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Welcome to Zurich

About Zurich
The insurer of this product is Zurich Australian Insurance Limited (ACN 000 296 640, an overseas registered company incorporated in Australia) (ZAIL), trading as Zurich New Zealand. In this policy wording, 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, and mid-sized and large companies, including multinational corporations.

Duty of disclosure
Before you enter into a contract of general insurance with us, you have a duty at common law to disclose to us every matter you know, or could reasonably be expected to know, that a prudent insurer would want to take into account in deciding whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance. Your duty however, does not require disclosure of a matter:

• that diminishes the risk to be insured;
• that is of common knowledge;
• that we know or in the ordinary course of our business we ought to know;
• that we state we do not want to know.

Non-disclosure or Misrepresentation
If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure we may treat your policy as if it never existed.

Our contract with you
Your policy is a contract of insurance between you and Zurich and contains all the details of the cover we provide.

Your policy is made up of:

• the policy wording which tells you 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;
• your most current policy schedule issued by us. The policy schedule is a separate document unique to you which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your 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 those insuring clauses and optional additional benefits shown as covered in your policy 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.
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 you with 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 limits, terms and conditions of this policy, we will pay:

1.1 Third party

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 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; and

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

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 operational liability in the provision of port services when such port services are provided on terms agreed by us and noted in the schedule.

1.3 Fines and penalties

1.3.1 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 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; and

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 clause 1.3.1 (including any breach by a person).

However, we will not pay you in respect of fines and penalties as set out in clause 6.2 ‘Fines and penalties exclusions’.

1.4 Pollution liability

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:

1.4.1 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; and

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, we will not pay you in respect of any sub-surface operations liability or contaminated land liability.
1.5 Errors and omissions
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 your 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
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 always that all rights of action against the owner, charterer or operator (and their respective insurers) of the wreck or debris to remove the wreck or debris, have been exhausted.

2. Limit of Liability
Zurich's liability, for any loss, damage or liability as a result of an occurrence will not exceed the Limit of Liability shown in the schedule.

Unless otherwise stated 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.

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 fines and penalties is $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 $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 a errors and omissions is $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 $1,000,000 unless otherwise stated in the schedule.

3. Extension of Cover
In addition to the limit of liability shown in the schedule, this policy will also 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; and

3.1.4 approved costs and expenses incurred in respect of quarantine, fumigation or disinfection of cargo, ships, containers or equipment as a result of an occurrence.

4. Optional Additional Benefits
The following 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 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 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.

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 Consequential loss

consequential loss means loss of profit, loss of opportunity, market loss, loss of use or any other economic loss.
5.8 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*.

5.9 Consultancy services

*consultancy services* means 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.

5.10 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*.

5.11 Contraband

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

5.12 Contractual liability

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

5.13 Contractors

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

5.14 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.

5.15 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.

5.16 Debris

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

5.17 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.

5.18 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.

5.19 Demurrage

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

5.20 Geographical limits

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

*gross charges* means 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.

5.22 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*.

5.23 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*.

5.24 Insured location(s)

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

5.25 Insured operation(s)

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

5.25.1 the provision and management of canteens, social, sports and welfare organisations or educational facilities which are primarily for the benefit of *your* employees;

5.25.2 first aid, medical, ambulance and fire services.

5.26 ISPS code

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

5.27 Liquidated damages

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

5.28 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.

5.29 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*.

5.30 Optional additional benefits

*optional additional benefits* means the optional cover set out in the various extensions of cover available under Section 4.
5.31 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.

5.32 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.

5.33 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.

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

5.35 Personal injury
personal injury means:

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

5.35.2 assault and battery committed with reasonable force by you or at your direction for the purpose of prevention of or eliminating danger to persons or property;

and includes hospital, funeral and medical expenses.

5.36 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 of any kind or nature whatsoever. Waste includes material to be recycled, reconditioned or reclaimed.

5.37 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:

5.37.1 it is an identifiable specific incident;

5.37.2 the specific incident occurred during the period of insurance on an identifiable date at a specific time;

5.37.3 the specific incident was discovered by you within 10 days of the specific time that it occurred; and

5.37.4 the specific incident was not caused by your deliberate, reckless or wilful conduct.

5.38 Port management
port management means managing the business of a port operator.

5.39 Port operations
port operations means the technical and commercial operations or services performed by a port operator.
5.40 **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.

5.41 **Port services**

*port services* means 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*.

5.42 **Premises**

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

5.43 **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.

5.44 **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.

5.45 **Schedule**

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

5.45.1 first buy the policy from us;

5.45.2 change any part of the policy or any details relevant to it;

5.45.3 renew the policy with us.

