

# Freight Forwarders Liability Insurance

Policy Wording



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## Freight Forwarders Liability Insurance – Policy Wording

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# Welcome to Zurich

## 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.

## Duty of Disclosure

Before *you* enter into an insurance contract, *you* have a duty to tell us anything that *you* know, or could reasonably be expected to know, 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.

## 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 policy *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

We are signatories to the General Insurance Code of Practice (the Code) and support 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 132 687. 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 general insurance fact sheet available on our 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*.

# Freight Forwarders 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.

## The cover

We insure *you* against risks covered under the sections and optional additional covers stated in the *schedule* as applying to this policy and occurring during the *period of insurance* arising from an *insured service* provided by *you*.

## Section 1 – Third party liability insurance

### 1.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will pay all sums which *you* become legally liable to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured service(s)* for:

#### 1.1.1 Non-contractual liabilities at law:

- (a) *accidental bodily injury* to, or disease incurred by, any person;
- (b) *accidental loss or damage* to property;
- (c) *consequential loss* resulting from (a) and (b) above.

#### 1.1.2 Legally enforceable contractual liabilities under a contract or contracts, that have been previously advised and approved by us in writing in respect of:

- (a) renting or leasing *equipment*;
- (b) using the services of a sub-contractor or joint service partner;
- (c) any other contract entered into in connection with the *insured service(s)*;
- (d) *consequential loss* resulting from (a), (b) or (c) above.

### 1.2 What you are not insured for

Excluding *your* liability in consequence of:

#### 1.2.1 the existence, maintenance, or use of:

- (a) any licensed truck, licensed automobile, or other licensed mechanically propelled vehicle (unless used as a tool of trade); and
- (b) any unlicensed truck, unlicensed automobile, or other unlicensed mechanically propelled vehicle used outside *your* premises;

unless the truck, automobile, or other mechanically propelled vehicle belongs to a *third party* and *your* liability arises as a result of providing an *insured service*.

#### 1.2.2 death, illness, personal injury, or any claim arising directly or indirectly under Worker's Compensation or Employer's Liability legislation, or any other statutory or common law liability in respect of death, personal injury, or illness of any worker or other person employed by *you* in any capacity whatsoever when the death or personal injury or illness arises out of or in course of the employment of the worker or other person.

#### 1.2.3 death, injury, loss, damage, or liability of any nature which is directly or indirectly connected to, or alleged to be caused by or contributed to, in whole or in part, by or arising out of, the presence, ingestion, actual, alleged, threatened, or suspected inhalation or absorption of *silica* or *silica related dust*.

#### 1.2.4 loss of or damage to:

- (a) property held in trust or in custody by *you* or *your* employees but not employee's property; or
- (b) *your* property or property loaned, hired, or rented by *you*.



- 1.2.5 an *occurrence* in the USA or Canada on public roads involving a *container*, trailer, or chassis that is owned or leased by *you*.
- 1.2.6 *pollution* if:
- (a) it was not sudden, unexpected, and accidental;
  - (b) a full disclosure is not made to us as soon as the *occurrence* is known;
  - (c) the proximate cause if the *pollution* occurred prior to or after the *period of insurance*;
  - (d) the claim is not brought against *you* prior to expiry of 12 months after the known or believed date of the *occurrence* that gave rise to the *pollution*.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

## Section 2 – Liability insurance in relation to cargo

### 2.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will pay all sums which *you* become legally *liable* to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured services* that are payable as a result of *your* liability for loss or damage to *cargo* and *consequential loss* resulting therefrom, under:

- 2.1.1 contracts of carriage or handling, including bills of lading and waybills, air waybills and/or trading conditions, that have been advised to/and or have been seen and approved by us in writing (and for which approval will not to be unreasonably withheld); or
- 2.1.2 international conventions and/or national, civil, commercial, or common law, that is applicable by compulsion or statute.

