

Port Operators Liability Insurance

Policy Wording



Contents

Welcome to Zurich

About Zurich	2
Duty of Disclosure.....	2
Our contract with you.....	2
Privacy.....	2
General Insurance Code of Practice.....	3
Complaints and Disputes Resolution process.....	3

Port Operators Liability Insurance – Policy Wording

1. Insuring Clauses.....	4
2. Limits of Liability	5
3. Extension of Cover.....	5
4. Optional Additional Benefits	6
5. Definitions.....	7
6. Exclusions.....	13
7. General Conditions.....	17

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 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

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*.

Port Operators 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. Insuring Clauses

Subject to the Limit of Liability, and terms and conditions of this policy, we will pay all sums which *you* are liable to pay following an *occurrence* happening during the *period of insurance* and arising out of *your insured operations* for:

1.1 Third party

liability to *third parties* for:

1.1.1 Property damage

physical loss or damage to property of any *third party* including ships, locomotives, rolling stock, equipment and *cargo*, and *consequential loss*, loss of use, delay or *demurrage* resulting from such physical loss or damage.

1.1.2 Personal injury

personal injury to any *third party* including *consequential loss* resulting from such *personal injury* (including any claim for indemnity brought against *you* by a subrogated insurer/claimant pursuant to any Workers' Compensation or Employers' Liability Insurance of any such injured person).

1.2 Operational liability

operational liability arising from any *occurrence* in the provision of *port services* provided that such *port services* are provided on *your* terms and conditions as provided to and agreed by us at inception of the policy and noted in the *schedule*.

1.3 Fines and penalties

finances and penalties, provided always that the statute, regulation or law that is breached relates to the importation or exportation of *cargo*, the importation or exportation of equipment (other than equipment owned by *you* or equipment in the process of acquisition or disposal by *you*), immigration, security or anti terrorism, work place safety, pollution, navigation aids, marine traffic control or pilotage, we will pay:

1.3.1 fines or other penalties or fiscal charge imposed by a government or authority, provided that such liability arises from an unintentional breach of the statute, law or regulation by *you*, or *your contractors*;

1.3.2 *your* loss arising from confiscation by a government or authority of any property of any person, including *your* equipment, as a consequence of *your* breach of any statute, law or regulation in the circumstances described in 1.3.1 (including any breach by a person).

However, we will not indemnify *you* in respect of fines and penalties as set out in Exclusion 6.2 'Fines and penalties'.

1.4 Pollution liability

1.4.1 any compensation to *third parties* for *personal injury* or physical loss or damage to property arising from a *pollution incident*;

1.4.2 any expense or cost incurred in removing, preventing, mitigating, or cleaning up any *pollutant* following a *pollution incident*;

1.4.3 any fine or penalty that arises from any *pollution incident* unless a competent court or tribunal determines that it is illegal or contrary to public policy for *you* to be insured against such liability or loss.

However, cover is specifically excluded for any *sub-surface operations liability* or *contaminated land liability*.

1.5 Errors and omissions

liability to *third parties* for financial loss, *consequential loss*, wrongful delivery of *cargo*, delay or *demurrage* arising from an error or omission.

1.6 Wreck removal

1.6.1 *approved costs and expenses* incurred by *you* in discharging *your* legal obligations to remove any *wreck* or *debris* following an *occurrence* for the purpose of avoiding or minimising a liability insured under this policy, provided that *you* took reasonable steps to put on notice, any owner, charterer, or operator (and their respective insurers) that they were required to remove the *wreck* or *debris* at their cost and expense, and if they failed to do so expediently, *you* will make a claim against them to recover any costs *you* incur in removing the *wreck* or *debris*.

1.6.2 If, due to the circumstances of the claim, you are required to incur costs and expenses to:

- (a) limit any liability insured under this policy;
- (b) prevent loss or damage to property or persons;
- (c) otherwise preserve property and evidence; or
- (d) preserve or enforce any legal right against a *third party*;

you must:

- (a) notify us as soon as possible of the cost incurred, or to be incurred. We will cover costs and expenses which are reasonably incurred; and
- (b) take reasonable steps to put any owner, charterer, or operator (and their respective insurers) on notice that a claim for the costs and expenses incurred will be made against them.

