



# Marina Operators 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*.

# Marina 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* become legally liable to pay in compensation arising from *your marina business* for:

- 1.1 loss or damage to *watercraft* in *your* physical legal care, custody or control and including *watercraft* in *your* care, custody and control solely for the purpose of being stored;
- 1.2 *property damage*;
- 1.3 *personal injury*;
- 1.4 *products liability*;
- 1.5 *consequential loss*;
- 1.6 *pollution risks*;
- 1.7 *premises occupier's liability*;
- 1.8 *berth occupier's liability*;
- 1.9 *hot work liability*;
- 1.10 *removal of wreck liability*;
- 1.11 *subcontractors liability*; and
- 1.12 *temporary hire of equipment liability*;

resulting from an *occurrence* happening during the *period of insurance* and within the *territorial limits* stated in the *schedule*.

## 2. Limits of Liability

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

Our total aggregated liability for any one *period of insurance* to indemnify *you* for any loss, damage, or liability in respect of, or in any way related to, *products liability* is shown in the *schedule*.

Our total aggregate liability for any one *period of insurance* to pay compensation in respect of, or in any way related to, *watercraft* in *your* care, custody and control solely for the purpose of being stored is limited to \$1,000,000, unless stated otherwise in the *schedule*.

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

Our total aggregate liability for any one *period of insurance* for *temporary hire of equipment liability* is limited to \$100,000, unless stated otherwise in the *schedule*.

### 3. Extensions of Cover

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

#### 3.1 Defence and costs cover

*your legal defence, investigation and mitigation costs.*

#### 3.2 First aid

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

#### 3.3 Cover is available under clause 3.1 and 3.2, provided that:

- (i) if, in settling or disposing of a claim covered under this policy, compensation is payable in excess of the Limit of Liability, our additional liability in respect of costs incurred under 3.1 and 3.2 will be limited to the same proportion of these costs as the Limit of Liability bears to the total compensation payable to dispose of or settle the claim; and
- (ii) we will not pay for any costs or expenses under 3.1 and 3.2 that are incurred after we have paid, or agreed to pay, an amount equal to the Limit of Liability.

### 4. Optional Additional Benefit

The following optional additional benefit is only applicable to this policy if we have agreed to provide the cover to *you*, *you* have paid any additional premium that may be required, and the optional additional benefit is noted as being covered in the *schedule*. Otherwise, such cover is excluded.

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

#### 4.1 Extended hot work

*hot work* carried out on or near *watercraft* previously engaged in carrying explosives, ammunition, or inflammable liquids or gasses, or any work on or near any fuel tank, fuel pipeline, or fuel bunker space.

### 5. Definitions

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

#### 5.1 Aircraft

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

#### 5.2 Berth occupier's liability

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

#### 5.3 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:

- 5.3.1 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
- 5.3.2 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
- 5.3.3 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).

#### **5.4 Consequential loss**

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

#### **5.5 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.

#### **5.6 Excess**

*excess* means the amount shown in the *schedule* which must be paid by *you* when *you* make a claim under this policy.

#### **5.7 Gross charges**

*gross charges* mean total charges (collected or uncollected) made by *you* in the course of *your marina business* during the *period of insurance* and included in the annual revenue as stated on *your* annual profit and loss statement/statement of financial performance.

#### **5.8 Hot work**

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

#### **5.9 Legal defence, investigation and mitigation costs**

*legal defence, investigation and mitigation costs* means:

- 5.9.1 reasonable fees and expenses incurred by *you*, including investigation and mitigation costs after a claim under this policy has been notified to us, provided that we agree in writing (not be unreasonably withheld) to the basis and the rates of the fees and expenses to be incurred;
- 5.9.2 fees and expenses payable by *you* to another party by agreement or settlement in respect of a claim under this policy provided that we agree in writing (not be unreasonably withheld) to the amount to be paid before agreement or settlement is reached; or
- 5.9.3 fees and expenses payable by *you* to another party in respect of a claim under this policy by order of any court or other tribunal made within the jurisdiction of the states, territories, or Commonwealth of Australia.

