



# Marine Liability Insurance

## Policy Wording

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# ABOUT THIS INSURANCE

## ABOUT ZURICH

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, ZAIL may also be expressed as '*Zurich*', '*we*', '*us*' or '*our*'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

## ABOUT PROTEUS MARINE INSURANCE

Proteus Marine Insurance is a business name of NM Insurance Pty Ltd ABN 34 100 633 038 AFS Licence Number 227 186 ('NM Insurance').

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

## CONTACT DETAILS

**The contact details for Proteus Marine Insurance are:**

Level 7, 99 Walker Street, North Sydney, NSW, 2060

Email: [customerservice@proteusinsurance.com.au](mailto:customerservice@proteusinsurance.com.au)

Phone: 1300 767 231

### **To make a claim**

If an *event* happens which may give rise to a claim, please refer to 7.9 'Claims Procedure' on page 30. If you'd like to make a claim or to enquire about an existing claim please contact:

- Proteus by sending an email to:  
[Claims@proteusinsurance.com.au](mailto:Claims@proteusinsurance.com.au)
- Proteus by calling – 1300 767 251

## AUTHORITY TO ACT ON OUR BEHALF

We have given Proteus Marine Insurance a binding authority to arrange and administer this product. Under the terms of this binding authority Proteus Marine Insurance acts as *our* agent, and not *yours*, but liability within the terms and conditions of this product remain at all times with *us*. If *you* have any queries in relation to this product, please contact Proteus Marine Insurance.

# DUTY OF DISCLOSURE

This contract of insurance will be governed by either the Insurance Contracts Act 1984 (Cth) or the Marine Insurance Act 1909 (Cth).

## DUTY OF DISCLOSURE UNDER THE INSURANCE CONTRACTS ACT 1984

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

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.

## DUTY OF DISCLOSURE UNDER THE MARINE INSURANCE ACT 1909

*Your* attention is drawn to Sections 23 to 27 of the Marine Insurance Act 1909 (Cth) and, in particular, that any contract of marine insurance is based on utmost good faith and in the absence of such good faith, may be avoided. Further, the *insured* has an obligation to disclose to *us* every material circumstance which is known to the *insured* and/or which in the ordinary course of business ought to be known by the *insured*. Every circumstance is material if it would influence the judgement of a prudent insurer in fixing the *premium* or determining whether he will take the risk. If there is a failure to make such disclosure, *we* may avoid the contract.

## NON-DISCLOSURE OR MISREPRESENTATION

If the *insured* makes a misrepresentation to *us*, or if they do not comply with this duty of disclosure and *we* issue this policy with terms and conditions that are different to the terms and conditions that would have been issued had there not been any misrepresentation, or the *insured's* duty of disclosure had been complied with, then:

- *we* may reduce the cover provided so that *we* are placed in the same position as *we* would have been in, had there not been any misrepresentation and the *insured's* duty of disclosure had been complied with; and
- *we* may also cancel this policy; or
- *we* may treat this policy as if it never existed if the misrepresentation or the non-compliance with the *insured's* duty of disclosure was fraudulent.

# OUR CONTRACT WITH YOU

This *policy* is a contract of insurance between the *insured* and *Zurich* and contains all the details of the cover that *we* provide.

This *policy* is made up of:

- the policy wording. It states what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the proposal, which is the information *you* provide to *us* when applying for insurance cover;
- the most current *schedule* issued by *us*. The *schedule* is a separate document unique to the *insured*. It includes any changes, exclusions, terms and conditions made to suit the individual circumstances and may amend the policy; and
- any other written change otherwise advised by *us* in writing (such as an *endorsement*). These written changes vary or modify the above documents.

Please note, only covers shown in the *schedule* are insured. This document is used for any offer of renewal *we* may make, unless *we* tell *you* otherwise. Please keep *your* policy in a safe place. *We* reserve the right to change the terms of this product where permitted to do so by law.

## PRIVACY

Zurich is bound by the Privacy Act 1988 (Cth). *We* collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about *you* ('your details') to assess applications, administer policies, contact *you*, enhance *our* products and services and manage claims ('Purposes'). If *you* do not provide *your* information, *we* may not be able to do those things. By providing *us*, *our* representatives or *your* intermediary with information, you consent to *us* using, disclosing to third parties and collecting from third parties *your* details for the Purposes.

*We* may disclose *your* details, including *your* sensitive information, to relevant third parties including *your* intermediary, affiliates of Zurich Insurance Group Ltd, other insurers and reinsurers, *our* banking gateway providers and credit card transactions processors, *our* service providers, *our* business partners, health practitioners, *your* employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

*We* may obtain *your* details from relevant third parties, including those listed above. Before giving *us* information about another person, please give them a copy of this document. Laws authorising or requiring *us* to collect information include the Insurance Contracts Act 1984 (Cth), Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and other financial services, crime prevention, trade sanctions and tax laws.

Zurich's Privacy Policy, available at [www.zurich.com.au](http://www.zurich.com.au) or by telephoning us on 132 687, provides further information and lists service providers, business partners and countries in which recipients of *your* details are likely to be located. It also sets out how *we* handle complaints and how *you* can access or correct *your* details or make a complaint.

# GENERAL INSURANCE CODE OF PRACTICE

*Zurich* is a signatory to the General Insurance Code of Practice (the Code) and Proteus Marine Insurance supports the Code.

The objectives of the Code are:

- to commit *us* to high standards of service;
- to promote better, more informed relations between *us* and *you*;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes you make about *us*; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers compliance with the Code.

Further information about the Code or the Code Governance Committee and *your* rights under it is available at <https://insurancecouncil.com.au/cop/> or by contacting *us*.

## COMPLAINTS AND DISPUTES RESOLUTION PROCESS

If *you* have a complaint about an insurance product *we* have issued or the service *you* have received from *us*, please contact *your* intermediary to initiate *your* complaint with *us*. If *you* are unable to contact *your* intermediary, *you* can contact *us* directly on 1300 767 251. *We* will acknowledge receipt of *your* complaint within 24 hours or as soon as practicable.

If *you* are not satisfied with *our* initial response, *you* may access *our* internal dispute resolution process. Please refer to the Feedback & Complaints section on the Proteus Marine Insurance website for details of *our* internal dispute resolution process.

*We* expect that *our* internal dispute resolution process will deal fairly and promptly with *your* complaint, however, *you* may take *your* complaint to the Australian Financial Complaints Authority (AFCA) at any time.

AFCA is an independent external dispute resolution scheme. *We* are a member of this scheme and *we* agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to *you*.

**Their contact details are:**

**Website:** [www.afca.org.au](http://www.afca.org.au)

**Email:** [info@afca.org.au](mailto:info@afca.org.au)

**Freecall:** 1800 931 678

**In writing to:** The Australian Financial Complaints Authority, GPO Box 3, Melbourne, Victoria 3001.

If *your* complaint or dispute falls outside the AFCA Rules, *you* can seek independent legal advice or access any other external dispute resolution options that may be available to *you*.

# MARINE LIABILITY INSURANCE POLICY WORDING

To the prior payment of, or *your* agreement to pay, the premium set out in the *schedule*, we agree to provide insurance as set out in this policy.

In issuing this policy, we have relied on the information contained in the proposal form and/or any other information given by *you* or on *your* behalf.

## 1. DEFINITIONS

Where the following words appear in the *policy*, *the schedule* or endorsements this is what they mean:

### 1.1 AIRCRAFT

*aircraft* means any object that is intended to fly or move in or through the air, atmosphere or space.

