobiles, public telephones or hotel rooms may attract additional charges.
Email	enquiries@oaic.gov.au
Online	www.oaic.gov.au

Sanctions limitation and exclusion clause

You're not insured under any section of this Policy where a claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America, or any local autonomous sanctions.

Policy Terms and Conditions for Marine Services Liability Policy

Insurer

The Policy is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545.

Our agreement with you

This Policy is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in the Policy, occurring during the period of insurance shown on your Policy Schedule or any renewal period.

The amount of any deductible that applies to your Policy is shown on the Policy Schedule.

The definition, exclusions and general conditions apply to all sections of this Policy.

Your Policy

Your Policy consists of the Policy terms and conditions in this booklet and the Policy Schedule we give you.

Please read this Policy carefully, and satisfy yourself that it provides the cover you require.

If you need more information about any part of your Policy, please ask us, or your financial services provider.

Paying your premium

You must pay your premium, any adjustments of premium, GST and other amounts charged for this Policy and any renewal, extension or endorsement to this Policy by the due date. If we do not receive the premium by this date or your payment is dishonoured, this Policy will not operate and there will be no cover.

How Goods & Services Tax (GST) affects any payments we make

The amount of premium payable by you for this Policy includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay. When you are:

- not registered for GST, the amount we pay is the sum insured/limit of liability or the other limits of insurance cover including GST;
- registered for GST, we will pay the sum insured/limit of liability or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a damaged item insured under the Policy) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number and Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/limit of liability or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in *A New Tax System (Goods and Services Tax) Act 1999* and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

1. Definitions

Some key words and terms used in this Policy have a special meaning.

Wherever the following words or terms are used in the Policy, their meaning is as set out below

Word or term	Meaning
1.1 Act of terrorism	an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.
1.2 Aircraft	any craft or thing made or intended to fly or move in or through the atmosphere or space.
1.3 Compensation	monies paid or agreed to be paid by judgement, award or settlement for personal injury, property damage and consequential loss. Provided that compensation is only payable in respect of an occurrence to which this Policy applies.
1.4 Consequential loss	loss of use of tangible property resulting directly from property damage including loss of earnings and loss of hire resulting directly from property damage to third party vessels.
1.5 Deductible	the amount you first bear in relation to each occurrence. The deductible applies to all amounts payable under this Policy including the indemnity provided under clause 2.2 'Defence of claims'.
1.6 Electronic data	facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.
1.7 Employee	any person or persons engaged by you under a contract of service or apprenticeship, but does not include any person employed under such contract who is excluded from the definition of worker under any workers' compensation legislation.

Word or term	Meaning
1.8 Employment practices	any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by you.
1.9 Hot work	the use of oxyacetylene torches, welding or soldering equipment and oil/gas tank cleaning equipment. This includes: <ul style="list-style-type: none"> • fire or spark producing activities that may increase the risk of fire or explosion, • introduction of a non-certified ignition source into a classified hazardous area, • activities within a hazardous area that have the potential to cause a release of gas in that hazardous area, • activities within a hazardous area that have the potential to cause a large dense dust cloud in that hazardous area. <p>Note: Examples of the above include:</p> <ol style="list-style-type: none"> (a) welding, grinding, heating, thermal, friction or oxygen cutting, (b) taking/using communication devices, combustion engines, torches, battery or mains powered tools in a hazardous area, (c) maintenance of a gas pipeline valve on-line that could create an explosive gas atmosphere, (d) air-arc cutting a wear liner creating a large dust cloud.
1.10 Incidental contracts	<ol style="list-style-type: none"> (a) any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault; (b) any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities; (c) any written contract with any railway authority for the loading, unloading and/or transport of products, including contracts relating to the operation of railway sidings.
1.11 Insured services	services referred to and/or shown on your Policy Schedule for which we have agreed to insure you
1.12 Limit of liability	the applicable limit of liability specified on your Policy Schedule.
1.13 Medical persons	qualified medical practitioners, nurses, dentists and first aid attendants.