#### **5.10 Medical persons**

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

#### **5.11 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*.

#### 5.12 Period of insurance

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

#### 5.13 Personal injury

*personal injury* means:

5.13.1 bodily injury, death, sickness, disease, disability, shock, fright, mental anguish, or mental injury;

5.13.2 false arrest, false imprisonment, wrongful detention, malicious prosecution, or humiliation;

5.13.3 libel, slander, or defamation; and/or

5.13.4 wrongful entry or wrongful eviction or other invasion of privacy.

#### 5.14 Pollutant

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

#### 5.15 Pollution risks

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

#### 5.16 Premises occupier's liability

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

#### 5.17 Product

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

#### 5.18 Products liability

*products liability* means *your* legal liability for *personal injury* or *property damage* caused by a defective *product* where the *product* formed part of repair, installation, assembly, or maintenance work carried out by *you* on a *watercraft* and the *personal injury* or *property damage* occurred after the *product* has ceased to be in *your* possession or control.

#### 5.19 Property damage

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

#### 5.20 Removal of wreck liability

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

#### 5.21 Schedule

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

#### **5.22 Silica**

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

#### **5.23 Silica related dust**

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

#### **5.24 Subcontractors liability**

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

#### **5.25 Temporary hire equipment**

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

#### **5.26 Temporary hire of equipment liability**

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

#### **5.27 Territorial limits**

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

#### **5.28 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:

5.28.1 involves violence against one or more persons;

5.28.2 involves damage to property;

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

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

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

#### **5.29 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 are designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.

#### **5.30 Watercraft**

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

#### **5.31 You, your**

*you, your* means:

5.31.1 the Insured as named in the *schedule*;

5.31.2 subsidiary companies of the Insured as named in the *schedule* formed or constituted and incorporated in Australia;

5.31.3 the directors, employees, executive officers, or partners of the Insured as named in the *schedule*, but only whilst acting in such a capacity related to *your marina business*.

### 5.32 Your marina

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

### 5.33 Your marina business

*your marina business* means, and is limited to, *your* ownership and/or operation of *your marina*, which includes:

- 5.33.1 waterfront facilities including hoists, cranes, and cradles used in connection with the *marina* operations, moorings, berths, ramps, piles, wharfs, jetties, docks, slipways, pontoons and walkways on, over or immediately adjacent to water subject to tidal movement;
- 5.33.2 floating plant and equipment used within the confines of *your marina*;
- 5.33.3 working boats used to ferry customers to and from moored *watercraft*;
- 5.33.4 *your* physical and legal control of *watercraft* owned by third parties, including whilst *you* are relocating such *watercraft* within the confines of the *marina*;
- 5.33.5 the provision of services to *watercraft* including fuel, water, and sewage removal;
- 5.33.6 the provision of moorings, berths, buoys, and the like;
- 5.33.7 storage of customers *watercraft*;
- 5.33.8 hauling and/or lifting out, slipping and/or launching of customers *watercraft*;
- 5.33.9 the sale of *watercraft* and *products*; and
- 5.33.10 the service, repair, and maintenance of *watercraft* and machinery, or parts thereof.

## 6. Exclusions

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

### 6.1 Aircraft and watercraft

- 6.1.1 *your* ownership, construction, maintenance, servicing, operation, or use by *you* of any *aircraft*;
- 6.1.2 *your* ownership, charter, or lease of any *watercraft*;
- 6.1.3 the use, movement, or delivery of *watercraft* in *your* care, custody or control other than for trial trips and movement incidental to *your marina business* within 100 kilometres of *your marina*;
- 6.1.4 *products* installed in, or on, any *aircraft* or *watercraft* owned, chartered, or leased by *you*; or
- 6.1.5 the use by *you* as a landing area for *aircraft* of any property or structure owned, occupied, or controlled by *you*. For the purpose of this exclusion, the term 'landing area' includes any area on which *aircraft* taxi, land, take-off, are housed, maintained, or operated.

### 6.2 Asbestos

death, injury, loss, damage, or liability of any nature which is directly or indirectly connected in any way with asbestos.

### 6.3 Assault and battery

assault and battery committed by or at the direction of *you* unless reasonably necessary for the protection of persons or property.

### 6.4 Communicable disease

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

## 6.5 Contractual liability

liability assumed by *you* under any contract or agreement.