### 1.2 BERTH OCCUPIER'S LIABILITY

*berth occupier's liability* means *your* legal liability arising from *your* ownership, tenancy or use of a berth, jetty, pontoon or mooring in the course of *your business*.

### 1.3 BOAT BUILDER

*boat builder* means a person or company whose business activities and operations include:

- 1.3.1 the design, construction and modification of *watercraft* for reward;
- 1.3.2 the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment; and
- 1.3.3 *watercraft* inspections and the issuing of inspection reports.

### 1.4 BOAT DEALER

*boat dealer* means a person or company whose business activities and operations include:

- 1.4.1 the purchase, sale, supply, distribution, delivery, import and export of *watercraft* and other products;
- 1.4.2 the testing and/or demonstration of *watercraft* in the ordinary course of marketing and/or selling of *watercraft*. Demonstration of *watercraft* may include towing of water skiers or aquaplanes or other similar water tow sports but in no case para-sailing, kite surfing, kite boarding, teak surfing or other similarly dangerous activities;
- 1.4.3 the exhibiting of *watercraft* at trade shows in the ordinary course of marketing and/or selling of *watercraft*;
- 1.4.4 the collection of *watercraft* from sellers or consignors and/or the delivery of *watercraft* to buyers;
- 1.4.5 pre-delivery detailing, repairing and/or servicing of *watercraft* in the ordinary course of preparing *watercraft* for sale;
- 1.4.6 pre-delivery sale, supply and/or installation of motors, sails and rigging, trailers, equipment, contents and accessories attaching to and/or forming part of *watercraft* in the ordinary course of preparing *watercraft* for sale;
- 1.4.7 *watercraft* inspections and the issuing of inspection reports; and
- 1.4.8 the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment.

## 1.5 CLAIM

*claim* means a written demand received by *you* alleging liability or responsibility for an *occurrence* and seeking a remedy from *you*.

## 1.6 COMMUNICABLE DISEASE

*communicable disease* means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- 1.6.1 the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- 1.6.2 the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- 1.6.3 the disease, substance or agent can cause or threaten bodily injury, illness, *damage* to human health, human welfare or *property*.

## 1.7 COMPENSATION

*compensation* means monies paid or agreed to be paid by judgment, award, settlement for *personal injury* and/or *property damage* which is the subject of a *claim* that is covered under this *policy*.

## 1.8 CONSEQUENTIAL LOSS

*consequential loss* means *loss* of hire or *loss* of use of any *watercraft* as a direct consequence of *property damage* to the *watercraft*, liability for which is otherwise covered by this policy, but excluding liability for a delay in, or lack of performance by *you* or on *your* behalf of any contract or agreement.

## 1.9 CONTRACTOR

*contractor* means an independent contractor with whom you enter into a service contract for the performance of work by them. *Contractor* includes any sub-contractor engaged by a *contractor* with whom you enter into such service contract for the performance of work. *Contractor* includes labour hire personnel. *Contractor* does not mean you or the *Insured*.

## 1.10 COSTS AND EXPENSES

*costs and expenses* mean:

- 1.10.1 costs or expenses that *we* incur in the investigation, defence or settlement of a *claim* for which cover is available or could be available under this policy;
- 1.10.2 costs awarded against *you* and all interest accruing after judgment until *we* have paid, tendered or deposited in court that part of any judgment which does not exceed the *limit of liability*;
- 1.10.3 reasonable costs or expenses incurred by *you* with *our* prior written consent; and
- 1.10.4 reasonable costs or expenses incurred by *you* for providing first aid to others at the time of *personal injury*.

*Costs and expenses* does not include loss of earnings. *Costs and expenses* does not include any amounts incurred after *we* have paid or agreed to pay an amount equal to the *limit of liability*.

## 1.11 DELIBERATE, RECKLESS OR WILFUL CONDUCT

*deliberate, reckless or wilful conduct* means any conduct being an act or omission to act where such act or omission is with intent to cause loss or recklessly and with knowledge that such loss would probably result.

## 1.12 DAMAGE

*damage* means physical loss, destruction of or damage to *property* or *watercraft* including the resultant loss of use. *Damage* also means the loss of use of *property* or *watercraft* which has not been physically lost, destroyed or damaged provided that such loss of use is caused by or arises from an *occurrence*.

## 1.13 DEDUCTIBLE

*deductible* means the amount *you* first bear in relation to each *occurrence*. The *deductible* applies to all amounts payable under this policy.

## 1.14 DIVING SERVICES

*diving services* means a person or company whose business activities and operations include the performance of all underwater activities such as inspections, surveys, repairs, salvage, maintenance and installations.

## 1.15 ELECTRONIC DATA

*electronic data* means 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 programs, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

## 1.16 EMPLOYEE

*employee* means any person while employed by *you* in *your business* who *you* compensate by salary, wages, or commission and have the right at all times to govern, control and direct in the performance of their work. Employee includes volunteers and students on work experience.

*Employee* does not include:

1.16.1 any broker, factor, consignee or *contractor*;

1.16.2 any member of *your* family, unless that person is also an *employee*; or

1.16.3 any partner, director or trustee unless that person is also an *employee*.

## 1.17 EMPLOYMENT PRACTICES

*employment practices* means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of an *employee*.

## 1.18 ENDORSEMENT

*endorsement* means documentary evidence of an alteration to this policy which forms part of this policy.

## 1.19 FAMILY

*family* means any member of *your* family who lives permanently with *you*, including *your* partner.

## 1.20 GENERAL LIABILITY

*general liability* means amounts that *you* become legally liable to pay by way of *compensation* for *property damage* and/or *personal injury*. *General liability* includes *property damage* and/or *personal injury* caused by or arising from a *product* but only when such *product* forms part of repair, installation, assembly or maintenance work carried out by *you* on *watercraft*. *General liability* does not mean *product liability* or *pollution risks* or *statutory liability* or *professional services liability*.

## 1.21 GROSS REVENUE

*gross revenue* means the total *gross revenue* arising from *your* business during the *period of insurance*. *Gross revenue* does not include GST. The estimated gross revenue *you* declare to *us* is stated in the 'Gross Revenue' section of the *schedule*.

## 1.22 GST

*GST* means Goods and Services Tax as such term is defined in a New Tax System (Goods and Services Tax) Act 1999 (Cth) and A New Tax System (Goods and Services Transition) Act 1999 (Cth).

## 1.23 HOT WORK

*hot work* means work involving the use of oxyacetylene torches, soldering, welding or oil tank cleaning equipment but not work carried out on or near *watercraft* previously engaged in carrying explosives, ammunition or inflammable liquids or gasses or any work on or near any fuel tank, fuel pipeline or fuel bunker space.

## 1.24 HOVERCRAFT

*hovercraft* means any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

## 1.25 INCIDENTAL CONTRACTS

*incidental contracts* mean:

- 1.25.1 any written rental agreement or lease of *property* or *watercraft* other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires *you* to insure such *property* or *watercraft*;
- 1.25.2 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;
- 1.25.3 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; and
- 1.25.4 those contracts designated in the 'Contractual Liability' section of the *schedule*.

## 1.26 INSURED SERVICES

*insured services* referred to and/or shown on the *schedule* for which we have agreed to insure *you*.

## 1.27 LIMIT OF LIABILITY

*limit of liability* means the maximum amounts that we will pay. A *limit of liability* is not reduced by the amount of any deductible payable by *you*. *Limits of liability* are stated in the '*Limits of Liability*' section of the *schedule* and/or elsewhere in this policy.

