



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

Phone: 1300 767 231

To make a claim

If an event happens which may give rise to a claim, please refer to 7.8 '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
- Proteus by calling – 1300 767 251

AUTHORITY TO ACT ON OUR BEHALF

ZAIL 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;
- *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 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

Email: 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

Subject 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 this 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 does this include 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* insured hereunder;

and includes, but is not limited to, a disease that is or becomes listed on the National Notifiable Disease List and/or is or becomes a temporary addition to the National Notifiable Disease List and/or has or could give rise to a public health event of national significance and/or is or becomes a listed human disease (where National Notifiable Disease List means the list established and in force from time to time under section 11 of the National Health Security Act 2007 (Cth) and listed human disease has the meaning given by section 42 of the Biosecurity Act 2015 (Cth)).

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 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 COSTS AND EXPENSES

costs and expenses mean:

- 1.9.1 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;
- 1.9.2 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*;
- 1.9.3 reasonable costs or expenses incurred by *you* with *our* prior written consent (such consent not to be unreasonably withheld); and
- 1.9.4 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*.

1.10 DELIBERATE, RECKLESS OR WILFUL CONDUCT

deliberate, reckless or wilful conduct means any act or failure to act where such act is intended to cause loss or which is done so recklessly that a loss would probably result.

1.11 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*.

1.12 DEDUCTIBLE

deductible means in the event of a claim *you* must bear the first amount of the loss *you* are claiming. This is the policy deductible and will be specified in *your schedule* or elsewhere in this policy wording.

1.13 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.

1.14 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.

1.15 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:

1.15.1 any broker, consignee or *subcontractor*;

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

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

1.16 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*.

1.17 ENDORSEMENT

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

1.18 FAMILY

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

1.19 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*.

1.20 HOT WORK

hot work means work involving the use of oxyacetylene torches, soldering, welding or oil tank cleaning equipment but does not include or extend to 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.

1.21 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.

1.22 INCIDENTAL CONTRACTS

incidental contracts mean:

- 1.22.1 any written agreement for rental 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*;
- 1.22.2 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;
- 1.22.3 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
- 1.22.4 those contracts designated in the 'Contractual Liability' section of the *schedule*.

1.23 INSURED SERVICES

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

1.24 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.

1.25 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.

1.26 MEDICAL PERSONS

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

1.27 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.

1.28 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*.

1.29 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.

1.30 PERSONAL INJURY

personal injury means:

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

1.31 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.

1.32 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*.

1.33 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*.

1.34 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 *your business*.

1.35 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*.

1.36 PROFESSIONAL SERVICES LIABILITY

professional services are those services *you* provide where *your* customer is relying upon *your* advice or professional opinion. This includes vessel condition reports and valuations, rigging inspections and reports and cargo loading and out-turn surveys.

1.37 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).

1.38 PROPERTY

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

Property does not mean:

1.38.1 *watercraft*;

1.38.2 *products*; or

1.38.3 *intangible property*

1.39 PROPERTY DAMAGE

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

1.40 REGATTA ORGANISER

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

1.41 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.

1.42 REMOVAL OF WRECK EXPENSES

removal of wreck expenses mean reasonable expenses incurred by *you* in the removal, salvage or recovery of any vessel or *watercraft* that has sunk or is wrecked, disabled or destroyed when ordered by a Maritime, Port or Harbour Authority.

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

1.43 SCHEDULE

schedule means *your schedule* attaching to and forming part of this policy, including any schedule substituted for the original schedule.

1.44 SHIP REPAIRER

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

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

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

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

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

1.45 SUBCONTRACTOR

subcontractor means an independent contractor with whom you enter into a service contract for the performance of work by them. *Subcontractors* does not mean *you* or the *Insured*.

1.46 SUBCONTRACTORS' LIABILITY

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

1.47 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:

- 1.47.1 civil offence in connection with the discharge, dispersal, release or escape of a *pollutant*;
- 1.47.2 strict liability offence in connection with the discharge, dispersal, release or escape of a *pollutant*; or
- 1.47.3 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 *personal injury* or *products liability* or *pollution risks* or *professional services liability*.

1.48 SUBSIDIARY COMPANY

subsidiary company means any company in which *you* have a controlling interest and which are stated in the *schedule* as an additional insured.

1.49 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 another. *Tangible property* does not mean money (in the form of coins and notes, cheques and electronic forms of money) or incorporeal property such as a license, copyright, trademark or other forms of intellectual property.

1.50 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.

