

Ship Repairers Liability Insurance

Policy Wording



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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 insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

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 that we provide.

Your policy is made up of:

- the policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *submission*, 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.
- 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.

Ship Repairers Liability Insurance Policy Wording

In return for paying the premium to *us*, we will give *you* the cover described in this policy for events which occur during the *period of insurance* shown in *your schedule*.

Definitions

Where the following words appear in this policy, this is what they mean.

Aircraft

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

Berth occupiers liability

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

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.

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.

Excess

excess means the amount(s) specified in the *schedule* that *you* shall first contribute towards each claim, or series of claims arising out of the one *occurrence*. The *excess(es)* shown for the individual items in the *schedule* will apply cumulatively. The *excess* may be expressed as either a monetary amount or a period of time.

Gross charges

gross charges means total charges (collected or uncollected) made by *you* in the course of *your 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.

Hot work

hot work means work involving the use of oxy-acetylene 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.

Legal defence, investigation and mitigation costs

legal defence, investigation and mitigation costs means:

- (a) 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 to the basis and the rates of the fees and expenses to be incurred;
- (b) 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 to the amount to be paid before agreement or settlement is reached; and
- (c) 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 New Zealand.

Medical persons

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

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*.

Period of insurance

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

Personal injury

personal injury means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish, mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- (c) libel, slander or defamation; or
- (d) wrongful entry or wrongful eviction or other invasion of privacy.

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 - waste includes material to be recycled, reconditioned or reclaimed.

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*.

Your Premises

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

Premises occupier's liability

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

Product

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

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.

Property damage

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

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.

Schedule

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

Subcontractors liability

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

Temporary hire equipment

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

Temporary hire of equipment liability

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

Territorial limits

territorial limits means anywhere within New Zealand or as amended in the *schedule*.

Terrorism

terrorism means any act(s) of any person(s) or organisation(s) involving:

- (a) the causing, occasioning or threatening of harm of whatever nature and by whatever means; or
- (b) putting the public or any section of the public in fear,

in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of a political, religious or ideological or similar nature.

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 other than by manual or animal power.

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.

We, Us, Our

we, us, our means Zurich Australian Insurance Limited trading as Zurich New Zealand.

You, Your

you, your means:

- (a) the Insured as named in the *schedule*;
- (b) subsidiary companies of the Insured as named in the *schedule* formed or constituted and incorporated in New Zealand;
- (c) the directors, employees, executive officers or partners of the Insured as named in the *schedule* but only whilst acting in such a capacity related to *your business*.

Your business

your business means all activities of *your business* as a ship repairer or otherwise specified in the *schedule*, including repair, installation and maintenance work carried out on *watercraft* and undertaken within the *territorial limits* specified in the *schedule*.

What you are insured for

1. Subject to the limit of liability and the terms and conditions of this policy we will pay all sums which *you* become legally liable to pay in compensation arising from *your business* for:
 - 1.1 loss or damage to *watercraft* in your care, custody or control;
 - 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*.

Limit of Liability

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

Our total aggregate liability any one *period of insurance*, to pay compensation in respect of or in any way related to the prevention, removal or clean up of *pollutants* is \$250,000.

Our total aggregate liability any one *period of insurance*, for *temporary hire of equipment liability* is \$50,000 unless stated otherwise in the *schedule*.

Additional cover

3. In addition to the limit of liability this policy will also cover *you* for:
 - 3.1 any reasonable costs incurred by *you* for first aid rendered to third parties at the time of any *personal injury*; and
 - 3.2 *your legal defence, investigation and mitigation costs*.Provided that:
 - 3.3 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;
 - 3.4 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.

Optional additional benefits

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

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

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.

4.2 **Other work**

other work that does not fall within the scope of *your* ship repairing business and which is specified in the *schedule* and provided that *you* have declared to *us* your *gross charges* in respect of such business and we have agreed to provide cover.

4.3 **Storage**

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

4.4 **Warranty/maintenance guarantee obligations**

the failure of *your product* or service to meet the level of performance, quality, fitness or durability expressly warranted or represented by *you* in writing in the course of your ship repairing business up to a maximum period of 12 months.

4.5 **Worldwide services**

work performed by *you* outside New Zealand and provided that any claim or proceeding in relation to such work is brought against *you* within New Zealand.