## 1.28 MARINA OPERATOR

*marina operator* means the owner, operator, lessor, or sub-lessor of a place located on or adjacent to a body of water or a watercourse and whose business is services performed in respect of vessels for the provision and/or supply of moorings, wet and/or dry storage, repairs, marine fuelling, operation of travel lifts, slipway operation and/or provision of utilities.

## 1.29 MEDICAL PERSONS

*medical persons* means qualified medical practitioners, nurses, dentists and first aid attendants.

## 1.30 MOORING CONTRACTOR

*mooring contractor* means a person or company whose business activities and operations include the design, supply, construction and/or installation, testing, inspection, repair, modification and/or servicing of moorings.

### 1.31 OCCURRENCE

*occurrence* means an *event*, including continuous or repeated exposure to substantially the same general conditions, which results in *loss, damage, liability* or costs neither expected nor intended by *you*. All *claims* that result from one original source, or one original cause, shall be considered to have been caused by a single *occurrence*.

### 1.32 PERIOD OF INSURANCE

*period of insurance* means the *Period of Insurance* stated in the *schedule* and any subsequent period we have agreed to renew this policy for.

### 1.33 PERSONAL INJURY

*personal injury* means:

- 1.33.1 bodily injury, death, sickness, disease, disability, shock, fright, mental anguish, mental injury;
- 1.33.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation; libel, slander or defamation; or
- 1.33.3 wrongful entry or wrongful eviction or other invasion of privacy.

### 1.34 POLLUTANT

*pollutant* means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals, waste, oil or petroleum products and waste includes material to be recycled, reconditioned or reclaimed.

### 1.35 POLLUTION RISKS

*pollution risks* means *your* legal liability directly or indirectly caused by or arising out of the sudden accidental or potential discharge, dispersal, emission, release, spillage, escape or seepage of *pollutants* into or upon any *property*, land, the atmosphere, seas, watercourse or body of water including liability to pay any *costs and expenses* incurred in the prevention, removal or clean-up of such pollutants, provided that such sudden accidental or potential discharge, dispersal, emission, release, spillage, escape or seepage does not arise from *your deliberate, reckless or wilful conduct*.

### 1.36 PREMISES OCCUPIER'S LIABILITY

*premises occupier's liability* means *your* legal liability arising from *your* ownership, tenancy or use of *your* premises in the course of *your business* but does not include *berth occupier's liability*.

### 1.37 PRODUCT

*product* means anything which is or is deemed to have been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by *you* (including packaging or containers) in the course of the *your business*.

### 1.38 PRODUCTS LIABILITY

*products liability* means *your* legal liability for *personal injury* or *property damage* happening during the *period of insurance* as a result of an *occurrence* caused by a defective *product* where the *product* formed part of repair, installation, assembly or maintenance work carried out by *you* on a watercraft and the *personal injury* or *property damage* occurred after the *product* has ceased to be in *your* possession or control. We will pay up to the *limit of liability* for any one *occurrence* and in the aggregate in any one *period of insurance*.

### 1.39 PROFESSIONAL SKIPPER

*professional skipper* means a person or company whose business activities and operations include the command, operation, navigation, control and general management of *watercraft* and crew (if applicable).

## 1.40 PROPERTY

*property* means tangible property that is not owned, used or leased by *you*.

*Property* does not mean:

1.40.1 *watercraft*;

1.40.2 *products*; or

1.40.3 intangible property

## 1.41 PROPERTY DAMAGE

*property damage* means physical loss, damage or destruction of *tangible property* that is not owned, used or leased by *you*.

## 1.42 REGATTA ORGANISER

*regatta organiser* means all aspects of organising a yachting or sailing race.

## 1.43 REMOVAL OF WRECK LIABILITY

*removal of wreck liability* means *your* legal liability for the *removal of wreck expenses* or recovery of a *watercraft* where it is damaged, stranded, abandoned or sinks accidentally.

## 1.44 REMOVAL OF WRECK EXPENSES

*removal of wreck expenses* mean reasonable expenses incurred by *you* in 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.

*Removal of wreck expenses* does not include any expenses incurred in the removal and/or disposal of a *watercraft* owned, hired, chartered or leased by or loaned to *you*.

## 1.45 SCHEDULE

*schedule* means the most current 'Policy Schedule of Insurance' issued by *us* which specifies details relating to this policy.

## 1.46 SHIP REPAIRER

*ship repairer* means a person or company whose business activities and operations include:

1.46.1 the maintenance and repair of *watercraft* for reward;

1.46.2 the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment; and

1.46.3 *watercraft* inspections and the issuing of inspection reports.

A *ship repairer* may have a principal place of business or provide a mobile service.

## 1.47 SUBCONTRACTORS LIABILITY

*subcontractors liability* means your legal liability for the negligence of *your* subcontractors engaged by *you* in the course of *your business*.

## 1.48 STATUTORY LIABILITY

*statutory liability* means a pecuniary penalty awarded against *you* in and under any Federal, State or Territory laws of the Commonwealth of Australia for a:

- 1.48.1 civil offence in connection with the discharge, dispersal, release or escape of a pollutant;
- 1.48.2 strict liability offence in connection with the discharge, dispersal, release or escape of a *pollutant*; or
- 1.48.3 strict liability offence in connection with a breach of any Federal, State or Territory occupational health and safety law or regulation of the Commonwealth of Australia.

*Statutory liability* does not mean *general liability* or *product liability* or *pollution risks* or professional services liability.

## 1.49 SUBSIDIARY COMPANY

*subsidiary company* means any company in which *you* have a controlling interest and which are stated in the 'Subsidiary Companies' section of the *schedule*.

For the purpose of this definition the term 'controlling interest' means the beneficial ownership of shares carrying more than 50% (fifty percent) of votes capable of being cast at a general meeting of all shareholders of the *subsidiary company*.

## 1.50 TANGIBLE PROPERTY

*tangible property* means *property* which has physical substance and which can be touched, physically assessed for its dimensions, weight and location and is capable of being physically moved from one location to other. *Tangible property* does not mean money (in the form of coins and notes, cheques and electronic forms of money) and incorporeal property such as a license, copyright, trademark and other forms of intellectual property.

## 1.51 TEMPORARY HIRE EQUIPMENT

*temporary hire equipment* means equipment hired or leased to *you* in the course of *your business* for a total continuous period not exceeding 120 days.

## 1.52 TEMPORARY HIRE OF EQUIPMENT LIABILITY

*temporary hire of equipment liability* means *your* legal liability for *damage* or *loss* of any *temporary hire equipment*.

## 1.53 TERRITORIAL LIMITS

*territorial limits* means anywhere within Australia or as amended in the *schedule*.

## 1.54 TERRORISM

*terrorism* means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connections with any organisation(s) or government(s) de jure or de facto, and which:

- 1.54.1 involves violence against one or more persons;
- 1.54.2 involves *damage* to *property*;
- 1.54.3 endangers life other than that of the person committing the action;
- 1.54.4 creates a risk to the health or safety of the public or a section of the public; or
- 1.54.5 is designed to interfere with or to disrupt an electronic system.

## 1.55 TOOL OF TRADE

*tool of trade* means 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.

## 1.56 VEHICLE

*vehicle* means any type of machine (other than ship-lifters, marine travel lifts, jinkers, slipways, cradles or any other mobile ship-lifting device) including attachments that is designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.

## 1.57 WATERCRAFT

*watercraft* means anything made or intended to float on or in or travel on or through or under water other than fixed pontoons, berths or jetties, and includes its machinery, contents and equipment.