1.51 TEMPORARY HIRE OF EQUIPMENT LIABILITY

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

1.52 TERRITORIAL LIMITS

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

1.53 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:

- 1.53.1 involves violence against one or more persons;
- 1.53.2 involves *damage* to *property*;
- 1.53.3 endangers life other than that of the person committing the action;
- 1.53.4 creates a risk to the health or safety of the public or a section of the public; or
- 1.53.5 is designed to interfere with or to disrupt an electronic system.

1.54 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.

1.55 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.

1.56 VESSEL BROKER

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

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

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 WE, US OR OUR

we, us or our means Zurich Australian Insurance Limited (ZAIL) and includes Proteus Marine Insurance when acting as an agent of ZAIL.

1.59 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 Insured Disclosed Activities section of the *schedule*, the activities and operations of a *yacht club* shall extend to include the ordinary activities and operations of a:

- 1.59.1 *marina operator*;
- 1.59.2 *regatta organiser*;
- 1.59.3 *instructor*;
- 1.59.4 *class association*;
- 1.59.5 *vessel broker*; and/or
- 1.59.6 *ship repairer*.

1.60 YOU, YOUR, INSURED

you, your, Insured means:

- 1.60.1 the *Insured* as named in the *schedule*;
- 1.60.2 subsidiary companies of the *Insured* as named in the *schedule* formed or constituted and incorporated in the Commonwealth of Australia;
- 1.60.3 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*.

1.60.4 every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in definition 1.60.1 and 1.60.2 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;

1.60.5 each partner, joint venture partner, coventurer or joint leasee of the parties shown in 1.60.1 and 1.60.2 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.

1.61 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*.

1.62 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* and 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;*

2.11 *temporary hire of equipment liability; and*

2.12 *hot work 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 maximum liability in respect of any *claim* or any series of *claims* 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 \$100,000 unless stated otherwise in the *schedule*.

4. EXTENSIONS OF COVER

We will cover *you* for *your* legal liability caused by or arising in connection with:

4.1 DEFENCE AND COSTS COVER

Your legal defence, investigation and mitigation costs.

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 this clause 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 legal defence, investigation, and mitigation costs or expenses that are incurred after we have paid, or agreed to pay, an amount equal to the *limit of liability*.

Our settlement for these costs is in addition to the *limits of liability* shown in the *schedule*.

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 this clause 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 first aid costs or expenses 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 '6.15 Faulty Workmanship' exclusion clause contained in Exclusions section 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, re-completing, 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 that it may give rise to, *personal injury*, *property damage* 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*.

Unless stated to the contrary on the *schedule*:

- 4.3.1 the *deductible* applicable to this 'Rectification of Faulty Workmanship' extension clause is \$5,000; and
- 4.3.2 the *limit of liability* applicable to this 'Rectification of Faulty Workmanship' extension clause is \$50,000 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 must be caused by or arise from an *occurrence*, in the ordinary course of *your business*, that happens during the *period of insurance* and we must not be legally prohibited from disposing of or settling the *claim*.

We do not cover any *statutory 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 \$5,000, and
- (b) the *limit of liability* applicable to this 'Statutory liability' clause is \$1,000,000 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*.

4.5 PHYSICAL OR LEGAL CONTROL EXTENSION

The 'Your property or property in your physical or legal control' exclusion clause contained in the Exclusions section of this policy shall not apply to *damage* to:

- 4.5.1 (a) *watercraft* in *your* physical or legal control in the ordinary course of *your business*; or
(b) *your premises* (including its contents) leased or rented to or temporarily occupied by *you*.
- 4.5.2 any of the items specified in sub-clauses (a) – (d) 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 4.5.1 (b) 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 *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
 - (d) any *property* not more specifically provided for in sub-clauses (a) and (b) above.

Unless stated to the contrary on the *schedule*, the *limit of liability* applicable to the cover provided by the provisions of sub-clause (4.5.2) of this 'Physical or legal control extension' clause is \$500,000 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 *your* legal liability caused by or arising in connection with:

5.1 EXTENDED HOT WORK

If we agree to cover *you* for extended hot work then this will be shown in the *schedule* and *you* will be covered for hot works:

- 5.1.1 performed on or in a *watercraft* previously engaged in carrying explosives or flammable liquids or gases; and
- 5.1.2 performed on or near any fuel tank, pipeline or fuel bunker space.

5.2 PERSONAL INJURY TO SUBCONTRACTORS EXTENSION

Provided *you* have informed us that *you* engage *subcontractors* and this is stated in the *schedule*, the '6.24 Personal injury to subcontractors' exclusion clause contained in Exclusions section of this policy shall not apply to *subcontractors* 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, *your* 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.