2. Limits of Liability

Our liability, for any loss, damage, or liability as a result of an *occurrence* will not exceed the Limit of Liability shown in the *schedule*.

Our liability to indemnify *you* for any loss damage or liability as the result of an *occurrence* arising out of *cargo* in *your* care, custody and control is limited to \$1,000,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify *you* for any loss, damage, or liability in respect of or in any way related to a *finer* and *penalties* is limited to \$500,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify *you* for any loss, damage, or liability in respect of or in any way related to a *pollution incident* is limited to \$1,000,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify *you* for any liability in respect of or in any way related to an *errors* and/or *omissions* is limited to \$500,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify *you* for any loss, damage, or liability in respect of, or in any way related to, *wreck* removal is limited to \$1,000,000 unless otherwise stated in the *schedule*.

3. Extension of Cover

Zurich will, in addition to the Limits of Liability shown in the *schedule*, cover *you* for:

3.1 Defence and costs cover

3.1.1 *approved legal costs and expenses* incurred by *you* in the defence of any liability insured under this policy;

3.1.2 *approved legal costs and expenses* incurred by *you* with the reasonable expectation of avoiding or mitigating a potential liability insured under this policy including representation before any court, tribunal or investigative body;

- 3.1.3 *approved costs and expenses* incurred by *you* in disposing of *cargo* or property other than a *wreck* following an *occurrence*;
- 3.1.4 *approved costs and expenses* in respect of quarantine, fumigation or disinfection of *cargo*, ships, containers or equipment as a result of an *occurrence*.
- 3.2 If, due to the circumstances of the claim, *you* are required to incur legal costs and expenses and/or costs and expenses to:
- (a) limit any liability insured under this policy;
 - (b) prevent cargo liability, third party liability (including property damage and *personal injury*), fines and penalties and pollution liability;
 - (c) otherwise preserve property and evidence; or
 - (d) preserve or enforce any legal right against a *third party*;
- you* must notify us as soon as possible of the cost incurred, or to be incurred. We will cover costs and expenses which are properly and reasonably incurred.

4. 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 *optional additional benefit* is noted as being covered in the *schedule*. Otherwise, such cover is excluded.

4.1 Berth and/or port blockage

Your loss of profits, increased cost of working and costs arising from a blockage as a result of an *occurrence* causing a *blockage* resulting in *you* being wholly or partially unable to provide *your port services*.

Unless stated otherwise in the *schedule*, the cover provided to *you* under this *optional additional benefit* will apply for the *indemnity period*.

4.2 Consultancy services legal liability

Your contractual liability to compensate *third parties* for losses, including financial loss or loss of income, arising from *consultancy services* provided by *you* in relation to *port management* or *port operations* during the *period of insurance* provided *your* liability is specifically excluded for any *liquidated damages* or claim by any *third party* for indemnity for *liquidated damages*.

Provided always that any contract *you* may have in place for *consultancy services* has been approved by us in writing and noted in the *schedule* prior to any *occurrence*.

4.3 Infringement of personal rights liability

Your legal liability to compensate *third parties* for false arrest, detention or imprisonment, libel, slander, defamation, eviction, invasion of privacy, or any public or private nuisance.

4.4 Tenant's legal liability

4.4.1 *Your* legal liability to compensate *third parties* for physical loss or physical damage to *premises* leased or rented by *you* as tenant where such physical loss or damage is caused following an *occurrence*.

4.4.2 This *optional additional benefit* does not cover or attach to any *premises* owned by *you* and leased or rented to any *third party* nor to any *premises* leased by *you* and sub-leased or rented to any *third party*.

4.4.3 Infringement of personal rights liability.

5. Definitions

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

5.1 Approved costs and expenses

approved costs and expenses mean costs and expenses that *you* notify to us and obtain our agreement to pay in advance of *you* incurring them (and for which approval will not to be unreasonably withheld), and which are in any event properly and reasonably incurred.

5.2 Approved legal costs and expenses

approved legal costs and expenses mean legal costs and expenses that *you* notify to us and obtain our agreement to pay in advance of *you* incurring them (and for which approval will not to be unreasonably withheld), and which are in any event properly and reasonably incurred.

5.3 Blockage

blockage means a blockage of any part of the port or berth arising from an *occurrence* which results in the sinking or stranding of a ship, or the inability of a ship to gain access to a berth.