## 1.58 VESSEL BROKER

*vessel broker* means a person or company whose business activities and operations include:

- 1.58.1 representing buyers and/or sellers in the buying and/or selling of *watercraft* for reward;
- 1.58.2 the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment; and
- 1.58.3 *watercraft* inspections and the issuing of inspection reports.

## 1.59 WE, US, OUR

*we, us, our* means Proteus Marine Insurance acting as agent of Zurich Australian Insurance Limited.

## 1.60 YACHT CLUB

*yacht club* means a sports club specifically related to yachting and/or sailing activities.

Where you declare to *us*, and it is stated in the '*your business*' section of the *schedule*, the activities and operations of a *yacht club* shall extend to include the ordinary activities and operations of a:

- 1.60.1 *marina operator*;
- 1.60.2 *regatta organiser*;
- 1.60.3 instructor;
- 1.60.4 class association;
- 1.60.5 yacht broker; and/or
- 1.60.6 ship repairer.

## 1.61 YOU, YOUR, INSURED

*you, your, Insured* means:

- 1.61.1 the *Insured* as named in the *schedule*;
- 1.61.2 subsidiary companies of the *Insured* as named in the *schedule* formed or constituted and incorporated in Australia;
- 1.61.3 the directors, employees, executive officers or partners of the *Insured* as named in the *schedule* but only whilst acting in such a capacity related to *your business*.
- 1.61.4 every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in definition (a) and (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;
- 1.61.5 each partner, joint venture partner, coventurer or joint leasee of the parties shown in definition but only:

- (i) where *you* assume active control of, or are required to arrange insurance for the partnership, joint venture, co-venture or joint lease; and
- (ii) with respect to liability incurred as the partnership, joint venture, co-venture or joint lease.

*You, your, Insured* does not include the interest of any other person other than as described in this definition

## 1.62 YOUR BUSINESS

*your business* means all activities of *your business* specified in the *schedule*, including repair, installation and maintenance work carried out on *watercraft* and undertaken within the *territorial limits* specified in the *schedule*.

## 1.63 YOUR PREMISES

*your premises* means the land and buildings or parts of buildings including car parks at the address noted in the *schedule*, owned, leased or used exclusively by *you* to carry on *your business*.

# 2. INSURED PERILS

Subject to the *limit of liability*, terms and conditions of this policy, we will pay all sums which *you* become legally liable to pay in *compensation* arising from *your business* as shown on the *schedule* for any of the following:

2.1 *damage to watercraft in your care, custody or control;*

2.2 *property damage;*

2.3 *personal injury;*

2.4 *products liability;*

2.5 *consequential loss;*

2.6 *pollution risks;*

2.7 *premises occupier's liability;*

2.8 *berth occupier's liability;*

2.9 *removal of wreck liability;*

2.10 *subcontractors liability; and*

2.11 *temporary hire of equipment liability,*

happening during the *period of insurance* as a result of an *occurrence* and within the *territorial limits* in connection with *your insured services*.

# 3. LIMITS OF LIABILITY

Our liability to pay *compensation* as a result of an *occurrence* will not exceed the *limit of liability* shown in the *schedule*.

Our maximum liability in respect of any *claim* or any series of *claims* for *personal injury*, *property damage*, *consequential loss* and *removal of wreck liability* caused by or arising out of one *occurrence* will not exceed the *limit of liability* shown on the *schedule*.

Our total aggregate liability any one *period of insurance* to pay *compensation* in respect of or in any way related to *products liability* is as stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to pay *compensation* in respect of or in any way related to *pollution risks* is \$1,000,000 unless stated otherwise in the *schedule*.

Our total aggregate liability any one *period of insurance* for *temporary hire of equipment liability* is \$50,000 unless stated otherwise in the *schedule*.

## 4. EXTENSIONS OF COVER

We will, in addition to the *limits of liability* shown in the *schedule*, cover you for:

### 4.1 DEFENCE AND COSTS COVER

Your legal defence, investigation and mitigation costs.

### 4.2 FIRST AID

Any reasonable costs incurred by you for first aid rendered to third parties at the time of any *personal injury*.

Provided that if in settling or disposing of a *claim* covered under this policy *compensation* is payable in excess of the *limit of liability*. Our additional liability in respect of costs incurred under 4.1 and 4.2 above will be limited to the same proportion of these costs as the *limit of liability* bears to the total *compensation* payable to dispose of or settle the *claim*. We will not pay for any costs or expenses under above 4.1 and 4.2 that are incurred after we have paid, or agreed to pay, an amount equal to the *limit of liability*.

### 4.3 RECTIFICATION OF FAULTY WORKMANSHIP

The 'Faulty Workmanship' exclusion clause contained in 'What is Not Covered' of this policy shall not apply to the extent of the provisions of this 'Rectification of faulty workmanship extension' clause.

Subject to the terms and conditions of this policy, we will pay for *costs and expenses* incurred in undertaking completion, re-performing, recompleting, improving or otherwise rectifying any work previously undertaken by you or on your behalf during the *period of insurance* which is considered faulty workmanship and gives rise to, or is expected may give rise to, *general liability* and/or *products liability*.

Unless we have given you our prior written approval for you to undertake such rectification work, the rectification work shall be undertaken by a third party chosen by us.

If the *occurrence* causing or giving rise to such rectification work also gives rise to *general liability* and/or *products liability* then our liability to pay for such rectification work is in addition to the *limit of liability* but in no case to exceed an amount equivalent to the *limit of liability*.

Unless stated to the contrary on the *schedule*:

- 4.3.1 the *deductible* applicable to this 'Rectification of faulty workmanship extension' clause is AUD5,000 five thousand Australian Dollars); and
- 4.3.2 the *limit of liability* applicable to this 'Rectification of faulty workmanship extension' clause is AUD50,000 (Fifty Thousand Australian Dollars) for all amounts payable in respect of each *claim* or a series of *claims* under this policy caused by or arising from one *occurrence* and in the aggregate during the *period of insurance*.

### 4.4 STATUTORY LIABILITY

Statutory liability:

- 4.4.1 caused by or arising from an *occurrence*;
- 4.4.2 in the ordinary course of *your business*;
- 4.4.3 that happens after the relevant retrospective inception date;
- 4.4.4 the *claim* is first made against you during the *period of insurance*, and
- 4.4.5 we are not legally prohibited from disposing of or settling the *claim*.

We do not cover any liability caused by or arising from any breach, contravention or violation of sections 182, 183, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those sections.

Unless stated to the contrary in the *schedule*:

- (a) the *deductible* applicable to this 'Statutory liability' clause is AUD5,000 (five thousand Australian Dollars), and
- (b) the *limit of liability* applicable to this 'Statutory liability' is AUD1,000,000 (one million Australian Dollars) for all amounts payable in respect of each *claim* or a series of *claims* under this policy caused by or arising from one *occurrence* and in the aggregate during the *period of insurance*.

## 5. OPTIONAL ADDITIONAL BENEFITS

The optional additional benefits are only applicable to this policy if we have agreed to provide the cover to *you*, *you* have paid any additional premium required and the additional benefit is noted as being covered in the *schedule*. Otherwise such cover is excluded. We will cover *you* for *you* legal liability caused by or arising in connection with:

### 5.1 EXTENDED HOT WORK

Unless *you* have told *us* that *you* undertake hot work and this is stated in the '*your business*' section of the *schedule*, we do not cover any liability caused by or arising from *hot work* whatsoever.