### 2.2 Special conditions

- 2.2.1 in the event of *you* knowingly being involved in the carriage, handling, or storage of dangerous *cargo*, it is a condition precedent to insurance cover remaining in force that *you* will ensure compliance with all relevant regulations issued by an *authority*;
- 2.2.2 if *you* receive a declaration of *cargo* value under an ad-valorem clause (being a clause that expressly declares the value of the subject cargo) contained in a contract (including a Bill of Lading, way bills, or similar contracts), or are requested to increase the limit of liability under a contract, the terms and conditions of the contract having been previously approved by us, it is a condition precedent to cover being extended to include the increase in liability that the extension is specifically accepted by us in writing. *You* may be required to pay an additional premium, which will be assessed according to the ad-valorem clause or request to increase the limit of liability and any increased risk to any liability insured by this policy;
- 2.2.3 when negotiating new contracts with *customers* that do not conform with or contain the same terms and conditions as previous terms and conditions accepted by us, *you* must submit the proposed new terms and conditions to us for approval prior to entering into such contracts in order for us to assess and accept any increased risk exposure.

### 2.3 What you are not insured for

*You* are not insured, unless we agree to do so in writing, for liability arising from the provision of *insured services* to *excluded cargo*.

However, if *you* were not given notice of the kind of *cargo* that was to be carried or handled, and/or *you* could not reasonably have been aware of the presence of such *cargo*, *you* will be insured for liabilities to *excluded cargo* subject always to any applicable limitations and conditions of *your* trading conditions and/or contracts of carriage or handling as previously accepted by us.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

## Section 3 – Errors and omissions and liabilities to authorities

### 3.1 What you are insured for

Subject to the limit of liability, and the terms and conditions of this policy, we will pay all sums which *you* become legally liable to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured services* for:

3.1.1 *customer's* financial loss resulting from:

- (a) unintentional breach of regulations relating to imports and/or exports and/or the carriage or movement of *cargo*;
- (b) delay in performing contractual obligations;
- (c) unintentional delivery of *cargo* contrary to instruction to withhold delivery without taking in exchange payment or the relevant document of title;
- (d) an unintentionally made incorrect statement in, or omission from, any bill of lading, waybill, air waybill or other document for the transportation, handling, or storage of *cargo*; or
- (e) any other unintentional negligent act, error, or omission giving rise to a breach of duty whether committed, or alleged to have been committed, by or on behalf of any *principals*, directors or office clerical or other staff employed by *you* or acting on *your* behalf in the provision of *insured services*, the first discovery of such act, error, or omission being during the *period of insurance* and limited to a maximum liability of \$1,000,000 any one *occurrence*.

3.1.2 Liability imposed on *you* or others acting on *your* behalf by an *authority* relating to an *occurrence* during the *period of insurance* to pay fines, penalties, customs duty, sales or excise tax, or similar fiscal charges which would not have been payable except for:

- (a) breach of regulations relating to the import or export, carriage or movement of *cargo*;
- (b) breach of regulations relating to import or export of any conveyance (such as transport by ship or watercraft, *aircraft*, rail, or road) or *equipment*;
- (c) short or over delivery of *cargo*;
- (d) smuggling or breach of any immigration regulations;
- (e) breach of regulations relating to *pollution*;
- (f) breach of regulations relating to working conditions;

limited to a maximum liability of \$1,000,000 any one *occurrence*.

3.1.3 confiscation by an *authority* of any property (which includes any *equipment* that belongs to *you*, or is leased by *you*, but only if that property is insured under "Section 6 - Equipment insurance" of this policy and is specified in the *schedule*) for which confiscation is a result of a breach of regulations listed in and insured under clause 3.1.2 above.

### 3.2 Special conditions

Cover provided under clause 3.1.2 does not apply to *excluded cargo* unless we have agreed in writing to provide such cover.

However, if *you* were not given notice of the kind of *cargo* that was to be carried or handled and *you* could not have reasonably been aware of the presence of such *excluded cargo*, *you* will be insured for liabilities to *excluded cargo* subject always to any applicable limitations and conditions contained in *your* trading conditions and/or contracts of carriage or handling as previously accepted by us for insurance hereunder.