5.4 Cargo

cargo means goods, including anything (other than items supplied by *you*) used, or intended to be used, to pack or secure goods carried from one place to another place in respect of which *you* contract to provide services, or in which *you* have an insurable interest, or in which you have suffered a pecuniary or economic loss by reason of those goods being damaged or destroyed.

5.5 Carrying or lifting equipment

carrying or lifting equipment means an item of equipment used for lifting, carrying, or moving of *cargo* including any item of equipment mounted on a *vehicle* for the purpose of lifting or securing *cargo*, but not a shipping container, aircraft, ship, or train.

5.6 Co-assured

co-assured means any legal entity noted in the *schedule* as a co-assured.

5.7 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:

- 5.7.1 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
- 5.7.2 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
- 5.7.3 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).

5.8 Consequential loss

consequential loss means *loss of profit*, loss of opportunity, market loss, loss of use, or any other economic loss.

5.9 Construction activity

construction activity means construction of any building, infrastructure, or civil works including refurbishment but not land reclamation activity that is not otherwise part of any *construction activity*.

5.10 Consultancy services

consultancy services mean any agreement for the provision of advice, information, or associated services by *you* to a *third party* relating to *port management* or *port operations* for a specific fee.

5.11 Contaminated land liability

contaminated land liability means any legal liability, fine, penalty, clean-up costs or expenses relating to the contamination of any land, including sub-surface land, unless arising from a *pollution incident*.

5.12 Contraband

contraband means any *cargo* that is unlawful to import and/or export, or *cargo* that is imported or exported in an unlawful way.

5.13 Contractual liability

contractual liability means civil liability incurred by *you* through entering into a contract.

5.14 Contractors

contractors mean *your* contractors and sub-contractors and, where the context requires, their respective servants and agents.

5.15 Costs arising from a blockage

costs arising from a blockage means such costs reasonably incurred by *you* after any *occurrence* that may give rise to a claim under the 'Port and berth blockage' *optional extension* for investigating the *occurrence*, assessing its financial impact, or protecting *your* interests in relation to such *occurrence*.

5.16 Dangerous cargo

dangerous cargo means any *cargo* specified as such in the Australian Dangerous Goods Code (ADG) or in the International Maritime Dangerous Goods Code (IMDG) or which may become a *dangerous cargo* while in *your* possession or control for whatever reason.

5.17 Debris

debris means flotsam, jetsam, or lagan (ligan) associated with any *wreck* or other marine casualty.

5.18 Declared value cargoes

declared value cargoes means any *cargo* received by *you* for carriage, storage or handling purposes that are declared by the shipper to have a specific value, Ad Valorem, for carriage.

5.19 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.

5.20 Demurrage

demurrage means the agreed pre-estimate of losses for delay as specified in a contract.

5.21 Geographical limits

geographical limits mean the area of *port operations* according to Acts of Parliament, orders, regulations or other gazetted limit.

5.22 Gross charges

gross charges mean total charges (collected or uncollected) made by *you* during the *period of insurance* and included in the annual revenue as stated on *your* annual profit and loss statement/statement of financial performance. No deduction will be made from the *gross charges* in respect of any sub-contracted work. *You* agree to keep a complete and accurate record of all *gross charges* for *insured operations* for examination by us or our representatives and further agree to make an annual report of collected and uncollected charges to us within 30 days after the expiration of this policy for purposes of calculating any applicable premium adjustment.

5.23 Increased cost of working

increased cost of working means such costs as may be reasonably incurred during the period of *blockage* cover for the purpose of avoiding or diminishing the potential reduction of *gross charges* or increased costs in maintaining *your insured operations* following a *blockage*.

5.24 Indemnity period

indemnity period means a period commencing 14 clear days after the *occurrence* giving rise to the *blockage* claim and concluding not later than 90 clear days after the *occurrence* giving rise to the *blockage* claim unless otherwise stated in the *schedule*.

5.25 Insured location(s)

insured location(s) means location(s) at which *you* conduct an *insured operation* that has been noted in the *schedule*.

5.26 Insured operation(s)

insured operation(s) means operations, including services, that have been noted in the *schedule*. *Insured operation(s)* may include:

- 5.26.1 the provision and management of canteens, social, sports and welfare organisations, or educational facilities which are primarily for the benefit of *your* employees;
- 5.26.2 first aid, medical, ambulance, and fire services.