Word or term	Meaning
1.14 Occurrence	an event which results in personal injury, property damage, consequential loss or removal of wreck, neither expected nor intended from your standpoint. All personal injury, property damage, consequential loss or removal of wreck arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one (1) occurrence.
1.15 Period of insurance	the period shown on your Policy Schedule.
1.16 Personal injury	<p>(a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury. In the event of any claims, for personal injury arising from latent injury, latent disease or latent sickness, each claim shall be deemed to have first happened on the day such injury, disease or sickness was first medically diagnosed provided that such diagnosis first occurred during the period of insurance;</p> <p>(b) the effects of false arrest, wrongful detention false imprisonment or malicious prosecution;</p> <p>(c) the effects of wrongful entry or eviction;</p> <p>(d) the effects of the publication or utterance of defamatory or disparaging material;</p> <p>(e) the effects of assault and battery not committed by you or at your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.</p>
1.17 Policy	this booklet, your Policy Schedule and any endorsement attached or intended to be attached to it.
1.18 Policy Schedule	the schedule of insurance and/or any endorsement schedule we give you.
1.19 Pollutants	any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
1.20 Products	any goods, products and property (after they have ceased to be in your possession or under your control), which are or is deemed to have been manufactured, grown, extracted, produced, processed, constructed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by you (including any container thereof other than a vehicle).
1.21 Property damage	physical damage to or physical loss or physical destruction of tangible property.

Word or term	Meaning
1.22 Removal of wreck	the removal, salvage or recovery of any vessel that has sunk or is wrecked, disabled or destroyed when ordered by a Maritime, Port or Harbour authority.
1.23 Subsidiary	<p>(a) any entity which by virtue of any applicable legislation or law is deemed to be your subsidiary (where you are a company),</p> <p>(b) any entity over which you (where you are a company) are in a position to exercise effective direction or control.</p>
1.24 Territorial limits	anywhere in the World subject to exclusion 4.19 'Territorial limits'.
1.25 Tool of trade	a vehicle which has a tool or plant forming part of, attached to, or used in connection with it while such tool or plant is engaged on a work site. Tool of trade does not include any vehicle whilst travelling to or from a work site, or vehicles that are used to carry goods to or from any premises.
1.26 Vehicle	any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.
1.27 Vessel(s)	any ship, boat, yacht, craft or thing made or intended to float on or in or travel on or through or under water.
1.28 We, our, us	QBE Insurance (Australia) Limited, ABN 78 003 191 035.
1.29 You, your, insured	<p>(a) the person(s), companies or firm(s) named on the Policy Schedule as the insured</p> <p>(b) all the subsidiary companies (now, previously or subsequently constituted) of the insured named on the Policy Schedule, provided their places of incorporation are within Australia or any Territory of Australia;</p> <p>(c) every director, executive officer, employee, volunteer, work experience student, partner or shareholder of the parties shown in definition 1.29 (a) and 1.29 (b), but only while acting within the scope of their duties in such capacity;</p> <p>(d) every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in definition 1.29 (a) and 1.29 (b) in the performance by them of work for that principal, but subject always to the extent of coverage and the limit of liability provided by this Policy;</p> <p>(e) each partner, joint venture partner, coventurer or joint leasee of the parties shown in definition 1.29 (a) and 1.29 (b) but only:</p>

Word or term	Meaning
	<p>(i) where you assume active control of, or are required to arrange insurance for the partnership, joint venture, co-venture or joint lease;</p> <p>(ii) with respect to liability incurred as the partnership, joint venture, co-venture or joint lease;</p> <p>(f) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with your consent (other than the parties shown in definition 1.29 (d) or 1.29 (e) in respect of claims arising from their duties connected with the activities of any such club, organisation or service;</p> <p>(g) any director or senior executive of the parties shown in definition 1.29 (a) and 1.29 (b) in respect of private work undertaken by your employees for such director or senior executive;</p> <p>You, your, insured' does not include the interest of any other person other than as described in this definition</p>

2. Cover

2.1 Liability

We will cover your legal liability to pay:

- (a) all sums by way of compensation and all costs awarded against you in respect of:
- (i) Personal injury;
 - (ii) Property damage to third party property;
 - (iii) Property damage to third party vessels and vessel parts, machinery or equipment removed ashore;
 - (iv) Property damage to third party cargo on or discharged
 - (v) Consequential loss;

first happening during the period of insurance and caused by an occurrence within the 'Territorial limits' in connection with your insured services.