### 3.3 What you are not insured for

This policy does not cover any fine or penalty imposed by the Federal Maritime Commission of the United States of America for failure to:

- 3.3.1 file a required tariff;
- 3.3.2 post a bond; or
- 3.3.3 appoint an agent.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

## Section 4 – Costs and expenses

### 4.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will indemnify *you* for costs and expenses arising out of an *occurrence*, that will, or may, give rise to a claim covered by any of the sections stated as applying to this policy arising out of *insured services* which are necessary and incurred:

- 4.1.1 (a) to mitigate or prevent an insured loss; and/or  
(b) to investigate an *occurrence* by a surveyor or an appropriate specialist in order to protect *your* interest and our interest.
- 4.1.2 extra costs and expenses necessarily incurred in disposing of *cargo* or an item of *equipment* insured following an *occurrence*, subject to such costs and expenses having been approved by us in writing (unless immediate steps need to be taken to dispose of *cargo* or *equipment* to protect property or people, or mitigate further loss or damage).
- 4.1.3 legal fees and expenses incurred, with our written approval (not to be unreasonably withheld) which relate to any loss or liability insured.
- 4.1.4 extra costs incurred by re-routing misdirected *cargo* to the correct destination subject to obtaining our written agreement (not to be unreasonably withheld).
- 4.1.5 extraordinary costs and expenses involved for quarantine, fumigation, or disinfection of *cargo*, *equipment* or other property, when costs and expenses have not been incurred in the normal course of business and have been approved by us in writing (not to be unreasonably withheld).
- 4.1.6 *cargo's* proportion of general average and/or salvage and/or salvage charges which *you* are legally liable to pay:
  - (a) because of a breach of the contract of carriage with the *customer*; or
  - (b) because *you* are unable to obtain recovery from the *customer* after all reasonable rights of recourse have been exhausted.
- 4.1.7 additional costs incurred with our consent because of:
  - (a) the complete failure of the consignee to take up or remove *cargo* from the contracted place of delivery; or
  - (b) *your* sub-contractor or appointed agent failing in duties to promptly pay all debts resulting in such additional costs having to be paid by *you* in order to complete contractual obligations.
- 4.1.8 losses, costs, and expenses that we may require *you* to incur in mitigation of a loss if we consider that it is in our interest that such losses, costs, and expenses should be incurred, even if they would not otherwise have been recoverable under this policy.



## 4.2 General average and salvage bonds

If required, in order to enable *you* to obtain release of *cargo*, we will at *your* request, issue guarantees or bonds subject to *you* immediately obtaining a completed *cargo* valuation form and, if possible prior to the delivery of the *cargo*, endeavour to obtain counter security from each consignee and/or their insurers. If *you* are unable to obtain counter security or payment from each consignee and/or their insurers, then we will pay the irrecoverable amount.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

## Section 5 – Specific cover for insurable services

This Section 5 cover option is only applicable if Sections 3 and 4 are stated in the *schedule* as applying.

### 5.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will pay all sums which *you* become legally liable to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured service(s)* for claims made by an *authority* in respect of either:

- 5.1.1 the removal, disposal, storage, or marking of any *cargo*, means of transportation, or *equipment* that has been abandoned; or
- 5.1.2 payment falling due under standard forms of customs bonds or guarantees.

In addition, *you* will be reimbursed for:

- 5.1.3 additional costs and expenses reasonably incurred in complying with, or attempted compliance with, an order from an *authority* in connection with 5.1.1 or 5.1.2 above;
- 5.1.4 any salvage money or the value of any *cargo* or means of transport or *equipment* obtained by *you*, arising out of a claim being made under 5.1.1 above, will be credited to us up to the total sum settled or claimed; and
- 5.1.5 *you* will only be entitled to obtain payment from us in respect of claims under 5.1.1 or 5.1.2 above after the all reasonable rights of recourse to recover such amounts from *principals* or other responsible parties have been pursued.
- 5.2 This policy also indemnifies *you* for legal liabilities arising out of any statutory enactment which imposes on *you* the responsibilities of a *principal* on whose behalf *you* act, which results in *you* being obliged to settle any claim or claims. Payment by us being subject to *you* having taken reasonable steps to obtain recovery of the amount(s) settled from the *principal*.
- 5.3 *You* will be insured for the consequence of any fraudulent or dishonest act by an employee who is not a director, partner, or controlling *principal*, resulting in a claim or claims being made which *you* are legally liable to settle.
- 5.4 *You* will be insured for payment of costs and/or fees incurred in recovering or attempting to recover monies that are due and payable to *you*:
  - 5.4.1 for the provision of *insured service(s)*;
  - 5.4.2 as a result of the operation of the *insured service(s)*; or
  - 5.4.3 for disbursements expended on behalf of a *principal* in providing the *insured service(s)*.