5.27 ISPS code

ISPS code means the International Ship and Port Facility Security Code as in force from time to time.

5.28 Liquidated damages

liquidated damages mean any pre-estimate of damages contained in any contract for any breach of such contract.

5.29 Loss of profits

loss of profits means the reduction in *your* revenue during the *indemnity period* net of monies saved or received. In calculating *your loss of profits* we will take into account any savings through reduced expenses in consequence of the *occurrence* giving rise to the *blockage* and any revenue arising from *your port operations* being transferred to another location in consequence of the *occurrence* giving rise to the claim and any taxes saved in consequence of *your* revenue being reduced.

5.30 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*.

5.31 Optional additional benefits

optional additional benefits mean the optional cover set out in the various extensions of cover available under Section 4.

5.32 Optional additional benefits deductible

optional additional benefits deductible means the amount stated in the *schedule* to be deducted from any claim recoverable under any *optional additional benefit* in respect of *your* ultimate net loss resulting from any one *occurrence*.

5.33 Optional additional benefits sub-limit

optional additional benefits sub-limit means the limit applicable to all claims arising under any *optional additional benefit* noted in the *schedule*. This is the maximum amount we will indemnify *you* for *your* liabilities arising under the extension as a result of any one *occurrence* in any one *period of insurance*.

5.34 Overload or overloaded

overload or overloaded means whenever the safe working load specified by the manufacturer or other competent person or responsible authority for any equipment is exceeded.

5.35 Period of insurance

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

5.36 Personal injury

personal injury means:

- 5.36.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish or mental injury; or
 - 5.36.2 assault and battery committed with reasonable force by *you*, or at *your* direction, for the purpose of preventing or eliminating danger to persons or property;
- and includes hospital, funeral, and medical expenses.

5.37 Pollutant

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

5.38 Pollution incident

pollution incident means a sudden and accidental event constituting the actual or potential discharge, emission, spillage, or leakage upon or into the seas, waters, land, or air anywhere in the world of any *pollutant* where:

- 5.38.1 it is an identifiable specific incident;
- 5.38.2 the specific incident occurred, and discovered, during the *period of insurance* on an identifiable date at a specific time; and
- 5.38.3 the specific incident was not caused by *your deliberate, reckless or wilful conduct*.

5.39 Port management

port management means managing the business of a *port operator*.

5.40 Port operations

port operations mean the technical and commercial operations or services performed by a *port operator*.

5.41 Port operator

port operator means the legal entity that technically and commercially operates a port and, if specifically agreed by us, includes any port authority, harbour authority, harbour board, corporation, or other legal entity that operates any port or harbour.

5.42 Port services

port services mean services provided by the port including towage, pilotage, line boats, stevedoring, marshalling, storage, *terminal operator*, and other services provided by *your port operations* as agreed by us and shown in the *schedule*.

5.43 Premises

Premises means a piece of land or real property identified by its legal title together with its buildings and infrastructure.

5.44 Product

product means anything which was, or is deemed by law to have been, manufactured, grown, extracted, treated, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, renovated, installed, assembled, erected, or constructed in the course of the *insured operation* by *you*, or on *your* behalf, including labels, packaging, or containers (but not a *vehicle*) and any directions, instructions, or advice given or omitted to be given in connection with such *product* after it ceases to be in *your* possession or under *your* control.

5.45 Product liability

product liability means *your* legal liability to pay compensation in respect of loss or damage, death, or *personal injury* arising directly or indirectly from the manufacture, sale, or supply of any defective *product* by *you*.

5.46 Schedule

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

- 5.46.1 first buy the policy from us;
- 5.46.2 change any part of the policy or any details relevant to it; and/or
- 5.46.3 renew the policy with us.

5.47 Security legislation

security legislation means the *ISPS Code*, the Maritime Transport and Offshore Facilities Security Act and any other similar or associated regulations or orders.

5.48 Silica

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

5.49 Silica related dust

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

5.50 Sub-surface operations liability

sub-surface operations liability means any legal liability, fine, penalty, clean-up cost or expense resulting from subsidence causing damage to any activity or infrastructure below ground or under water.