Unless stated to the contrary on the *schedule*:

- (a) the *deductible* applicable to this Personal Injury to Subcontractors Extension clause is \$25,000, and
- (b) the *limit of liability* applicable to this Personal Injury to Subcontractors Extension clause is \$5,000,000 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 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.

5.4 STORAGE

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

5.5 WORLDWIDE SERVICES

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

6. EXCLUSIONS

6.1 AIRCRAFT, HOVERCRAFT 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;
- 6.1.4 *products* installed in or on any *aircraft*, *hovercraft* or *watercraft* owned, chartered or leased by *you*; or
- 6.1.5 the use by *you* as a landing area for *aircraft* or *hovercraft* of any property or structure owned occupied or controlled by *you*. For the purpose of this exclusion, the term 'landing area' includes any area on which *aircraft* or *hovercraft* 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.

6.3 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*.

6.4 COMMUNICABLE DISEASE EXCLUSION

This policy excludes any actual or alleged loss, liability, *damage*, *compensation*, injury, sickness, disease, medical payment, *claim*, *cost*, *expense* or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a *communicable disease* or the fear or threat (whether actual or perceived) of a *communicable disease*.

6.5 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.

6.7 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, including any term or condition that imposes an obligation on *you* to insure *property* owned by someone else. This exclusion shall not apply to:

- 6.7.1 the liability or obligation arising from *incidental contracts*;
- 6.7.2 liability that would have been implied by law in the absence of such contract or agreement;
- 6.7.3 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.

6.8 CYBER RISK

This policy excludes any loss, *damage*, liability or expense directly or indirectly caused by, contributed to by or arising from:

- 6.8.1 the failure, error or malfunction of any computer, computer system, computer software programme, code, or process or any other electronic system; or
- 6.8.2 the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

6.9 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.

6.10 DIVING SERVICES

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

6.11 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:

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

6.12 EMPLOYMENT LIABILITY

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

- 6.12.1 *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;
- 6.12.2 any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- 6.12.3 any *claim* for *employment practices*.

6.13 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.

6.14 FAULTY DESIGN

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

- 6.14.1** the cost or expense of condemnation or rejection of any part or *product* by reason of faulty design, specification, formulae or pattern;
- 6.14.2** 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.

6.15 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.

6.16 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.

6.17 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*.

6.18 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:

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

6.19 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.

6.20 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:

- 6.20.1** a delay in or lack of performance by *you* or on *your* behalf of any contract or agreement; or
- 6.20.2** 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 6.20.2 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*.

6.21 NUCLEAR, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS

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

- 6.21.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 6.21.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;
- 6.21.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 6.21.4 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
- 6.21.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

6.22 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.

6.23 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 when you are a *regatta organiser*.

6.24 PERSONAL INJURY TO SUBCONTRACTORS

This policy does not insure *you* for *your* legal liability caused by or arising out of *personal injury* to *subcontractors*, except to the extent provided for in clause '5.2 Personal Injury to Subcontractors Extension' 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 SERVICES 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 from your activities as a *professional skipper*.

6.30 YOUR PROPERTY OR PROPERTY IN YOUR 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*, other than as provided for by clause '4.5 Physical or Legal Control Extension'. Provided however, that this exclusion does not apply to *your* liability for loss or *damage* to *temporary hire equipment* in *your* physical or legal control.

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 and 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 and 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 of trade*) 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 turnover stated in the *schedule*, 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 in 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 excess turnover.

No premium adjustment is required when the 100% deposit premium is less than \$5,000 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 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 to *you*.

7.5 CANCELLATION

7.5.1 *You* may cancel this policy at any time by notifying *us* in writing.

7.5.2 When the policy is subject to the Insurance Contracts Act 1984 (Cth), *we* may cancel this *policy* subject to the provisions of that Act.

7.5.3 If required by *us*, *you* must advise *us* of *your* actual *gross revenue* for the period this policy has been in force so that *we* can calculate the premium due in accordance with the '7.2 Adjustment Premium' clause in this policy.

If *you* have submitted a *claim* during the current policy period then *you* will not be entitled to any refund of premium.

7.6 CLAIMS CONTROL

We may elect 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.

We will, whenever reasonably practicable, inform *you* of the progress of any defence or prosecution, and/or consult with *you* as to its interests or concerns in relation to any *claim*, defence, or prosecution, but *you* agree that *we* will have ultimate discretion in the conduct of any proceedings and in the settlement of any *claim* *we* have conduct of.