However, if recovery is being contemplated (either by way of informal arrangements with the debtor, a formal demand, or proceedings or some other action), Zurich will:

- 5.4.4 ascertain whether the debt is actually due and payable to *you*;
- 5.4.5 not reimburse *you* for any costs and/or fees incurred:
  - (a) incurred in relation to a debt that has been outstanding in excess of 12 months at the time you first notify us of the debt); or
  - (b) which remain unpaid or outstanding in excess of 12 months from the time you incurred those costs and/or fees.

5.4.6 consider the utility and commercial viability of any recovery action (whether informal or formal), having regard to matters such as:

- (a) the probability of a recovery based on the known financial status of the debtor;
- (b) any offer that may have been made by any party; or
- (c) the amount of the debt;

and, in consultation with *you*, Zurich will have the right to withdraw from any further recovery action (whether informal or informal). If Zurich decides to withdraw from any recovery action, we will not reimburse *you* for any costs and/or fees incurred following that decision;

subject to the limitations of costs and expenses stated in “5.7 - Special condition” below.

5.5 *You* will be insured for any reasonable legal expenses not otherwise insured arising out of a dispute or controversy in respect of the provided *insured service(s)*.

However, in considering a claim for, or payment of, reasonable legal expenses, Zurich will:

- 5.5.1 decide if the dispute or controversy is likely to have a successful outcome for *you*, including any potential or action litigation;
- 5.5.2 consider the utility or commercial viability for defending or prosecuting any dispute or controversy (whether by informal or formal action), taking into account the probable costs and the feasible amount to be recovered;
- 5.5.3 direct any investigation or the obtaining of any advice;
- 5.5.4 consider whether it had the opportunity to approve any costs and expenses prior to them being incurred;
- 5.5.5 initiate or decline to initiate any litigation or formal action;
- 5.5.6 terminate further action, , taking into account the above provisions,

subject to the limitation of costs and expenses stated in “5.7 - Special conditions” below.

5.6 *You* will be insured for any claim or claims that *you* are held legally liable to pay arising out of alleged:

- 5.6.1 slander, libel, or other defamatory statement made or published by *you*;
- 5.6.2 wrongful arrest, constraint, or confinement of a person;
- 5.6.3 malicious wrongful prosecution;
- 5.6.4 breach of *third party's* right to tenure or privacy.

## 5.7 Special conditions

In respect to costs and expenses covered by risks insured under clauses 5.4 and 5.5:

- 5.7.1 We will pay up to the first AUD\$50,000 (or the equivalent in other currencies) of all legal costs or other expenses incurred during the *period of insurance* arising from a claim or claims. Any legal costs or expenses in excess of this amount will be paid 50% by us and 50% by *you*.
- 5.7.2 in the event of a successful action where costs are awarded to *you*, we will first be reimbursed up to the amount of our total costs expended. Where costs have been borne partially by us and partially by *you* costs recovered will be allocated in the same proportions.

## 5.8 Exclusions

In respect to risks covered in clause 5.6, in no case will this policy cover:

- 5.8.1 intentional breach of any regulation or statute, perpetrated by any of *your principals*, directors, or executive officers;
- 5.8.2 any intentional defamatory statement or publication made with the knowledge of any of *your principals*, directors, or executive officers;

- 5.8.3 any offence sustained by a person or persons arising out of, or in the course of, their employment by *you*;
- 5.8.4 publication by way of advertising or otherwise on *your* behalf in an independent journal, magazine, or newspaper, or broadcast by radio or television;
- 5.8.5 any action or defamatory statement, the origin of which is prior to commencement of the *period of insurance*.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

## Section 6 – Equipment insurance

Insured *equipment* values agreed at the inception of the *period of insurance* may not be reduced during that period unless agreed by us in writing.

### 6.1 What you are insured for

- 6.1.1 All risks of loss or damage to the *equipment* insured. However, we will only reimburse *you* when loss or damage to an individual replaceable or separate part is caused by *accidental loss or damage*.
- 6.1.2 *Your* liability for contribution to general average, salvage and/or salvage charges that may be incurred to avoid or mitigate a loss to the *equipment* from any cause. The insured *equipment* is deemed to be insured for its full contributory value.
- 6.1.3 *Your* liability to pay lease per diem charges (other than in respect of lease purchase) due in respect of *equipment* that has been lost or damaged, when reimbursement for such loss or damage is recoverable from us, and the *equipment* is prevented from being used by *you* or being redelivered to the lessor by the due or anticipated return date. Our liability is limited to 35 days indemnity for each *occurrence*.

### 6.2 Exclusions

In no case will this insurance cover loss, damage, or expense arising from:

- 6.2.1 wear, tear, or gradual deterioration;
- 6.2.2 latent defect and/or fault in the manufacture or design of the *equipment*;
- 6.2.3 mechanical, electrical, or electronic breakdown or derangement;
- 6.2.4 destruction of, or damage to, the insured *equipment* by or under order of an *authority*;
- 6.2.5 confiscation, seizure, appropriation, expropriation, nationalization, requisition, or pre-emption by an *authority*; and
- 6.2.6 mysterious disappearance, unexplained loss, or loss discovered when taking inventory.

### 6.3 Basis of indemnity

In the event of a claim for an item of *equipment* our liability will not exceed:

- 6.3.1 for partial loss – the reasonable cost of repairs but not exceeding the insured value of the item of *equipment*. If there is no insured value the market value or, for *equipment* hired or leased by *you*, the reasonable cost of repairs but not exceeding the amount payable in accordance with the hire or lease agreement;
- 6.3.2 for total loss – up to the insured value of the lost item of *equipment*  
if there is no sum insured the market value, or in the case of *equipment* hired or leased by *you*, the amount payable in accordance with the hire or lease agreement.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

## 7. Definitions applicable to all Sections

When used in this policy, *schedule* or endorsements the following definitions will apply:

### 7.1 Accidental bodily injury or disease

*accidental bodily injury* means bodily injury disease as a result of an *occurrence* that is unforeseen and unintended.

### 7.2 Accidental loss or damage

*accidental loss or damage* means loss or damage as a result of an *occurrence* that is unforeseen and unintended.

### 7.3 Aircraft

*aircraft* means any vessel, craft, or thing manufactured to, or intended to, move through the air or space.

### 7.4 Authority(ies)

*authority(ies)* means an administrative body(ies) or person(s) of competent jurisdiction or a legally constituted court or tribunal.

### 7.5 Bullion

*bullion* means gold, silver, platinum, or other precious metals in bars or similar bulk form.

### 7.6 Cargo

*cargo* means goods of any description, including packaging or *containers*, for which *you* are responsible.

### 7.7 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:

- 7.7.1 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
- 7.7.2 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
- 7.7.3 the disease, substance, or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of, or loss of use of 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), or in each case any subsequent amendment, replacement or successor legislation of the Commonwealth of Australia).

### 7.8 Consequential loss

*consequential loss* means any financial or economic loss suffered by any person.

### 7.9 Container

*container* means a unit load transport device, fitted with corner castings designed for the carriage of *cargo* by more than one mode of transport. For the purpose of this insurance, '*container*' includes flat rack, reefer, and tank containers.

### 7.10 Customer

*customer* means any person or group of persons, corporation, entity or collective entity for whom *you* provide an *insured service*.

**7.11 Deductible**

*deductible* means the proportion of the risk *you* retain for each claim (the amount shown in the *schedule*) and *you* will pay the *deductible* before we pay the remainder of the claim.

**7.12 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.

**7.13 Equipment**

*equipment* means *containers*, trailers and handling equipment used by *you* in carrying out the *insured service(s)* and specified in the *schedule*.