5.51 Temporary hire agreement

temporary hire agreement means an agreement to lease, hire, rent, or borrow any property or equipment for a period not exceeding 120 consecutive days.

5.52 Terminal operator

terminal operator means the legal entity that technically and commercially operates any container, break-bulk, bulk liquid or dry-bulk commodity marine terminal for the purpose of loading or unloading *cargo* from or to a ship and the marshalling and storage of such *cargo*.

5.53 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:

- 5.53.1 involves violence against one or more persons;
- 5.53.2 involves damage to property;
- 5.53.3 endangers life other than that of the person committing the action;
- 5.53.4 creates a risk to the health or safety of the public or a section of the public; or
- 5.53.5 is designed to interfere with or to disrupt an electronic system.

5.54 Third party

third party means any person other than *you* or *us*.

5.55 Tool of trade

tool of trade means any *vehicle* which has a tool or plant attached to, forming part of or used in connection with it while such tool or plant is engaged on a work site but does not include such *vehicle* whilst it is in transit to or from any work site.

5.56 Valuable cargoes

valuable cargoes mean any high value *cargo* such as bullion, precious metal objects, precious stones and gemstones, precious jewellery, cash or securities, negotiable instruments, valuable works of art, thoroughbred horses, computers, hand held electronic *goods* or mobile phones or any electrical components of these or similar.

5.57 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.

5.58 Wear and tear

wear and tear means deterioration of anything over time from normal use.

5.59 Wreck

wreck means whatever may remain of a ship and its *cargo* following a shipwreck found in, or on the shores of, the sea or any tidal waters or navigable waters of the port but not any *pollutant* from the wrecked vessel.

5.60 You, your

you, your means the person, legal entity, company or companies noted as the named Insured in the *schedule*, including any named *co-assured* and any:

- 5.60.1 subsidiary company, including subsidiaries thereof, of the named Insured or any named *co-assured* in the *schedule* and any other organisation under the control of the named Insured or any named *co-assured* in the *schedule* and over which it is exercising active management;
- 5.60.2 new organisations acquired by the named Insured or any named *co-assured* in the *schedule*, during the *period of insurance*, through consolidation, merger, purchase of the assets of or assumption of control and active management, provided such acquisition or assumption is reported to us within 90 days after it is effected and provided further such acquisition is endorsed onto this policy; or
- 5.60.3 director, officer or employee acting in the course of their employment.

6. Exclusions

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.

6.1 General exclusions

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

- 6.1.1 for *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 arrangement 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.
- 6.1.2 arising out of the provision of any workers' compensation legislation or industrial award or agreement or determination.
- 6.1.3 for *personal injury* to any person arising directly or indirectly from:
 - (a) exposure to noxious or inherently harmful substances (including but not limited to radio-active substances, asbestos, cadmium, or hydrocarbons);
 - (b) repetitive stress, strain, or cumulative trauma; or
 - (c) 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*.
- 6.1.4 for damage or loss to:
 - (a) any *premises* occupied by *you* unless the appropriate tenant's legal liability' extension applies and is noted in the *schedule*; or
 - (b) any property or equipment leased, hired, rented, or borrowed by *you* unless such property or equipment is leased, hired, rented, or borrowed by *you* under a *temporary hire agreement* and the damage or loss arises from *your* negligence.
- 6.1.5 for damage or loss to any property (including damage or loss to *cargo* or equipment including shipping containers and *cargo* handling equipment) caused by or arising from:
 - (a) routine *wear and tear* or gradual deterioration when *you* are responsible for the maintenance or care, custody and control of such property;
 - (b) inherent vice, ordinary leakage, or ordinary loss in weight or volume;
 - (c) defective or insufficient packaging of the *cargo* by *your* customer, their subcontractor or agent; or
 - (d) unexplained losses discovered on inventory/stocktaking unless established by *you* to have been caused by an *occurrence*.
- 6.1.6 arising from the release of *cargo* without production by the person claiming release of the *cargo*, of the original bill of lading or other sea-carriage document.
- 6.1.7 arising from damage or loss to *declared value cargoes* to the extent that any claim is increased by the declaration of value by *your* customer, their contractors, or agents.
- 6.1.8 arising from damage or loss to *valuable cargoes* unless:
 - (a) *your* customer did not inform *you*, and *you* could not have reasonably known, that *you* were handling such *cargoes*; or
 - (b) *you* handle such *valuable cargoes* only on specific terms of *your contract* that has been previously approved by us;