What you are not insured for

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

Aircraft and watercraft

- 5.1 *your* ownership, construction, maintenance, servicing, operation or use by *you* of any *aircraft*;
- 5.2 *your* ownership, charter or lease of any *watercraft*;
- 5.3 the use, movement or delivery of *watercraft* in *your* care, custody or control other than for trial trips and movement incidental to *your business* within 100 kilometres of *your premises* or the place where the work was performed;
- 5.4 *products* installed in or on any *aircraft* or *watercraft* owned, chartered or leased by *you*; or
- 5.5 the use by *you* as a landing area for *aircraft* of any property or structure owned occupied or controlled by *you* – the term ‘landing area’ includes any area on which *aircraft* taxi, land, take-off, are housed, maintained or operated.

Asbestos

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

Assault and battery

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

Contractual liability

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

This exclusion shall not apply to:

5.8.1 liability that would have been implied by law in the absence of such contract or agreement; or

5.8.2 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 New Zealand Ship Repairers Group or similar organisation approved by *us* in writing.

Defective product

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

Employment liability

5.10 *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.

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

Exceeding capacity

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

Faulty design

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

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

Fines, penalties and punitive damages

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

Infidelity

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

Libel, slander and defamation

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

(a) made prior to the commencement date of this policy;

(b) made by *you* or at *your* direction knowing it to be false; or

(c) related to advertising, broadcasting or telecasting activities conducted by *you* or on *your* behalf.

New Watercraft

5.17 any new *watercraft* being built by *you* as the principal builder.

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

5.18.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

5.18.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;

- 5.18.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 5.18.4 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
- 5.18.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

Product recall

- 5.19 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.

Professional advice

- 5.20 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*.

Property in your physical or legal control

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

Reckless conduct

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

Second hand products

- 5.23 the supply, sale or provision of a second hand *product*.

Spray painting

- 5.24 *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.

Strikes

- 5.25 *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.

Terrorism

- 5.26 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*.

Vehicles

- 5.27 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
- 5.28 the use, ownership or operation by *you* of any registered *vehicle* , such liability being for *property damage*.

War

5.29 whether directly or indirectly, war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom 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.

Other consequential loss

5.30 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*.

General conditions

6. 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. Reconstruction or conversion

You must notify us prior to commencing work on any *watercraft* that will result in any material change to the dimension, tonnage or type of *watercraft*. At our discretion we may either decline insurance for such work or require you to pay an additional premium.

8. Reasonable diligence

You must:

- 8.1 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;
- 8.2 take all reasonable precautions to:
 - (a) prevent *personal injury* and *property damage*;
 - (b) prevent the manufacture, sale or supply of defective *products*; and
 - (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;
- 8.3 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.

9. Premium and its adjustment

This insurance 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 insurance 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 expiration of the *period of insurance*.

10. 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.

11. Cross liability

Subject to clause 12 'Joint Insureds' where *you* are comprised of more than one party, each of the parties will be considered as a separate legal entity with the words '*you*' and '*your*' applying to each party in the same manner as if a separate policy had been issued to each party, provided that nothing in this condition will result in an increase in *our* limit of liability in respect of any *occurrence* or *period of insurance*.

12. 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.

13. Other insurance

If *you* make a claim for an *occurrence* which is, or may be, covered in whole or in part by any other insurance, then when making the claim *you* must give *us* full details of the other insurance.

This policy does not cover any claim to the extent that *you* are entitled to indemnity in respect of that claim under any other insurance policy specified in the *schedule*.

14. 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:

- 14.1 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*;
- 14.2 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;
- 14.3 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 7 years;
- 14.4 not make any admission, offer, promise of payment in connection with any *occurrence* or claim under this policy without *our* written consent; and
- 14.5 give to *us* all information and assistance as *we* may reasonably require in the prosecution, defence or settlement of any claim.

We will:

- 14.6 be entitled at *our* discretion to take over and conduct in *your* name the defence or settlement of any claim; and
- 14.7 have full discretion in the conduct of any negotiations or proceedings in connection with any claim.

15. Claims settlement

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

16. Fraudulent claim

If you or anyone acting upon your behalf is in any way fraudulent in obtaining any benefit under this policy, we may deny liability in respect of that claim or event.

17. Payments in respect to Goods and Service Tax

All *sums insured* in this policy (except for the *excess*) exclude 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 *excess* which is GST inclusive.

18. Cancellation

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

18.2 *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 of notification received by *you*.

18.3 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 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.

19. 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 and/or validity and/or performance and/or interpretation, *you* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

Zurich Australian Insurance Limited
(incorporated in Australia)
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