Notwithstanding that *you* may have told to *us* that *you* undertake *hot work*, in no case do we cover liabilities caused by or arising from *hot work*:

- 5.1.1 performed on or in a *watercraft* previously engaged in carrying explosives or flammable liquids or gases;
- 5.1.2 performed on or near any fuel tank, pipeline or fuel bunker space; and/or
- 5.1.3 not performed in accordance with the provisions of Australian Standard 1674.1-1997 – Safety in Welding and Allied Process – Fire Precautions.

### 5.2 PERSONAL INJURY TO CONTRACTORS EXTENSION

The '*Personal injury to contractors*' exclusion clause contained in 'What is Not Covered' of this policy shall not apply to *contractors* engaged by *you* in the ordinary course of *your* business for the purpose of:

- 5.2.1 maintaining or otherwise providing services to *your watercraft*, marina, business premises, plant, equipment or other *property*; and/or
- 5.2.2 providing services to the *watercraft* or *property* of others that is in *your* physical or legal control.

Nothing herein shall be construed to alter the requirement that all *contractors* be declared to and accepted by *us* as specified in the 'Contractor' clause contained in 'What Is Not Covered' of this policy.

Unless stated to the contrary on the *schedule*:

- (a) the *deductible* applicable to this 'personal injury to contractors extension' clause is AUD25,000 (twenty five thousand Australian Dollars), and
- (b) the *limit of liability* applicable to this 'personal injury to contractors extension' clause is AUD5,000,000 (five million Australian Dollars) for all amounts payable in respect of each *claim* or a series of *claims* under this policy caused by or arising from one *occurrence* and in the aggregate during the *period of insurance*.

## 5.3 PHYSICAL OR LEGAL CONTROL EXTENSION

The 'Physical or legal control' exclusion clause contained in 'What is Not Covered' of this policy shall not apply to *damage* to:

- 5.3.1 *watercraft* in *your* physical or legal control in the ordinary course of *your business*; or
- 5.3.2 any of the items specified in sub-clauses (a) – (e) below in *your* physical or legal control in the ordinary course of: *your business*:
  - (a) *watercraft* other than that specifically provided for in sub-clause 5.3.1 above;
  - (b) the personal tools, clothing or effects of *your* directors, partners, proprietors, officers, executives or *employees*, or the clothing and personal effects of any of *your* visitors;
  - (c) a premises (including its contents) leased or rented to or temporarily occupied by *you*;
  - (d) a *vehicle* (including its contents, spare parts and accessories while they are in or on such *vehicle*) provided that such vehicle is:
    - (i) not hired, leased by or loaned to *you*; and
    - (ii) is in a car park that is owned or operated by *you*; and
    - (iii) that *you* do not operate such car park for a fee as a principal part of *your business*; and
  - (e) any *property* not more specifically provided for in sub-clauses (a) to (e) above.

Unless stated to the contrary on the *schedule*, the *limit of liability* applicable to the cover provided by the provisions of sub-clause (5.3) of this 'Physical or legal control extension' clause is AUD500,000 (five hundred thousand Australian Dollars) for all amounts payable in respect of each *claim* or a series of *claims* under this policy caused by or arising from one *occurrence* and in the aggregate during the *period of insurance*.

## 5.4 OTHER WORK

Other work that does not fall within the scope of *your business* and which is specified in the *schedule* and provided that *you* have declared to *us your gross revenue* in respect of such business and *we* have agreed to provide cover.

## 5.5 STORAGE

*Watercraft* in *your* care, custody and control solely for the purpose of being stored.

## 5.6 WORLDWIDE SERVICES

Work performed by *you* outside Australia and provided that any *claim* or proceeding in relation to such work is brought against *you* within Australia.

# 6. EXCLUSIONS

## 6.1 AIRCRAFT AND WATERCRAFT

This *policy* does not insure *you* for *your* legal liability caused by or arising out of:

- 6.1.1 *your* ownership, construction, maintenance, servicing, operation or use by *you* of any *aircraft* or *hovercraft*;
- 6.1.2 *your* ownership, charter or lease of any *watercraft*;
- 6.1.3 the use, movement or delivery of *watercraft* in *your* care, custody or control other than for trial trips and movement incidental to *your business* within 100 kilometres of *your premises* or the place where the work was performed;

6.1.3 *products* installed in or on any *aircraft*, *hovercraft* or *watercraft* owned, chartered or leased by *you*; or

6.1.3 the use by *you* as a landing area for *aircraft* or *hovercraft* of any *property* or structure owned occupied or controlled by *you* – the term ‘landing area’ includes any area on which *aircraft* taxi, land, take-off, are housed, maintained or operated.

## 6.2 ASBESTOS

This *policy* does not insure *you* for *your legal liability* caused by or arising out of death, injury, loss, *damage* or liability of any nature which is directly or indirectly connected in any way with asbestos.

## 6.2 ASSAULT AND BATTERY

This *policy* does not insure *you* for *your legal liability* caused by or arising out of assault and battery committed by or at the direction of *you* unless reasonably necessary for the protection of persons or *property*.

## 6.3 COMMUNICABLE DISEASE EXCLUSION

This *policy* excludes any *loss*, *damage*, liability, claim, cost or expense of whatsoever nature caused by, contributed to by, resulting from, arising out of, or in connection with a *communicable disease* or the fear or threat (whether actual or perceived) of a *communicable disease* regardless of any other cause or event contributing concurrently or in any other sequence thereto.

## 6.4 CONFISCATION

This *policy* does not insure *you* for *your legal liability* caused by or arising out of confiscation, nationalisation, requisition, embargo or destruction of or *damage* to *property* or *watercraft* by order of any government, public or local authority.

## 6.5 CONTRACTORS

This *policy* does not insure *you* for *your legal liability* caused by or arising out of the acts or omissions of *contractors*, unless *you* have informed *us* that *you* engage *contractors* and this is stated in the ‘*your business*’ section of the *schedule*.

## 6.6 CONTRACTUAL LIABILITY

This *policy* does not insure *you* for *your legal liability* caused by or arising out of liability assumed by *you* under any contract or agreement. This exclusion shall not apply to:

6.6.1 the liability or obligation arises from *incidental contracts*;

6.6.2 liability that would have been implied by law in the absence of such contract or agreement;

6.6.3 written contracts or agreements agreed by *us* and specified in the *schedule* or to the extent that they adopt the standard terms published by peak industry bodies such as the Australian Ship Repairers Group or similar organisation approved by *us* in writing.

## 6.7 CYBER RISK

This *policy* excludes *loss*, *damage*, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.

## 6.8 DEFECTIVE PRODUCT

This *policy* does not insure *you* for *your legal liability* caused by or arising out of the need to replace a defective *product* where it is manufactured by a third party.

## 6.9 DIVING SERVICES

This *policy* does not insure *you* for *your* legal liability caused by or arising out of the provision of Diving Services.

## 6.10 ELECTRONIC DATA

This *policy* does not insure *you* for *your* legal liability caused by or arising out of loss of or *damage* to *electronic data*.

This exclusion shall not apply if such loss or *damage* arises from:

- 6.10.1 the theft of any computer or computer hardware, firmware or any device containing a microchip or integrated circuit containing *electronic data*;
- 6.10.2 water and/or other liquids or any other substances being discharged from or leaking or overflowing from any apparatus or appliance or pipes;
- 6.10.3 the breakage of glass;
- 6.10.4 impact;
- 6.10.5 storm, tempest, rainwater, wind, hail, fire, lightning, earthquake, explosion, implosion, sonic boom or volcanic eruption; or
- 6.10.6 *aircraft* or other aerial devices or articles dropped from them.