- (b) all reasonable costs and expenses for removal of wreck provided the vessel was sunk, wrecked, disabled or destroyed during the period of insurance.

2.2 Defence of claims

If we agree to cover you, we will:

- (a) defend in your name and on your behalf any claim or legal action against you seeking damages for personal injury, property damage, consequential loss or removal of wreck even if the action is groundless, false or fraudulent, and we will investigate, negotiate and settle any claim or legal action as we see fit;
- (b) pay all legal costs and expenses incurred by us and all interest accruing after entry of judgement until we have paid, tendered or deposited in court such part of the judgement as does not exceed the limit of liability;
- (c) reimburse you for all reasonable expenses, other than loss of earnings, incurred by you with our consent in connection with the defence of a claim or legal action;

- (d) pay reasonable expenses incurred by you for first aid to others at the time of a personal injury caused by an occurrence (other than medical expenses prohibited by law).

We will do this, provided that:

- (e) We will not be obliged to pay any claim or judgement or to defend any claim or legal action after the limit of liability has been exhausted by payment of judgements or settlements;
- (f) if a payment exceeding the limit of liability has to be made to dispose of a claim, our liability to pay any costs, expenses and interest under this clause

2.2 (a) to 2.2 (d) will be limited to that proportion of those costs, expenses and interest as the limit of liability bears to the amount paid to dispose of the claim.

Any amount we pay, other than payments in settlement of claims, suits and all costs awarded against you or incurred by you for removal of wreck, are payable over and above the limit of liability set out on your Policy Schedule.

2.3 Limit of liability

- (a) Our liability for pollution under exclusion 4.12 (a) and 4.12 (b) in respect of any one (1) discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one (1) period of insurance will not exceed \$1,000,000.
- (b) Our total aggregate liability during any one (1) period of insurance for all claims arising out of your products will not exceed \$1,000,000 unless otherwise shown on your Policy Schedule. Provided that this sub-limit under clause 2.3 (b) will not apply to claims when your products form an integral part of repair, installation, assembly, service or maintenance work on vessels.
- (c) Our maximum liability in respect of any claim or any series of claims for personal injury, property damage, consequential loss and removal of wreck (including liability under clauses 2.3 (a) and 2.3 (b) above) caused by or arising out of one (1) occurrence will not exceed the limit of liability shown on the Policy Schedule.

2.4 Deductible

- (a) For claims made on this Policy, you will be required to pay the deductible which is shown on your Policy Schedule.
- (b) If more than one (1) deductible is payable under this Policy for any claim, or series of claims arising from the one (1) occurrence you:
- (i) must pay the highest deductible, but
 - (ii) pay only one (1) deductible.

3. Insured services

We will cover your legal liability arising from any service provided directly by you or through your sub-contractor that is:

- listed in this clause and shown on your Policy Schedule;
- not listed in this clause and which is specified on your Policy Schedule

3.1 Ship Repairer

Services performed in respect of vessels	
<ul style="list-style-type: none"> • repairs • installation work • painting/anti-fouling • rigging • hot work • maintenance work detailing, • cleaning & water blasting 	<ul style="list-style-type: none"> • fit-out & refurbishment work • dry-dock operator • operator of lifting/carrying equipment • slipway operator. • fueling • sea trials
General Services	
<ul style="list-style-type: none"> • berth owner and occupier premises occupier • landlord • car park operator 	<ul style="list-style-type: none"> • provision of social club & first aid services • maintenance of your premises
<p><i>Including any other service commonly performed by a ship repairer</i></p>	

3.2 Marina Operator

Services performed in respect of vessels	
<ul style="list-style-type: none"> • provision of berths and moorings • fuelling • storage • retailer of chandlery and boating equipment • detailing, cleaning and water blasting 	<ul style="list-style-type: none"> • operator of lifting/carrying equipment • slipway operator • provision of utilities • provision of weather and boating information
General Services	
<ul style="list-style-type: none"> • berth owner and occupier premises occupier • landlord • bar, club and restaurant operator 	<ul style="list-style-type: none"> • provision of social club & first aid services • car park operator • maintenance of your premises
<p><i>Including any other service commonly performed by a marina operator</i></p>	

4. Exclusions

The following exclusions will apply to this Policy.