This exclusion shall not apply to:

- (i) liability that would have been implied by law in the absence of such contract or agreement; or
- (ii) written contracts or agreements agreed by us and specified in the *schedule* or to the extent that they adopt the standard terms published by peak industry bodies such as the Marina Industries Association or similar reputable and industry recognised organisation.

## 6.6 Cyber risk

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

- 6.6.1 the failure, error, or malfunction of any computer, computer system, computer software programme, code or process, or any other electronic system; or
- 6.6.2 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.

## 6.7 Defective product

the need to replace a defective *product* where it is manufactured by a third party.

## 6.8 Employment liability

6.8.1 *personal injury* to any employee or worker arising out of, or in the course of, their employment in *your marina 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.

6.8.2 any provision of any workers' compensation legislation or any industrial award or agreement or determination.

## 6.9 Exceeding capacity

*you* knowingly exceeding the registered or rated capacity of any lift device, slipway, or dry-dock.

## 6.10 Faulty design

6.10.1 the condemnation or rejection of any part or *product* by reason of faulty design, specification, formulae, or pattern; and

6.10.2 the need to repair, modify, or replace any part or *product* by reason of faulty design, specification, formulae, or pattern.

## 6.11 Fines, penalties, and punitive damages

punitive, aggravated, or exemplary damages, fines or penalties imposed by law.

## 6.12 Infidelity

infidelity or any act of a dishonest nature on *your* part or on the part of *your* subcontractors or employees.

## 6.13 Libel, slander, and defamation

the publication or utterance of a libel, slander, or defamation:

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

## 6.14 Nuclear, Chemical, Biological, Bio-Chemical, and Electromagnetic Weapons

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

## 6.15 Other consequential loss

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

## 6.16 Product recall

the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement, or loss of use of any *product* where such *product* is withdrawn or recalled from the market or from use in a particular application because of a known, alleged, or suspected defect or deficiency.

## 6.17 Professional advice

the rendering of, or failure to render, professional advice by *you*, for a fee or otherwise, or any error or omission connected therewith, including but not limited to surveys, inspection, or condition reports, and valuations of *watercraft*.

This exclusion shall not apply to the rendering of, or failure to render, medical advice or service by *medical persons* employed by *you* to provide first aid and other medical services on *your premises*.

## 6.18 Property in your physical or legal control

damage to property owned, used, or leased by *you*, but excluding *temporary hire equipment*.

## 6.19 Reckless conduct

the *deliberate, reckless, or wilful conduct* of *you* or *your* subcontractors.

## 6.20 Silica

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*.

## 6.21 Spray painting

*property damage* occurring as a result of overspray of paint or other substance and where such *property damage* is caused by *you* or *your* subcontractor failing to erect a purpose built spray booth or implement similar protective measures.

## 6.22 Strikes

*property damage* or *personal injury* arising from any strike, lockouts, labour disturbance, riot, civil commotion, or act of any person taking part in any such activity.

### 6.23 Terrorism

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*.

### 6.24 Vehicles

6.24.1 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; or

6.24.2 the use, ownership, or operation by *you* of any registered *vehicle*, such liability being for *property damage*.

### 6.25 War

whether directly or indirectly, war, civil war, revolution, rebellion, insurrection, or civil strife arising there from or any hostile act by or against a belligerent power, capture, seizure, arrest, restraint, or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat, 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 “7.7 - 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 Headings

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

## 7.7 Non-Imputation

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

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

## 7.8 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:

- 7.8.1 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;
- 7.8.2 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;
- 7.8.3 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);
- 7.8.4 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);
- 7.8.5 not make any admission, offer, or promise of payment in connection with any **occurrence** or claim under this policy without our written consent;

7.8.6 give to us all information and assistance as we may reasonably require in the prosecution, defence, or settlement of any claim.

## 7.9 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 this 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);

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.

## 7.10 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.

## 7.11 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* for purposes of calculating any applicable premium adjustment.

## 7.12 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.

### 7.13 Reconstruction or conversion

*You* must notify us prior to commencing work on any *watercraft* that will result in any material change to the dimension, tonnage, or type of *watercraft*. We may decline insurance for such work but if we agree to provide cover for such work, *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 any work *you* perform on any *watercraft*.

### 7.14 Reasonable diligence

*You* must:

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

### 7.15 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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