- (c) *your customer's bill of lading or other contract of carriage, in respect of such valuable cargoes, contains the following:*
- (i) provisions excluding or limiting the customer's liability including any liability in negligence to the extent permissible by law; and
 - (ii) provisions undertaking to defend and indemnify *you* and hold *you* harmless against any claim by, or liability to, the customer or any other party to the extent that such claim or liability exceeds the lesser of:
 - (a) *your* liability under *your* contract with the customer; or
 - (b) the liability that *you* would have incurred if *you* had been able to rely on the provisions in the bill of lading or other contract of carriage excluding or limiting the customer's liability and which would have applied had the scope of such bill of lading or contract of carriage included *your* services.

Any legal liability arising under 6.1.8.2 and 6.1.8.3 will be subject to the provision that *you* have ensured, as is reasonably practicable, that adequate security measures are employed in the handling of such *valuable cargoes*, relevant to the type of *valuable cargoes* that are being carried at any or the relevant time.

- 6.1.9 arising from the use, ownership, or operation by *you* of any *vehicle* in circumstances in which the *vehicle* is required by law to have compulsory insurance against such liability.
- 6.1.10 arising from the use, ownership, or operation by *you* of any registered *vehicle*, such liability being for property damage unless such *vehicle* is being used as a *tool of trade*.
- 6.1.11 arising from the ownership, operation, management, maintenance, lease, rental, charter, or use by *you* of any vessel or water-borne craft, locomotive, or rolling stock.
- 6.1.12 arising from any dredging operations performed by *you* or any *third party*.
- 6.1.13 arising from the disposal, treatment, storage, carriage, or processing of waste materials, spoil or operation of any land-fill or similar facility by *you* or any *third party* or relating to any contamination of land, including any sub-surface land (other than where arising from a sudden accidental event constituting a *pollution incident*) or any remediation of contaminated land, including any sub-surface land (whether pursuant to an order or directive of any competent authority or otherwise).
- 6.1.14 assumed by *you* under contract, including liability for delay and payments under penalty clauses or liability arising under 'liability without fault' or 'performance guarantee' or 'declared value' or '*liquidated damages*' clauses or similar provisions or liability otherwise accepted by *you* under any express or implied contract, but this exclusion will not apply to the extent that:
 - (a) *you* would incur legal liability in the absence of any specific contractual provision and as a result of *your* negligence; or
 - (b) we have specifically agreed to insure the contractual liabilities assumed by *you*.
- 6.1.15 incurred to any *third party* to the extent that any such liability is in excess of any statutory immunity or limit of liability or restriction of liability that would otherwise be available to *you*.
- 6.1.16 incurred in relation to the provision of any advice, information, or service for a specific fee, relating to *port management*, *port operations* or other similar activity unless the 'Consultancy services legal liability' *optional additional benefit* has been agreed and is noted in the *schedule*.
- 6.1.17 arising from loss or damage caused by or resulting from *you* deliberately, recklessly, or wilfully exceeding the registered or rated capacity or 'safe working load' or any *overload* of any *carrying or lifting equipment*.
- 6.1.18 arising from *deliberate, reckless or wilful conduct* by *you* or *your contractors*.