## 6.11 EMPLOYMENT LIABILITY

This *policy* does not insure *you* for *your* legal liability caused by or arising out of:

- 6.11.1 *personal injury* to any *employee* or worker arising out of, or in the course of, their employment in *your business*, to the extent that *you* are indemnified or entitled to be indemnified under a policy of insurance or self insurance arrangements in accordance with any workers' compensation or accident compensation legislation, or to the extent that *you* would have been entitled to be indemnified had *you* arranged insurance as required by such legislation;
- 6.11.2 any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- 6.11.3 any *claim* for *employment practices*.

## 6.12 EXCEEDING CAPACITY

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *you* knowingly exceeding the registered or rated capacity of any lift device, slipway or dry-dock.

## 6.13 FAULTY DESIGN

This *policy* does not insure *you* for *your* legal liability caused by or arising out of:

- 6.13.1 the cost or expense of condemnation or rejection of any part or *product* by reason of faulty design, specification, formulae or pattern;
- 6.13.2 any loss or expense arising from such condemnation or rejection and/or the cost or expense to repair, modify or replace any part or *product* by reason of faulty design, specification, formulae or pattern.

## 6.14 FAULTY WORKMANSHIP

This *policy* does not insure *you* for *your* legal liability for the costs incurred in performing, completing, correcting or improving any work undertaken by *you*, except to the extent provided for in the '4.3 Rectification of faulty workmanship' clause contained in section 4 of this policy.

## 6.15 FINES, PENALTIES AND PUNITIVE DAMAGES

This *policy* does not insure *you* for *your* legal liability caused by or arising out of punitive, aggravated or exemplary damages, fines or penalties imposed by law.

## 6.16 INFIDELITY

This *policy* does not insure *you* for *your* legal liability caused by or arising out of infidelity or any act of a dishonest nature on *your* part or on the part of *your* subcontractors or *employees*.

## 6.17 LIBEL, SLANDER AND DEFAMATION

This *policy* does not insure *you* for *your* legal liability caused by or arising out of the publication or utterance of a libel, slander or defamation:

- 6.17.1 made prior to the commencement date of this *policy*;
- 6.17.2 made by *you* or at *your* direction knowing it to be false; or
- 6.17.3 related to advertising, broadcasting or telecasting activities conducted by *you* or on *your* behalf.

## 6.18 LIQUIDATED DAMAGES

This *policy* does not insure *you* for *your* legal liability caused by or arising out of liquidated *damage* clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

## 6.19 LOSS OF USE

This *policy* does not insure *you* for *your* legal liability caused by or arising out of loss of use of *property* or *watercraft* which has not been physically lost, destroyed or damaged when such loss of use arises directly from:

- 6.19.1 a delay in or lack of performance by *you* or on *your* behalf of any contract or agreement; or
- 6.19.2 failure of any *product* or work performed by *you* or on *your* behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by *you*.

This sub-clause 6.19.2 shall not apply to *your* liability for loss of use of other *property* or *watercraft* resulting from sudden and accidental physical loss, destruction of or *damage* to any *product* or work performed by *you* or on *your* behalf after such *product* or work have been put to use by any person or organisation other than *you*.

## 6.20 NUCLEAR, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS

This *policy* does not insure *you* for *your* legal liability caused by or arising out of:

- 6.20.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 6.20.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;
- 6.20.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;

**6.20.4** 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; or

**6.20.5** any chemical, biological, bio-chemical, or electromagnetic weapon.

## 6.21 OTHER CONSEQUENTIAL LOSS

This *policy* does not insure *you* for *your* legal liability for payments under penalty clauses or for other *consequential loss* of any kind, including (but not limited to) detention, demurrage, loss of hire, loss of use or loss by diminution in value of any *watercraft*, except to the extent specified above as *consequential loss*, this policy excludes any liability.

## 6.22 ORGANISATION

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *your* failure to comply fully with all regulations prescribed by any applicable governing body or authority and/or any local authority regulations in relation to the organisation of a regatta.

## 6.23 PERSONAL INJURY TO CONTRACTORS

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *personal injury* to *contractors*, except to the extent provided for in clause 5.2 contained under 'Optional Additional Benefits' of this *policy*.

## 6.24 PHYSICAL OR LEGAL CONTROL

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *damage* to any *property* or *watercraft* in *your* physical or legal control, except to the extent provided for in clause 5.3 contained under 'Optional Additional Benefits' of this *policy*.

## 6.25 POLLUTION

This *policy* does not insure *you* for *your* legal liability caused by or arising from the discharge, dispersal, release or escape of *pollutants* into or upon land, the atmosphere or any watercourse or body of water, and/or for the cost of testing and monitoring for, removing, nullifying, or cleaning up of *pollutants*, except to the extent provided for in clause 2.6.

## 6.26 PRODUCT GUARANTEE

This *policy* does not insure *you* for *your* legal liability caused by or arising out of any *product* warranty or guarantee given by *you* or on *your* behalf, but this exclusion shall not apply to the requirements of any Federal, State or Territory legislation as to *product* safety and information.

## 6.27 PRODUCT RECALL

This *policy* does not insure *you* for *your* legal liability caused by or arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any *product* where such *product* is withdrawn or recalled from the market or from use in a particular application because of a known, alleged or suspected defect or deficiency.

## 6.28 PROFESSIONAL LIABILITY

This *policy* does not insure *you* for *your* legal liability caused by or arising out of the rendering of or failure to render professional advice or service including but not limited to surveys, inspection or condition reports, and valuations of *watercraft*, provided by *you* or on *your* behalf or any error or omission connected therewith.

This Exclusion shall not apply in respect to:

- 6.28.1 *personal injury or property damage* arising therefrom providing such professional advice or service is not given for a fee;
- 6.28.2 arising out of the rendering of or failure to render professional medical advice by medical persons employed by *you* to provide first aid and other medical services on *your premises*; or
- 6.28.3 arising out of advice given in respect of the use or storage of *your* products.

## 6.29 PROFESSIONAL SKIPPING

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *professional skipping*.

## 6.30 PROPERTY IN YOU PHYSICAL OR LEGAL CONTROL

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *damage* to *property* owned by, used by or leased by *you*, but excluding *temporary hire equipment*.

## 6.31 RECKLESS CONDUCT

This *policy* does not insure *you* for *your* legal liability caused by or arising out of the *deliberate, reckless* or wilful conduct of *you* or *your* subcontractors.

## 6.32 SILICA

This *policy* does not insure *you* for *your* legal liability caused by or arising from silica or silica *products* or silica contained in any *products*.

## 6.33 SPRAY PAINTING

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *property damage* occurring as a result of overspray of paint or other substance and where such *property damage* is caused by *you* or *your* subcontractor failing to erect a purpose built spray booth or implement similar protective measures.

## 6.34 STRIKES

This *policy* does not insure *you* for *your* legal liability caused by or arising out of *property damage* or *personal injury* arising from any strike, lockouts, labour disturbance, riot, civil commotion or act of any person taking part in any such activity.

## 6.35 TERRORISM

This *policy* does not insure *you* for *your* legal liability caused by or arising out of any act of *terrorism* or steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived *terrorism*.