7.7 CLAIMS SETTLEMENT

In the event of a *claim*, *we* shall consult with *you* and take into account *your* interests regarding the option of settling the loss either by payment, repair, reinstatement, or replacement, but *you* agree that *we* will have ultimate discretion in the settlement of any claim.

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:

7.7.1 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

- 7.7.2 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.

7.8 CLAIMS PROCEDURE

When an *occurrence* happens which may give rise to a *claim* under this policy, *you* must, as soon as reasonably practicable, 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.

7.8.1 *You* will:

- (a) give *us* written notice, as soon as reasonably practicable, with all reasonable 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) take all reasonable steps to retain and 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;
- (c) unless immediate steps need to be taken to protect or preserve *property*, or people, or mitigate further loss or *damage*, not proceed with any alteration or repair to any *property*, *products* or *watercraft* until *we* have had the opportunity to inspect it, without *our* prior written consent (not to be unreasonably withheld);
- (d) 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;
- (e) not make any admission, offer, promise or payment in connection with any *occurrence* or *claim* without *our* prior written consent; and
- (f) give *us* all information and assistance as *we* may reasonably require in the prosecution, defence or settlement of any *claim*.

7.9 CROSS LIABILITY

Subject to clause '7.15 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 the 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*.

7.10 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 and expenses incurred by *us* or by *you* with *our* written consent prior to the date of such payment.

7.11 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*.

7.12 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.

7.13 HEADINGS

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

7.14 INSPECTION & AUDIT

We shall be permitted, but are not obligated, to inspect *your premises* and operations at any reasonable time. This may be required to enable *us* to assess a *claim* or for *us* to determine whether we can insure *you* and on what terms and conditions.

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 *your* 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 years after the termination of this policy but only with regard to matters which in *our* opinion are relevant to this policy.

7.15 JOINT INSURED(S)

Where this insurance is arranged in the joint names of more than one *Insured*, it is hereby declared and agreed that:

- 7.9.1 each *Insured* shall be covered as if it made its own proposal for this insurance.
- 7.9.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each *Insured*.
- 7.9.3 any knowledge possessed by any *Insured* shall not be imputed to the other *Insured(s)*.

7.16 NOTIFICATION OF MATERIAL CHANGE

If *you* want to make a change to this policy, the change becomes effective when we agree to it in writing.

You must notify *us* in writing as soon as reasonably practicable of any change which materially increases the risk covered by this policy.

A material change includes, but is not limited to:

- (a) activities that are materially different from those declared to *us*
- (b) activities outside the normal activities of *your business*;
- (c) any loss of or condition imposed upon any licence or other authority required by *you* to conduct the business;
- (d) *you* being insolvent or bankrupt, or placed into external administration;
- (e) changes to *your* standard terms and conditions (that were originally approved by *us*);
- (f) *you* intend to commence any previously undisclosed work/contracts; or
- (g) *you* change the percentage of *subcontractor/labour* hire.

We reserve the right to assess any such change and may accept or deny coverage and/or vary the terms of coverage for any increased risk the change poses. If *we* and *you* agree to accept or vary the terms of coverage, *you* must pay such reasonable additional premium as *we* may require for any such coverage

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

If *you* fail to comply with this condition, *we* may be able to:

- (a) refuse a *claim*;
- (b) reduce *our* liability to pay a *claim* by an amount that fairly represents the extent to which *our* interests are prejudiced by the failure to comply; or
- (c) cancel the policy.

7.17 OTHER INSURANCE

When making a *claim* on this policy *you* must also supply *us* with written details of all policies that may pay or partially pay that *claim*.

7.18 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 State, Territory or Federal 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.

7.19 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.

7.20 REASONABLE CARE

You must take reasonable precautions to prevent personal injury or *damage*. Such precautions include but are not limited to:

- 7.20.1** exercise reasonable care that only competent *employees* and *subcontractors* are engaged and take reasonable measures to maintain *your premises*, fittings and plant in a safe and sound condition;
- 7.20.2** 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* or *watercraft*; 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;

- (f) ensure that *you, your subcontractors*, and any independent contractors do not exceed the registered or rated capacity of any lift device, marine railway or dry-dock;
- (g) take reasonable steps (at *your* expense) to restrict, trace, recall, modify, replace or repair the *products* if *you* discover that they may be defective and such defect may give rise to a *claim*;
- (h) maintain and look after other person's or organisation's property used or occupied by *you*, in accordance with your agreement with them;
- (i) establish the location of underground or underwater services prior to digging below ground or water level before the work is commenced; and
- (j) use and store 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 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.

7.22 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.

7.23 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.

7.24 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 by the Reserve Bank of Australia 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.

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