- 6.1.19 arising from the wrongful delivery of *cargo* to the extent that a competent court or tribunal determines that it is illegal for *you* to be insured against such liability; or for any criminal proceedings associated with any wrongful delivery of *cargo*.
- 6.1.20 arising from any *deliberate, reckless or wilful* non-compliance with, or breach of the *ISPS Code* or any other relevant *security legislation*.
- 6.1.21 arising from *construction activity*, or any other reclamation or demolition activities undertaken by *you* or *third parties* that would be covered under the scope of most industry standard 'Contract Works including Public Liability insurance' in respect of the property and liability interests associated with such activities.
- 6.1.22 arising from erection, dismantling or movement of *carrying or lifting equipment* unless our prior written agreement has been obtained by *you*. *You* may be required to pay an additional premium, which will be assessed according to the any increased risk to any liability insured by this policy arising from the erection, dismantling, or movement of *carrying or lifting equipment*.
- 6.1.23 in respect of any goods or *products* sold by *you* including any *product liability*.
- 6.1.24 arising in relation to any:
 - (a) trademark, copyright, or patent infringement;
 - (b) breach of directors' and officers' duties;
 - (c) breach of fidelity obligations of employees, company directors, officers, or company servants;
 - (d) conduct of directors, officers, employees, or company servants acting outside the course and scope of their employment, authority or contract as the case may be; or
 - (e) fault, error, or omission on *your* part in the course of administration of any superannuation, pension or employee benefits scheme.
- 6.1.25 arising from any alleged or actual fraudulent, dishonest, malicious, intentional, or criminal act or omission by *you* or *your contractors*.
- 6.1.26 arising from *you* performing any unlawful or illegal act or knowingly providing any services in respect of illegal trade or *contraband cargo*.
- 6.1.27 for 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*.
- 6.1.28 arising from any loss, damage, liability, or expense directly or indirectly caused by, contributed to, by, or arising from:
 - (a) the failure, error or malfunction of any computer, computer system, computer software programme, code, or process, or any other electronic system; or
 - (b) 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.

6.2 Fines and penalties

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

- 6.2.1 breach of any statute, law or regulation in respect of freight tariffs, fair trading or anti competitive behaviour;
- 6.2.2 breach of any statute, law or regulation in respect of ownership, lease or operation of a mechanically propelled *vehicle* that is required to be licensed or permitted to be licensed for use on a public road unless being used as a *tool of trade*;
- 6.2.3 breach of any statute, law or regulation in respect of *overloading* any mechanically propelled *vehicle*, *carrying or lifting equipment* unless such breach relates to workplace safety regulations;

- 6.2.4 breach of any statute, law or regulation caused by *deliberate, reckless or wilful conduct* by *you* or *your* servant, agent or *contractor*;
- 6.2.5 any fine, penalty, customs duty, sales tax, excise tax, similar financial charge or loss arising from confiscation, to the extent that a competent court or tribunal determines that it is illegal or contrary to public policy for *you* to be insured against such liability or loss;
- 6.2.6 any fine, penalty or loss arising from any criminal conviction, to the extent that a competent court or tribunal determines that it is illegal or contrary to public policy for *you* to be insured against such liability or loss; or
- 6.2.7 any amount that would have been payable by *you* in the ordinary course of events, notwithstanding any breach of regulation, statute or law.

6.3 Berth and/or port blockage

Notwithstanding *optional additional benefit* 4.1 'Berth and/or port blockage', this policy does not cover any liability arising from *your* failure to take reasonable and necessary steps to:

- 6.3.1 prevent the *occurrence*;
- 6.3.2 maintain all approaches and channels to the *insured locations*, and any approaches, channels, turning basins and berth(s) within the *insured locations* in good working order, cleared to marked depths, and fit for intended purposes;
- 6.3.3 comply with all statutory regulations and requirements relating to the operation and inspection of all approaches, channels, turning basins and berth(s) and the access to and from all such berths;
- 6.3.4 manage the *insured locations* so that all users comply with all statutory regulations and requirements relating to the use of all approaches, channels, turning basins and berth(s) so as to avoid the *occurrence*; or
- 6.3.5 rectify or minimise all consequences of any *blockage* that may occur.

6.4 Infringement of personal rights

Notwithstanding *optional additional benefit* 4.3 'Infringement of personal rights liability', this policy does not cover any liability arising from:

- 6.4.1 the *deliberate or reckless or wilful breach* of any statute, law, or regulation by *you* or *your* employee, officer, or contractor;
- 6.4.2 any personal relationship between *you* and any *contractor*;
- 6.4.3 a contract entered into by *you*;
- 6.4.4 intentional publication of material or any utterance by *you* or *your contractors* with knowledge that such publication or utterance is false;
- 6.4.5 any advertising activity publication or utterance that promotes *your insured operations*;
- 6.4.6 repeating the same or similar act, utterance or publication of material made by *you* or *your contractors* prior to the commencement of the *period of insurance*; or
- 6.4.7 any claim against *you* by any person claiming or asserting any breach by *you* of any discrimination, anti-vilification, harassment, or equal opportunity or employment or similar legislation.

6.5 Nuclear

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

- 6.5.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 6.5.2 the radioactive, toxic, explosive, or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;

- 6.5.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 6.5.4 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;
- 6.5.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

6.6 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*.