This Policy does not cover liability in respect of:

4.1 Aircraft, aircraft products and vessels

Claims arising out of:

- the ownership, maintenance, operation or use by you or on your behalf of any aircraft;
- the ownership, hire or charter of any vessel by you;
- the use, operation, movement or delivery of vessels in your care custody or control. Provided that this exclusion does not apply to incidental movements, trial trips or sea trials of vessels necessary to perform your insured services which occur within 100 nautical miles of your premises or home port;
- your products that are aircraft or aircraft component parts used for maintaining an aircraft in flight or moving upon the ground or used in the construction of an aircraft hull or machinery which to your knowledge are incorporated in an aircraft.

4.2 Asbestos

Claims directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

4.3 Assault and battery

Personal injury, property damage and consequential loss caused by or arising from assault and battery committed by you or at your direction. Provided that this exclusion 4.3 does not apply to definition 1.29 (a), 1.29 (b) and 1.29 (f) where reasonably necessary for the protection of persons or property

4.4 Contractual liability

Any obligation assumed by you under any contract or agreement that requires you to:

- effect insurance over property, either real or personal;
- assume liability regardless of fault.

Provided that this exclusion 4.4 shall not apply with regard to:

- liabilities which would have been implied by law in the absence of such contract or agreement;
- liabilities assumed under incidental contracts;
- terms regarding merchantability, quality, fitness or care of your products which are implied by law or statute;
- the obligation is assumed under those agreements specified on your Policy Schedule.

4.5 Defamation

For defamation:

- made prior to the commencement of the period of insurance,
- made by you or at your direction with knowledge of its falsity.

4.6 Electronic data

- communication, display, distribution or publication of electronic data, provided that this exclusion 4.6 (a) does not apply to personal injury resulting there from;
- total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation, or misappropriation of electronic data;
- error in creating, amending, entering, deleting or using electronic data;
- total or partial inability or failure to receive, send, access or use electronic data for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

4.7 Employment liability

- (a) Personal injury to any of your employees arising out of, or in the course of their employment in your business;
- (b) personal injury to any person who is deemed to be your employee pursuant to any legislation relating to workers' compensation;
- (c) which you are entitled to seek indemnity under any Policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not you are a party to such Policy of insurance;
- (d) the provisions of any workers' compensation legislation or any industrial award or agreement or determination;
- (e) employment practices.

4.8 Faulty design

The cost or expense of condemnation or rejection of any part or products by reason of faulty design, any loss or expense arising from such condemnation or rejection and/or the cost or expense of repairing, modifying or replacing any part or products (or for any loss or expense arising from such repair, modification or replacement) by reason of faulty design.

4.9 Fines, penalties, liquidated damages

Fines, penalties and/or liquidated damages.

4.10 Hot work

Claims directly or indirectly arising out of hot work. Provided that this exclusion 4.10 does not apply when hot work is conducted in strict compliance with the Australian Standard (Safety In Welding & Allied Processes) and you have complied with the rules, regulations and requirements of the relevant port or governmental authorities

These rules, regulations and requirements will include the procurement of a gas free certificate from either a chemist approved by Lloyds Agent or from the relevant Port or Statutory or local Body Authority prior to the commencement of any welding work to be undertaken on, to or near any oil tanker or vessel or any vessel engaged or previously engaged in the carriage of explosive or assume liability

4.11 Loss of use

Loss of use of tangible property resulting from:

- (a) a delay in or lack of performance by or on your behalf of any agreement;
- (b) the failure of your products to meet the level of performance, quality, fitness or durability expressed or implied, or warranted or represented by you. Provided that this exclusion 4.11 (b) does not apply to the loss of use of other tangible property resulting from the sudden unintended and unexpected physical damage to or loss or destruction of your products after they have been put to use by any person or organisation other than you as specified within definition 1.29 (a) and 1.29 (b).