**7.14 Excluded cargo**

*excluded cargo* means, but is not limited to, *bullion*, banknotes, cash, bonds, negotiable documents, securities, deeds, manuscripts, plans, stamps, livestock and bloodstock, cigarettes and other tobacco based products, spirits, jewellery, precious stones, works of art, antiques, or other precious goods.

**7.15 Insured service(s)**

*insured service(s)* means the usual service(s) or activity(ies) carried out by *you* as a freight forwarder, road transport operator, multi modal transport operator, non-vessel owning carrier by sea, non-aircraft owning carrier by air, warehouse keeper or operator, customs broker, or marine insurance agent.

**7.16 NVOC**

NVOC means a non-vessel or non-aircraft owning carrier.

**7.17 Occurrence**

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

**7.18 Period of insurance**

*period of insurance* means the Period of Insurance stated in the *schedule*.

**7.19 Pollution**

*pollution* means the emission, discharge, dispersal, release, or escape into or on to land, sea, the atmosphere, any watercourse, or body of any solid, liquid, gaseous, or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes material to be recycled, reconditioned, or reclaimed.

**7.20 Principal(s)**

*principal(s)* means any person(s) or group(s) of persons, corporation, entity or collective entity on whose behalf *you* undertake to provide an *insured service*.

**7.21 Schedule**

*schedule* means the most recent document we give *you* setting out details of *your* insurance cover. We give *you* a *schedule* when *you*:

7.21.1 first enter into the policy with us;

7.21.2 change any part of the policy or any personal details relevant to it; and/or

7.21.3 renew the policy with us.



#### 7.22 Silica

*Silica* means silicon dioxide, (occurring in crystalline, amorphous, and impure forms), silica particles, silica dust or silica compounds.

#### 7.23 Silica related dust

*silica related dust* means a mixture or combination of *silica* and other dust or particles.

#### 7.24 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:

7.24.1 involves violence against one or more persons;

7.24.2 involves damage to property;

7.24.3 endangers life other than that of the person committing the action;

7.24.4 creates a risk to the health or safety of the public or a section of the public; or

7.24.5 is designed to interfere with or to disrupt an electronic system.

#### 7.25 Third party

*third party* means any person or group of persons, corporation, entity or collective entity who is not *you* or us.

#### 7.26 You, your

*you, your* means the person, group of persons, corporation or entity named as 'The Insured' in the *schedule*.

### 8. Exclusions applicable to all Sections

Notwithstanding anything contained anywhere in this policy to the contrary, *you* are not insured for any losses, damages, or liabilities in accordance with the exclusion clauses below.

#### 8.1 General exclusions

This policy does not insure *you* for *your* legal liability:

8.1.1 arising out of any award against *you* or any other person for whose conduct *you* are liable for punitive, exemplary, or multiple damages.

8.1.2 resulting from *your* insolvency or financial default.

8.1.3 arising out of *your* involvement in the operation or management of a ship or *aircraft*.

8.1.4 assumed under any contract (including any time penalty or other penalty clause) unless, and to the extent, that such contract or provision has been specifically agreed by us in writing.

8.1.5 arising from *your* involvement in dredging operations or the dumping of spoil therefrom.

8.1.6 arising out of the operation or use of a dump site, land-fill operation, or from the disposing of waste other than under a contract for the carriage, handling, or storage of waste as *cargo* prior to its disposal, and the contract has been agreed by us in writing.

8.1.7 resulting from *you* waiving *your* rights of recourse against any other party, to the extent that such liability has been enhanced by the waiver, unless agreed to by us in writing.

8.1.8 resulting from any *deliberate, reckless, or wilful conduct* by *you* which enhances the likelihood of increasing loss, damage, liability, or expense beyond that which would otherwise have existed.

8.1.9 arising from loss to *third party* property held in *your* care, custody, and control as a result of accounting errors, or unexplained disappearances and/or shortages revealed only after *you* take inventory or other method of taking stock.

8.1.10 arising from asbestos.

## 8.2 Nuclear

This policy excludes loss, liability, damage, or expenses caused by or contributed to by:

- 8.2.1 ionising radiations from, or contamination by radioactivity from, any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 8.2.2 the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 8.2.3 any weapon or device using atomic or nuclear fission and/or fusion or other similar reaction or radioactive force or matter;
- 8.2.4 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;
- 8.2.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

## 8.3 Terrorism

This policy excludes any loss 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*.