## 6.36 TERRITORIAL LIMITS

This *policy* does not insure *you* for *your* legal liability caused by or arising out of costs or expenses relating to any *claim*:

- 6.36.1** brought against *you* in any country, state or jurisdiction other than the Commonwealth of Australia and its external territories;
- 6.36.2** arising as a consequence of *you* entering into contractual obligations submitting to the jurisdiction of court other than a court of a State or Territory of the Commonwealth of Australia; or
- 6.36.3** arising as a consequence of any agreement by *you* to indemnify any other party in respect of awards, judgments or settlements made under the jurisdiction of a court other than a court of a State or Territory of the Commonwealth of Australia, except as provided for below.

The exclusion contained in 6.36.1 above shall not apply to any liability, costs or expenses relating to any *claim* brought against *you* in any country, state or jurisdiction other than the Commonwealth of Australia and its external territories provided that the occurrence giving rise to the *claim*:

- (a) happens in the ordinary course of overseas business travel by *you* but not if *you* perform manual work in North America;
- (b) relates to *products* supplied from the Commonwealth of Australia to anywhere in the world except North America; or
- (c) relates to *products* supplied from the Commonwealth of Australia to North America but not if such *products* were supplied to North America with *your* knowledge.

## 6.37 VEHICLES & TRAILERS

This *policy* does not insure *you* for *your* legal liability caused by or arising out of the ownership, possession or use by *you* of any *vehicle* or trailer used to transport *watercraft* by road:

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

These sub-clauses above shall not apply to *personal injury* where:

- (a) that compulsory liability insurance or statutory indemnity does not provide indemnity, and
  - (b) the reason why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by *you* of any legislation relating to vehicles or trailers used to transport *watercraft* by road;
- 6.37.3** any *vehicle* (including any tool or plant forming part of or attached to or used in connection with such *vehicle*) or trailer used to transport *watercraft* by road whilst being operated or used by *you* or on *your* behalf in connection with *your business* at *your premises* or on any work site;
  - 6.37.4** the delivery or collection of goods to or from any *vehicle*;
  - 6.37.5** the loading or unloading of any *vehicle*;
  - 6.37.6** any *vehicle* temporarily in *your* custody or control for the purpose of parking; or
  - 6.37.7** *damage* caused by or arising from the movement of any *vehicle* (which is required to be conditionally registered in accordance with the law of any state or territory in the Commonwealth of Australia) in the event of *your* inadvertent and unintentional failure to effect conditional registration.

## 6.38 WAR, STRIKES, RIOTS, CIVIL COMMOTIONS

This *policy* does not insure *you* for *your* legal liability caused by or arising out of:

- 6.38.1 strike, lockout, labour disturbance, riot, civil commotion or act of any person taking part in any such event;
- 6.38.2 person acting from a political, ideological or religious motive;
- 6.38.3 act of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;
- 6.38.4 capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat; or
- 6.38.5 derelict mines, torpedoes, bombs or other derelict weapons of war.

## 7. GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS

### 7.1 ACQUISITION OF PROPERTIES OR COMPANIES

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

- 7.1.1 formed or acquired by *you* or for which *you* assume management responsibility during the *period of insurance*; and
- 7.1.2 which undertake activities consistent with the *insured services* and any other services as shown on the *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 no indemnity shall be granted in respect of *claims* for *personal injury*, *property damage*, *consequential loss* and *removal of wreck liability* which first happened prior to the date of such acquisition, formation or assumption of management responsibility.

### 7.2 ADJUSTMENT OF PREMIUM

This policy is in consideration of *your* payment of the minimum and deposit premium as stated on the *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 *deductible* 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*.

## 7.3 ASSIGNMENT

It is agreed that no assignment of this policy or any monetary sum which may be or may become payable under this policy is to be binding on or recognised by *us* unless a dated notice of such assignment signed by *you* and by the assignor in the case of subsequent assignment, is endorsed on this policy and the insurance with such *endorsement* is produced before payment of any *claim* or return of premium under this policy but nothing in this condition is to have effect as an agreement by *us* to the assignment of this policy in the event of a sale or transfer to a new management.

## 7.4 ALTERATION OF RISK

If *you* become aware of any changes to the facts or circumstances which existed at the commencement of this policy, *you* must notify *us* in writing within 30 (thirty) calendar days.

If we agree to the change we will do so in writing and *you* must pay *us* any additional premium we require. Examples of changes *you* should tell *us* about include but are not limited to:

- 7.4.1 a change in the type of or nature of *your business*;
- 7.4.2 of *damage* or *losses*; or
- 7.4.3 *your business* is wound up or carried on by an insolvency practitioner or permanently discontinued.

*Your* failure to notify *us* of the change could result in *us* declining a claim made under this *policy* and/or cancelling or avoiding this policy.

## 7.5 BANKRUPTCY OR INSOLVENCY

In the event that *you* should become bankrupt or insolvent, we shall not be relieved thereby of the settlement of any *claim* because of such bankruptcy or insolvency.

In case of execution against *you* of any final judgment covered by this *policy* being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against *us* in the same manner, and to the same extent as *you* but not in *deductible* of any *limit of liability*.

## 7.6 CANCELLATION

- 7.6.1 *You* may cancel this policy at any time by notifying *us* in writing.
- 7.6.2 When the policy is subject to the Insurance Contracts Act 1984 (Cth), we may cancel the *policy* subject to the provisions of that Act.
- 7.6.3 Within 30 days of the effective date of cancellation, *you* must advise *us* of the actual *gross revenue* figures for the period the policy has been in force to enable *us* to calculate the premium due for this period. The difference between this premium and the deposit premium will either be paid or allowed to *you* but subject to a retention by *us* of a minimum premium of 75 per cent of the proportionate part of the estimated annual premium for the period the policy has been in force.

## 7.7 CLAIMS CONTROL

We are entitled (but not obliged) at *our* own cost to control or take over the conduct of the investigation, defence and/or settlement of any *claim*, suit or proceeding against *you* which is or is likely to be the subject of indemnity under this policy.

## 7.8 CLAIMS SETTLEMENT

In the event of a *claim*, we have the option of settling *your* loss by either payment, repair, reinstatement or replacement.

If *you* are liable for GST in respect of any goods, services or other supply which are the subject of a *claim* under this policy, we will pay *you* for that GST liability.

However:

- 7.8.1 where we make a payment under this policy for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit *you* are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) in relation to that acquisition whether or not the acquisition is actually made; and
- 7.8.2 where we make a payment under this policy as *compensation* for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit *you* would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

## 7.9 CLAIMS PROCEDURE

7.9.1 *You* will:

- (a) give *us* immediate notice in writing with full particulars of every *occurrence*, circumstance, *claim*, writ, summons, proceedings, impending prosecution, inquest and the like which may give rise to a loss recoverable under this policy;
- (b) use *your* best endeavours to preserve any damaged or defective *property, products* or *watercraft* which may be necessary or useful by way of evidence in connection with any *claim* and, so far as may be reasonably practicable, no alteration or repair shall be made to any *property, products* or *watercraft* until we have had an opportunity to inspect it and given *our* prior written consent;
- (c) not make any admission, offer, promise or payment in connection with any *occurrence* or *claim* without *our* prior written consent; and
- (d) give *us* all information and assistance as *we* may reasonably require in the prosecution, defence or settlement of any *claim*.

7.9.2 *We* will:

- (a) be entitled to take over and conduct in *your* name the defence or settlement of any *claim*, and
- (b) have full discretion in the conduct of any negotiations or proceedings in connection with any *claim*.