4.12 Pollution

- (a) Personal injury, property damage and consequential loss directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of pollutants into or upon land, the atmosphere, or any water course or body of water. Provided that this exclusion 4.12 (a) does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place and which occurs outside of the United States of America or Canada;

- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided that this exclusion 4.12 (b) does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in personal injury, property damage and consequential loss and which occurs outside of the United States of America or Canada.

4.13 Product recall

Claims arising out of or resulting from any loss, cost or expense incurred by you for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your products or of any property of which they form a part, if such products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

4.14 Professional liability

The rendering of or failure to render professional advice or service by you or your sub-contractors or any related error or omission, provided that exclusion 4.14 shall not apply to:

- (a) personal injury, property damage and consequential loss arising from such rendering of or failure to render professional advice or service, providing such professional advice or service is not given for a fee;
- (b) medical advice by medical persons employed by you to provide first aid and other medical services on your premises providing your business is not involved in the provision of medical services.

4.15 Property in custody or control

Property damage and consequential loss to property owned by or leased or rented to you.

Provided that this exclusion 4.15 does not apply to third party vessels or liability for property damage to:

- (a) premises (including landlord's fixtures and fittings) which are leased or rented to you;
- (b) premises (or their contents) not owned, leased or rented by you but temporarily occupied by you for work therein;
- (c) vehicles (not belonging to or used by you) in your physical or legal control where the property damage occurs while the vehicles are in a car park owned or operated by you, unless you own or operate the car park for reward;
- (d) the property of an employee, or of the parties shown in definition 1.29 (a) and 1.29 (b);
- (e) property temporarily in your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which you are or have been working on and our limit under this exclusion 4.15 (e) does not exceed \$100,000 for any one (1) occurrence and in the aggregate for any one (1) period of insurance.

Provided that there will be no cover under this exclusion 4.15 in respect of liability assumed by you under any contract or agreement which requires you to effect material damage insurance on premises, property or goods which you do not own.

4.16 Punitive damages

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

4.17 Radioactivity, contamination, chemical, biological, biochemical and electromagnetic weapons

Claims caused by or contributed to by or arising from:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- (e) any chemical, biological, biochemical, or electromagnetic weapon.

4.18 Sexual molestation

Claims arising from, contributed to by or in connection with sexual and/or child assault, abuse, molestation or attempt thereof. In addition, we will not provide cover or pay costs detailed in clause 2.2 of this Policy.

4.19 Territorial limits

- (a) Claims made or actions instituted within any Country, State or Territory (outside Australia) where the laws of that Country, State or Territory require insurance to be effected or secured with an insurer or organisation licensed in that Country, State or Territory to grant such insurance;
- (b) claims made and actions instituted within the United States of America or Canada or any other Territory coming within the jurisdiction of the Courts of the United States of America or Canada;
- (c) claims and actions to which the laws of the United States of America or Canada apply.

Provided that exclusion 4.19 (b) and 4.19 (c) do not apply to:

- (d) claims and actions arising from the presence outside Australia of any of your employees and/or directors or partners who are normally resident in Australia and who are not undertaking manual work or supervision work of any kind while in the United States of America or Canada.

The limit of liability in respect of coverage provided under exclusion 4.19 (d) is inclusive of all costs, expenses and interest as set out in clause 2.2 of this Policy.

4.20 Terrorism

Loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss

This exclusion 4.20 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

4.21 Tobacco

Personal injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke,
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

4.22 Vehicles

Personal injury, property damage and consequential loss arising out of the ownership, possession, operation, or use by you or on your behalf of any vehicle:

- (a) which is registered or which is required under any legislation to be registered;
- (b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Exclusion 4.22 (a) and 4.22 (b) do not apply to:

- (c) personal injury where that compulsory liability insurance or statutory indemnity does not provide indemnity and the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity, does not involve a breach by you of legislation relating to vehicles;
- (d) property damage and consequential loss arising out of and during the loading or unloading of goods to or from any vehicle;
- (e) property damage and consequential loss caused by or arising from the operation or use of any vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by you or on your behalf within the confines of your premises;
- (f) property damage and consequential loss caused by or arising out of the use of:
 - (i) any vehicle whilst being used as a tool of trade;
 - (ii) plant forming part of your vehicle being used as a tool operating at any worksite;

but excluding property damage and consequential loss caused by or arising whilst the vehicle is transporting or carting goods.