## 8.4 War, strikes and confiscation

This policy excludes loss, liability, damage or expenses caused by:

- 8.4.1 war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom or any hostile act by or against a belligerent power;
- 8.4.2 derelict mines, torpedoes, bombs, or other weapons of war (deleted derelict);
- 8.4.3 strikers, locked-out workers, persons taking part in labour disturbances, riots or civil commotions, or resulting from strikers, locked-out workers, persons taking part in labour disturbances, riots, or civil commotions;
- 8.4.4 confiscation, appropriation, expropriation, nationalisation, requisition, or destruction of, or damage to, property by, or under the order of, any government or public *authority*.

## 8.5 Communicable disease

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*.

## 8.6 Cyber risk

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

- 8.6.1 the failure, error, or malfunction of any computer, computer system, computer software programme, code, or process, or any other electronic system; or
- 8.6.2 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.

## 9. General Conditions applicable to all Sections

### 9.1 Assignment

- 9.1.1 *You* may not transfer a right under this policy without our written consent.
- 9.1.2 Notwithstanding 9.1.1 above, at *your* request, an owner and/or mortgagee of *equipment* leased or purchased by *you* and insured under this policy may be named as a beneficiary if agreed by us in writing.

### 9.2 Cancellation

- 9.2.1 *You* may cancel this policy at any time by notifying us in writing.
- 9.2.2 When the policy is subject to the Insurance Contracts Act 1984 (Cth), we may cancel the policy subject to the provisions of that Act.
- 9.2.3 Within 30 days of the effective date of cancellation, *you* must advise us of the actual *gross charges* 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 by *you* or refunded to *you* but subject to retention by us of reasonable reinsurance, administration and cancellation costs incurred by us as well any tax or duty paid or owing for which we are unable to obtain a refund.

### 9.3 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 Zurich 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:

- 9.3.1 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
- 9.3.2 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.

### 9.4 Cross liability

Subject to clause 9.7, 'Non-Imputation' where *you* are comprised of more than one legal entity, each of them will be considered as a separate legal entity with the words '*you*' and '*your*' applying to each of them in the same manner as if a separate policy has been issued to each one, provided that nothing in this condition will result in an increase in our limit of liability in respect of any *occurrence* or *period of insurance*.

### 9.5 Deductibles

- 9.5.1 Where this policy is subject to a *deductible(s)* it will be applicable to each *occurrence* unless otherwise stated.
- 9.5.2 When two or more *deductibles* are applicable to an *occurrence*, the total to be deducted will not exceed the highest applicable *deductible*.

### 9.6 Headings

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

## 9.7 Non-Imputation

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

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

## 9.8 Legal

- 9.8.1 When *you* appoint lawyers, surveyors, or other professionals in connection with any matter likely to give rise to a claim, the costs and expenses incurred will only be recoverable if they are with our prior written consent (not to be unreasonably withheld).
- 9.8.2 We may, at any time, appoint lawyers, surveyors, and other professionals on *your* behalf even if *you* have previously appointed them. In consultation with *you*, we may also discontinue their appointment if that is considered necessary in the context of the claim or case.

All appointments made by *you* will be on the understanding that those appointments may or will retire from the case if:

- (a) we, or *you*, request it; or
- (b) it is considered that there may be a conflict of interest between *you* and us ;

and on a without prejudice basis to their right to retire from the case on any other grounds;

Any appointments made by *you* will at all times report and advise us in connection with the case, including providing to us any documents or information in their possession or power relating to the case, as if they had been appointed to act and at all times had been acting on our behalf, unless any such advice, reports, documents, or information are the subject of legal privilege.

## 9.9 Limits of liability

This policy is subject to limits of liability as stated in the *schedule*. When different limits are applicable to particular sections of this policy, the lower limits will apply to the specific section but the higher limit will be the overall limit of liability applicable to any one *occurrence* unless otherwise stated in the *schedule*.