## 7.10 CROSS LIABILITY

Subject to clause 7.16 'Joint Insureds', where *you* are comprised of more than one party, each of the parties will be considered as a separate legal entity with the words '*you*' and '*your*' applying to each party in this same manner as if a separate policy has been issued to each party, provided that nothing in these conditions will result in an increase in *our* limit of liability in respect of any *occurrence* or *period of insurance*.

## 7.11 DISCHARGE OF LIABILITIES

We may at any time pay to *you* in respect of *compensation* payable as a result of any *occurrence* the amount of the *limit of liability* or such limit stated in this policy in respect thereof (after deduction of any amount or amounts already paid) or any lesser amount for which the *claim* can be settled.

Upon such payment we shall relinquish conduct or control of and be under no further liability under this *policy* in connection with such *claim* except for costs or expenses incurred by *us* or by *you* with *our* written consent prior to the date of such payment.

## 7.12 DEDUCTIBLE

The *deductible* applies to all amounts for which we shall be liable, including but not limited to *costs and expenses*. If more than one *deductible* can be applied to an *occurrence*, then *you* will only need to pay the highest *deductible*.

## 7.13 GST

All of the amounts insured by this *policy* exclude *GST*.

Any settlement under this *policy*, up to the total of all amounts insured, will exclude *GST*. However, if there is a shortfall between the *GST* component of the settlement and the amount of input tax credit *you* are entitled to, we will pay this shortfall in addition to the settlement.

We will not be liable to pay any *GST*, or any fine, penalty or charge that *you* are liable for arising out of *your* misrepresentation of, or failure to disclose, *your* proper input tax credit entitlement in the settlement of any *claim* under this policy or premium relating to this policy.

## 7.14 HEADINGS

Headings have been included for ease of reference, but do not form part of the policy.

## 7.15 INSPECTION & AUDIT

We shall be permitted, but are not obligated, to inspect *your premises* and operations at any reasonable time.

Neither *our* right to make inspections, nor *our* failure to make inspections, nor the making of any inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of *you* or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit *your* books and records at any time during the currency of this policy and within 3 (three) years after the termination of this policy but only with regard to matters which in *our* opinion are relevant to this policy.

## 7.16 JOINT INSURED

Where *you* are comprised of more than one legal entity, information supplied to *us* will be deemed to have been furnished by or on behalf of all entities. Any information supplied to *us* or any omission or non-disclosure in relation to any renewal or *endorsement* of this policy will also be deemed to have been furnished, omitted or withheld on behalf of all entities.

## 7.17 NOTICE AND PROOF OF CLAIM

When an *occurrence* happens which may give rise to a *claim* under this policy, *you* must take reasonable care to prevent or minimise any *loss, damage*, liability or costs covered by this policy and ensure that all rights against other parties are properly preserved and exercised.

*You* must:

- 7.17.1 advise *us* within 30 days of full particulars of every *occurrence*, circumstance, *claim*, writ, summons, proceedings, impending prosecution, inquest or the like known to *you*;
- 7.17.2 use *your* best endeavours to preserve any damaged or defective property which may prove necessary or useful by way of evidence (together with any relevant documentation or records) in connection with any *claim* and, so far as may be reasonably practicable, no alteration or repair shall be made to any *watercraft*, premises, machinery, fittings, equipment or plant until *We* have had an opportunity to inspect and have provided *our* consent;

- 7.17.3 retain and preserve from destruction any business; documents and records that might foreseeably be connected with potential future *claims*, for a period of at least seven years;
- 7.17.4 not make any admission, offer, promise of payment in connection with any *occurrence* or under this *policy* without *our* written consent;
- 7.17.5 give to *us* all information and assistance as *we* may reasonably require in the prosecution, defence or settlement of any *claim*.

We must have full discretion in the conduct of any negotiations or proceedings in connection with any *claim*.

## 7.18 NOTIFICATION OF MATERIAL CHANGE

You must notify *us* in writing as soon as possible of any material change in the risk covered by this policy and pay any additional premium *we* may require.

## 7.19 OTHER INSURANCE

Provided it is permitted by law, where two or more insurance policies have either been effected by *you* or effected on *your* behalf by another party covering the same risk, this policy will only cover the amount of the *claim* which exceeds the amount recovered under the other policy or policies, up to the limits provided for under this policy.

## 7.20 PREVENTION OF ACCIDENTS

You must take reasonable precautions to prevent *personal injury* or *damage* as if *you* were not covered by this policy. Such precautions include but are not limited to

- 7.20.1 if *you* discover *products* may be defective and such defect may give rise to a *claim*, at *your* expense you must take reasonable steps to restrict, trace, recall, modify, replace or repair the *products*;
- 7.20.2 maintaining and looking after other person's or organisation's *property* used or occupied by *you*, in accordance with *your* agreement with them;
- 7.20.3 comply and ensure that *you* and any *contractors* comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or *property* or *watercraft*;
- 7.20.4 ensure that *you* and any *contractors* do not exceed the registered or rated capacity of any lift device, marine railway or dry-dock;
- 7.20.5 if *you* intend digging below ground or water level, the location of underground or underwater services must be obtained from the owners of the services by *you* before the work is commenced; and
- 7.20.6 using and storing all hazardous materials as required by law.

If *you* do not take reasonable precautions *we* may decline to pay part or all of a *claim* made under this policy.

## 7.21 PROPER LAW AND JURISDICTION

The construction, interpretation and meaning of the provisions of this *policy* shall be determined in accordance with Australian law.

In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, *you* will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

A reference to any statute, regulation or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation or subordinate legislation.

## 7.22 RECONSTRUCTION OR CONVERSION

You must notify *us* prior to commencing work on any *watercraft* that will result in any material change to the dimension, tonnage or type of *watercraft*. At *our* discretion we may either decline insurance for such work or require *you* to pay an additional premium.

## 7.23 REASONABLE DILIGENCE

You must:

- 7.23.1** exercise reasonable care that only competent *employees* and subcontractors are engaged and take reasonable measures to maintain all premises, fittings and plant in a safe and sound condition;
- 7.23.2** take all reasonable precautions to:
  - (a) prevent *personal injury* and *property damage*;
  - (b) prevent the manufacture, sale or supply of defective *products*;
  - (c) ensure that *you*, *your* subcontractors and all independent *contractors* comply with all statutory obligations, by-laws or regulations imposed by any port or public authority for the safety of persons or *property*; and
  - (d) when performing *hot work* or extended *hot work*, obtain a gas free schedule and/or any other schedule or authorisation that may be required by law;
  - (e) 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 any defect or deficiency.

## 7.24 RELEASE OF LIABILITY

Where *you* are required by contractual agreement to release any government authority or any landlord or any other person or parties from liability for loss, destruction or *damage* or legal liability covered by this policy, such release is allowed without prejudice to this insurance.

We agree to waive all *our* rights of subrogation against any such authority or persons or parties in the event of any *occurrence* for which a *claim* may be made under this policy.

## 7.25 RIGHTS OF SUBROGATION

In the event of a payment made under this policy to *you* or on *your* behalf, *we* shall be subrogated to all *your* rights of recovery against any person or organisation. At *our* request and *our* expense, *you* shall do all things reasonably required by *us* for the purpose of enforcing any rights and remedies or of obtaining indemnity from other parties to which *we* are entitled pursuant to this policy.

## 7.26 SANCTIONS REGULATION

Notwithstanding any other terms or conditions under this policy, *we* shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to *you* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of *yours* would violate any applicable trade or economic sanctions, law or regulation.

## 7.27 VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

## NOTES

## NOTES



[www.proteusinsurance.com.au](http://www.proteusinsurance.com.au)

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