4.23 Vessel building and construction risks

Any new vessel being built or constructed by you as the principal builder.

4.24 War

Invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any Government or public or local authority.

4.25 Working load limit

The operation by you of any lifting device, rail/cradle, dry-dock or carrying equipment in excess of the registered or rated capacity.

5. General conditions

These general conditions apply to all sections of this Policy.

5.1 Acquisition of properties or companies

The cover granted by this Policy extends to properties, assets, companies, firms, entities or other bodies:

- (a) formed or acquired by you or for which you assume management responsibility during the period of insurance;
- (b) which undertake activities consistent with the insured services and any other services as shown on your Policy Schedule subject to disclosure to us prior to any new acquisition which represents more than 15% of the current group turnover, in which event we may seek revised terms including but not limited to payment of additional premium. You are not obliged to accept such terms, but if you do not, that new acquisition will not be covered by this Policy.

Provided that:

- (c) no indemnity shall be granted in respect of claims for personal injury, property damage, consequential loss and removal of wreck which first happened prior to the date of such acquisition, formation or assumption of management responsibility.

5.2 Adjustment of premium

This insurance Policy is in consideration of your payment of the minimum and deposit premium as stated on your Policy Schedule. If your actual gross turnover for the period of insurance exceeds the estimated gross turnover on which the deposit premium was based, you agree to promptly pay any additional premium calculated by applying the agreed rate to the amount of such excess turnover.

No premium adjustment is required when the 100% deposit premium is less than \$2,500 per annum excluding government charges.

No deduction will be made from the gross turnover in respect of any subcontracted work. You agree to keep a complete and accurate record of all gross turnover relative to your operations covered by this insurance for examination by us or our representative and you further agree to make an annual report of all collected charges to us within thirty (30) days after expiration of the period of insurance.

5.3 Cancelling your Policy

- (a) How you may cancel this Policy
 - (i) You may cancel this Policy at any time by telling us in writing that you require cancellation,
 - (ii) where 'You' involves more than one (1) person, we will only cancel the Policy when a written agreement to cancel the Policy is received from all persons named as the insured.
- (b) How we may cancel this Policy
 - (i) We may cancel this Policy in any of the circumstances permitted by law by informing you in writing,
 - (ii) we will give you this notice as detailed in general condition 5.10.
- (c) The premium

We will refund to you the proportion of the premium for the remaining period of insurance, subject to any agreed minimum premium. When the premium is subject to adjustment, cancellation will not affect your obligation to supply to us such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

5.4 Changes to information previously advised

You must tell us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of personal injury, property damage, consequential loss and removal of wreck.

You must tell us immediately in writing of every change that comes to your knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy. We may at our discretion, for what we consider to be an increase of risk:

- (a) charge additional premium,
- (b) amend or impose additional terms or conditions,
- (c) cancel the Policy.

5.5 Changes to the Policy

If you want to make a change to this Policy, the change becomes effective when we:

- (a) agree to it,
- (b) give you a new Policy Schedule and/or an endorsement schedule detailing the change.

5.6 Cross liability

Where more than one (1) party comprises the insured each of the parties will be considered as a separate and distinct unit and the words 'You, your or insured' will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of them. Provided that nothing in this general condition 5.6 will result in an increase of our limit of liability in respect of any occurrence.

5.7 Discharge of liabilities

At any time we can pay to you or on your behalf, all claims made against you for any one (1) (1) occurrence:

- (a) the limit of liability, after deducting any amounts already paid,
- (b) any lower sum for which the claim may be settled.

If we do so:

- (a) the conduct of any outstanding claim(s) will become your responsibility, and
- (b) we will not be liable to pay any further amounts in relation to that occurrence other than costs, charges, or expenses that we agreed to pay before or when we made the payment referred to in this general condition 5.7 (a) and 5.7 (b).

5.8 Inspection of property

- (a) We will be permitted but not obligated to inspect your property and operations at any time,
- (b) neither our right to inspect nor our failure to inspect nor the making of any inspection nor any report of an inspection may be used by you or others in any action or proceeding involving us,
- (c) we may examine and audit your books and records at any time during the period of insurance and within three (3) years thereafter but that examination and audit will be restricted to matters which in our opinion are relevant to the Policy.

5.9 Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia.

5.10 Notices

Any notice given by us to the first named Insured on your Policy Schedule will be treated as notice to all parties comprising 'You, your, insured', and it will be effective:

- (a) if it is delivered to you personally;
- (b) if it is posted to your address last known to us, three (3) business days after having been posted by us;
- (c) immediately if it is sent by electronic communication.

5.11 Other interests

- (a) You cannot transfer any interests in this Policy without our written consent.
- (b) Any person whose interests you have told us about and we have noted on your Policy Schedule is bound by the terms of this Policy.

5.12 Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability to the extent that we have been prejudiced by that agreement.

5.13 Reasonable care

You must:

- (a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- (b) take all reasonable precautions to prevent personal injury, property damage, consequential loss and removal of wreck, and prevent the manufacture, sale or supply of defective product, and comply with and ensure that your employees, contractors, employees of labour hire organisations utilised by you, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
 - (i) safety of persons or property,
 - (ii) disposal of waste products,
 - (iii) handling, storage or use of flammable liquids or substances, gases or toxic chemicals;
- (c) at your own expense take reasonable action to trace, recall or modify any of your products containing any defect or deficiency of which you have knowledge or have reason to suspect, including (but not limited to) any of your products subject to governmental or statutory ban.

5.14 Subrogation

We may prosecute in your name for damages or otherwise. We may do this before or after we have paid your claim and whether or not you have been fully compensated for your actual loss. You must execute and deliver instruments and papers and do everything that is necessary to assist us in the exercise of those rights.

5.15 Vessel modification or reconstruction

You must notify us prior to commencing any work on a vessel that involves any structural change or any change to the dimensions, tonnage or type of the vessel. We may either decline to insure the work or offer cover subject to any required amendment to the Policy terms and conditions.

6. Claims

6.1 You must:

- (a) notify us immediately in writing of every occurrence, claim, writ, summons, proceeding, impending prosecution, and inquest together with all relevant information which may result in a claim under this Policy, whether or not you believe any claim amount might fall below the deductible;
- (b) complete our claim form and any other form we ask you to complete, and send it to our claims department at any of our offices. Our claim form is available from your financial services provider or you may download it from our website www.qbe.com.au;
- (c) supply us with all information we require to settle the claim;
- (d) take all reasonable precautions to prevent further loss or damage;
- (e) endeavour to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of right of subrogation, and as may be reasonably practicable, you must not without our written consent carry out any alteration or repair until we have had an opportunity to inspect;
- (f) co-operate with us fully in any action we take if we have a right to recover any money payable under this Policy from any other person;
- (g) pay the amount of the deductible in relation to each occurrence within fourteen (14) days of receiving a request form from us to pay your deductible. Cover provided by clause 2 of this Policy will not be available until the deductible has been paid.

If in doubt at any time, contact us or your financial services provider for advice on the procedure to follow.

6.2 What you must not do

- (a) Admit liability, make an admission, offer, promise or payment if an incident occurs which is likely to result in someone claiming against you;
- (b) make any admission of guilt or promise or offer of payment in connection with any such claim, unless we first agree in writing. This applies to you or any other person making a claim under this Policy;
- (c) negotiate, admit, repudiate or pay any claim by any person.

6.3 What we do

We may take over and conduct the defence or settlement of any claim or issue legal proceedings for damages. If we do this we will do it in your name. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You must co-operate by giving us any statements, documents or assistance we require. This may include giving evidence in any legal proceedings.

6.4 What can affect a claim

We will reduce the amount of a claim by the deductible shown on your Policy Schedule. We may refuse to pay a claim if you are in breach of your duty of disclosure or any of the conditions of this Policy, including any endorsements noted on or attached to the Policy Schedule. We pay only once for loss or damage from the same event covered by this Policy. We may be entitled to refuse to pay or to reduce the amount of a claim if:

- (a) it is in any way fraudulent,
- (b) any fraudulent means or devices are used by you or anyone acting on your behalf to obtain any benefits under this Policy.