## 9.10 Notice and proof of claim

If an *occurrence* happens that may give rise to a claim under this policy, *you* must:

- 9.10.1 as soon as reasonably practicable, advise us of all known details of any incident or claim that might give rise to a liability under this policy;
- 9.10.2 take all reasonable and necessary steps to avoid or minimise any liability, loss, or damage;
- 9.10.3 take all reasonable and necessary steps to ensure a claim is notified or made against any responsible *third party* within any time limitation applicable under contract or law;
- 9.10.4 make no admission of liability, offer, promise to indemnify, or payment without our written consent;
- 9.10.5 forward to us every letter, document, summons, writ, or process relating to a claim or possible claim on receipt;
- 9.10.6 *you* must supply us with written details of all policies that may apply to the claim.

## 9.11 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. *You* may be required to pay an additional premium, which will be assessed according to the material change and any increased risk to any liability insured by this policy.

A material change includes, but is not limited to:

- (a) activities that are materially different from those declared to us at inception of the policy;
- (b) activities outside the normal activities of the 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) to *your* standard terms and conditions (that was originally approved by us);

#### 9.12 Other insurance

Provided it is permitted by law and/or the Insurance Contracts Act 1984 (Cth), where two or more insurance policies have either been entered into by *you* or effected on *your* behalf by another legal entity covering the same risk, this policy will only cover the amount of the claims which exceeds the amount recovered under the other policy or policies, up to the limits provided for under this policy.

#### 9.13 Premium

*You* must pay us the minimum and deposit premium stated in the *schedule*. This premium is based on *your* estimated gross freight receipts, or other computation agreed by us, provided by *you* for the *period of insurance*.

*You* must provide a statement (audited if we request it) of *your* actual gross receipts to us within 30 days after the end of the *period of insurance*.

We will adjust the premium based on these actual figures. If the adjusted premium is higher than the minimum and deposit premium stated in the *schedule* *you* must pay us the difference.

#### 9.14 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 State, Territory or Federal court in the Commonwealth of Australia.

In this policy, 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.

#### 9.15 Recovery

When a recovery is obtained from a *third party* in respect of any claim, we will first be credited with the proceeds up to the full amount received. If the amount recovered exceeds the amount paid or payable by us, the surplus will be credited to *you* up to the amount of *your* liability. Any additional surplus will be divided equitably between *you* and us taking into account any interest that could have been earned or any amounts expended.

#### 9.16 Rights of subrogation

We are entitled to exercise any rights *you* may have against anyone else in relation to the insured *cargo* for which we have settled a claim under this policy. *You*, and anyone else entitled to claim under this policy, must cooperate fully with us in exercising those rights and must give us any information or assistance we may reasonably require.

#### 9.17 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich 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.

### 9.18 Terms and conditions

Provided *you* have incorporated *your* standard terms and conditions into *your* contracts of carriage, as approved by us at inception of this policy, if *you* unintentionally fail to incorporate those approved terms and conditions into a contract of carriage this policy will, nevertheless, cover *your* liability.

However, if *you* intentionally agree to carry *cargo*, either as a *principal* or as a subcontractor, under any terms different to *your* standard terms and conditions this policy will only cover *your* liability as if the *cargo* were carried subject to *your* approved standard terms and conditions unless we have agreed to extend this policy to cover *your* liability subject to those different terms.

### 9.19 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.

### 9.20 Your responsibilities

*You* must act responsibly and as though this policy does not exist for example:

- 9.20.1 by taking all reasonable steps to determine the competence, fidelity, and reliability of any employees, contractors, subcontractors, and/or agents employed by *you*;
- 9.20.2 by taking all reasonable attempts to recover any *container / cargo*, or claim the demurrage or detention charges, from the responsible *customer*;
- 9.20.3 when *equipment* is insured under this policy by complying with laws, rules, and regulations issued by any *authority* relating to licensing, inspection, testing, maintenance, and operation of the *equipment*;
- 9.20.4 by not intentionally overloading the *equipment* other than for the purpose of inspection or testing; and
- 9.20.5 by maintaining and keeping records of transportation, inspection, maintenance, or repair of the *equipment*, made available to us if we request it.

Failure to comply with these responsibilities may prejudice *your* entitlement to indemnity under this policy, and 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.



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