6.7 War

This policy excludes loss, damage, liability, or expense directly or indirectly occasioned by, happening through or in consequence of:

- 6.7.1 war, civil war, revolution, rebellion, insurrection, civil strife arising therefrom or any hostile act by or against a belligerent power;
- 6.7.2 capture, seizure, arrest, restraint, or detainment (barratry and piracy excepted) and the consequence thereof or any attempt thereat; or
- 6.7.3 derelict mines, torpedoes, bombs, or other derelict weapons of war.

7. General Conditions

7.1 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.

7.2 Cancellation

- 7.2.1 *You* may cancel this policy at any time by notifying us in writing.
- 7.2.2 When the policy is subject to the Insurance Contracts Act 1984 (Cth), we may cancel the policy subject to the provisions of that Act.
- 7.2.3 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.,

7.3 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 practically reasonable, 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 Zurich will have ultimate discretion in the conduct of any proceedings and in the settlement of any claim it has conduct of.

7.4 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:

- 7.4.1 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
- 7.4.2 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.

7.5 Cross liability

Subject to clause "7.9 -Non-Imputation", where *you* are comprised of more than one party, each of the parties will be considered as a separate legal entity with the words '*you*' and '*your*' applying to each party in this same manner as if a separate policy has been issued to each party, provided that nothing in these conditions will result in an increase in our limit of liability in respect of any *occurrence* or *period of insurance*.

7.6 Dangerous cargo

You must act diligently to ensure compliance with all regulations, laws and international conventions relating to the handling and storage of *dangerous cargo*.

7.7 Deductible

Any claim recoverable under this policy will be subject to the deduction of the sum stated in the *schedule* in respect of *your* ultimate net loss resulting from any one *occurrence*.

7.8 Headings

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

7.9 Non-Imputation

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).

7.10 Notice and proof of claim

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

- 7.10.1 advise us as soon as reasonably practicable, or within 30 days, of any *occurrence*, circumstance, claim, writ, summons, proceedings, impending prosecution, inquest, or the like known to *you*, and provide to us as much detail, information, or documents as is available to *you*;

- 7.10.2 use *your* best endeavours to preserve any damaged or defective property which may prove necessary or useful by way of evidence (together with any relevant documentation or records) in connection with any claim;
- 7.10.3 so far as may be reasonably practicable, not make any alteration or repair to any watercraft, *premises*, machinery, fittings, equipment, or plant until we have had an opportunity to inspect and have provided our consent (unless immediate steps need to be taken protect property or people, or mitigate further loss or damage);
- 7.10.4 retain and preserve from destruction any business documents and records that might foreseeably be connected with potential future claims:
 - (a) for a period of at least five years;
 - (b) until the conclusion of any proceedings or suit in which a claim against *you* is being defended or a recovery prosecuted; or
 - (c) for a longer period as advised by us (for example, a period of time reflecting a limitation period);
- 7.10.5 not make any admission, offer, or promise of payment in connection with any *occurrence* or claim under this policy without our written consent;
- 7.10.6 give to us all information and assistance as we may reasonably require in the prosecution, defence, or settlement of any claim.

7.11 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 in the proposal;
- (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);

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.

7.12 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 effected by *you* or effected on *your* behalf by another party covering the same risk, this policy will only cover the amount of the claim which exceeds the amount recovered under the other policy or policies, up to the limits provided for under this policy.

7.13 Premium

Subject to any agreement to the contrary, this policy is in consideration of *your* payment of the minimum and deposit premium as stated in the *schedule*.

If *your* actual *gross charges* for the *period of insurance* exceed the estimated *gross charges* on which the deposit premium was based, we will adjust the premium proportionally at the end of the *period of insurance* and based on a recalculation of *your* actual *gross charges*. *You* agree to promptly pay any additional premium calculated by applying the agreed rate, as noted in the schedule, to the amount of such excess charges.

No deduction will be made from the *gross charges* in respect of any subcontracted work.

You agree to keep a complete and accurate record of all *gross charges* for operations covered by this policy for examination by us or our representatives and *you* further agree to make an annual report of collected and uncollected charges to us within 30 days after the expiration of the *period of insurance*.

7.14 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.

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.

7.15 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.

7.16 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.

7.17 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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