5.46 **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.

5.47 **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.

5.48 **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.

5.49 **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*.
5.50 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:

5.50.1 involves violence against one or more persons;
5.50.2 involves damage to property;
5.50.3 endangers life other than that of the person committing the action;
5.50.4 creates a risk to the health or safety of the public or a section of the public; or
5.50.5 is designed to interfere with or to disrupt an electronic system.

5.51 Third party

Third party means any person other than you or us.

5.52 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.

5.53 Valuable cargoes

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

5.54 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.

5.55 Wear and tear

Wear and tear means deterioration of any thing over time from normal use.

5.56 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.

5.57 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:

5.57.1 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;

5.57.2 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;

5.57.3 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 arrangements in accordance with any workers’ compensation or accident compensation legislation, or to the extent that you would have been entitled to be indemnified had you arranged insurance as required by such legislation.

6.1.2 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); or
   (b) repetitive stress, strain or cumulative trauma.

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) you agree with your customer, in respect of such valuable cargoes, the following condition, or one to the same effect:

‘The customer shall have a clause in their bill of lading or other contract of carriage giving you the benefit of provisions therein excluding or limiting the customer's liability including any liability in negligence to the extent permissible by law and the customer undertakes 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:

1. your liability under your contract with the customer; or
2. 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 the services of you; and
3. you ensure that reasonable security measures are employed in the handling of such valuable cargoes’.

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 and you agree to pay any additional premium that we require.

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.

6.2 Fines and penalties
This policy does not insure you for your legal liability:

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 all reasonable 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;
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 detention (barratry and piracy excepted) and the consequence thereof or any attempt thereof;
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 Claims control
We are entitled (but not obliged) at our own cost to control or take over the conduct of the investigation, defence and/or settlement of any claim, suit or proceeding against you which is or is likely to be the subject of indemnity under this policy.

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

7.4 Cross liability
Subject to clause 7.8 ‘Joint insureds’, where you are comprised of more than one party, each of the parties will be considered as a separate legal entity with the words ‘you’ and ‘your’ applying to each party in this same manner as if a separate policy has been issued to each party, provided that nothing in these conditions will result in an increase in our limit of liability in respect of any occurrence or period of insurance.

7.5 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.

7.6 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.

7.7 Goods and Services Tax
All sums insured in this policy (except for the deductible) exclude goods and services tax (GST) where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to claim payments. However, this does not apply to the deductible which is GST inclusive.

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

7.9 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 and pay any additional premium we may require.

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

We may cancel this policy at any time by giving notice in writing to you, such cancellation to take effect after 30 days from the time the notification is received by you. Upon cancellation by us a refund of premium will be allowed prorata for the unexpired period of insurance.

You may cancel this policy at any time by giving notice in writing to us.

We may cancel this policy at any time by giving notice in writing to you, such cancellation to take effect after 30 days.

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 the period. The difference between this premium and the deposit will either be paid by or allowed to you but subject to a retention by us of a minimum premium of 75 per cent of the proportionate part of the estimated annual premium for the period the policy has been in force.

7.12 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, you agree to promptly pay any additional premium calculated by applying the agreed rate 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.

7.13 Proper law and jurisdiction

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

In the event of any dispute arising under this policy including, but not limited to, its construction, validity, performance or interpretation, you must submit to the exclusive jurisdiction of any competent Court in New Zealand.

7.14 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.

7.15 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 any insured or any other party to the extent that such cover, payment, service, benefit and/or business or activity of the insured would violate any applicable trade or economic sanctions, law or regulation.

7.16 Valuation and foreign currency

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand 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 New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.
7.17 What you should do in the event of a claim

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

You must:

7.17.1 advise us within 30 days of full particulars of every occurrence, circumstance, claim, writ, summons, proceedings, impending prosecution, inquest or the like known to you;

7.17.2 use your best endeavours to preserve any damaged or defective property which may prove necessary or useful by way of evidence (together with any relevant documentation or records) in connection with any claim and, so far as may be reasonably practicable, no alteration or repair shall be made to any watercraft, premises, machinery, fittings, equipment or plant until we have had an opportunity to inspect and have provided our consent;

7.17.3 retain and preserve from destruction any business documents and records that might foreseeably be connected with potential future claims, for a period of at least seven years;

7.17.4 not make any admission, offer, promise of payment in connection with any occurrence or claim under this policy without our written consent; and

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

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

7.18 Waiver of privilege

If we instruct any lawyer to investigate or defend any claim against any insured person, you authorise the lawyer to provide us with any documents, information or advice in respect of the claim, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect.