



Port Operators Liability Insurance

Policy Wording



Contents

Welcome to Zurich

About Zurich	2
Your duty of disclosure	2
Non-disclosure or misrepresentation.....	2
Our contract with you.....	2
Privacy statement and consent.....	3

Port Operators Liability Insurance – Policy Wording

1. Insuring Clauses.....	4
2. Limit of Liability.....	5
3. Extension of Cover.....	5
4. Optional Additional Benefits	6
5. Definitions.....	6
6. Exclusions.....	12
7. General Conditions.....	16

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.

Privacy statement and consent

Zurich is bound by the *Privacy Act 2020* and Information Privacy Principles. We collect, disclose, handle and hold 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, insurers, reinsurers, our service providers, our banking gateway providers and credit card transaction processors, our business partners, health practitioners, your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within New Zealand, 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 may apply when you seek cover, obtain cover or make a claim, such as the *United Nations Act 1946* (NZ), *Terrorism Suppression Act 2002* (NZ) and *Goods and Services Tax Act 1985* (NZ), and may include other financial services, crime prevention, trade sanctions and tax laws.

Zurich's Privacy Policy, available at www.zurich.co.nz 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. In most cases, you can access or correct your details and to do so, or to make a complaint, contact us using the details on our website or by telephone.

Port Operators Liability Insurance

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 regulatory authority, provided that such liability arises from an unintentional breach of a legislative requirement by you, or your *contractors*; and

1.3.2 your loss arising from confiscation by a regulatory authority of any property of any person, including your equipment, as a consequence of your breach of any legislative requirement 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 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 *finer* 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 that any contract *you* may have in place for *consultancy services* has been approved by us 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*.

4.4.3 Infringement of personal rights liability.

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*.

5. Definitions

When used in this policy, *schedule* or endorsements, the following definitions will apply. Words expressed in the singular or plural have corresponding meanings:

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 Computer virus

computer virus means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

5.8 Communicable disease

communicable disease means illness, syndrome, disease, physical distress or personal injury caused or aggravated, or contributed to, by the spread of any *infectious agent*. This includes, but is not limited to, the spread of *infectious agent* from one person to another person, or from organism to organism, whether directly or indirectly or by any intermediate transmission medium, substance or agent.

5.9 Consequential loss

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

5.10 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*.

5.11 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.

5.12 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*.

5.13 Contraband

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

5.14 Contractual liability

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

5.15 Contractors

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

5.16 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*.

5.17 Cyber event

cyber event means any occurrence in any way connected with:

5.17.1 an *IT network*; or

5.17.2. *computer virus*.

5.18 Dangerous cargo

dangerous cargo means any *cargo* specified as such in the Land Transport Rule: Dangerous Goods 2005, Maritime Rule Part 24A: Carriage of Cargoes – Dangerous Goods 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 stated area of *port operations* according to any legislative requirement.

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. If we require it, you will provide us with a complete and accurate record of all *gross charges* for *insured* or an annual report of collected and uncollected charges following 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 Infectious agent

infectious agent means any pathogen, virus, bacteria, protein, parasite or any other biological or non-biological agent or organism, whether living or not, that may cause, contribute to, or aggravate, illness, syndrome, disease, physical distress or personal injury.

5.24 Indemnity period

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

5.25 Insured locations

insured locations means locations at which *you* conduct an *insured operation* that has been noted in the *schedule*.

5.26 Insured operations

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

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

5.26.2 first aid, medical, ambulance and fire services.

5.27 ISPS code

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

5.28 IT network

IT network means any computer hardware (or components thereof), software (or components thereof), communication system networks, internet operations, websites whosoever hosted, online or offline media libraries, data, or any other peripheral devices.

5.29 Legislative requirement

legislative requirement means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in the territorial limits and includes standards, guides, information bulletins or industry codes that apply by reason of statute or regulations.

5.28 Liquidated damages

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

5.29 Loss of profits

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

5.30 Occurrence

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

5.31 Optional additional benefits

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

5.32 Optional additional benefits deductible

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

5.33 Optional additional benefits sub-limit

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

5.34 Overload or overloaded

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

5.35 Period of insurance

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

5.36 Personal injury

personal injury means:

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

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.

5.37 Pollutant

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

5.38 Pollution incident

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

5.38.1 it is an identifiable specific incident;

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

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

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

5.39 Port management

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

5.40 Port operations

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

5.41 Port operator

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

5.42 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*.

5.43 Premises

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

5.44 Product

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

5.45 Product liability

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

5.46 Regulatory authority

regulatory authority means governmental departments, agencies or corporations charged with the development, regulation or supervision of laws.

5.47 Schedule

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

5.47.1 first buy the policy from us;

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

5.47.3 renew the policy with us.

5.48 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.

5.49 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.

5.50 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.

5.51 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*.

5.52 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 groups of persons whether acting alone or on behalf of or in connections with any organisations or governments de jure or de facto, and which:

5.52.1 involves violence against one or more persons;

5.52.2 involves damage to property;

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

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

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

5.53 Third party

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

5.54 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.

5.55 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.

5.56 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.

5.57 Wear and tear

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

5.58 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.

5.59 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:

- 5.59.1 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;
- 5.59.2 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;
- 5.59.3 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 legislative requirement.
- 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 regulatory 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 legislative requirement in respect of freight tariffs, fair trading or anti competitive behaviour;
- 6.2.2 breach of any legislative requirement 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 legislative requirement 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 legislative requirement 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 any legislative requirement.

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 berths within the *insured locations* in good working order, cleared to marked depths and fit for intended purposes;
- 6.3.3 comply with all legislative requirements relating to the operation and inspection of all approaches, channels, turning basins and berths and the access to and from all such berths;
- 6.3.4 manage the *insured locations* so that all users comply with all legislative requirement relating to the use of all approaches, channels, turning basins and berths 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 legislative requirement 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 detainment (barratry and piracy excepted) and the consequence thereof or any attempt thereat;
- 6.7.3 derelict mines, torpedoes, bombs or other derelict weapons of war.

6.8 Communicable disease

This policy excludes any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount liability directly or indirectly caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a *communicable disease* or the fear or threat (whether actual or perceived) of a *communicable disease*.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- 6.8.1 supervising, hiring, employing, training, or monitoring of others that may be infected with and spread a *communicable disease*;
- 6.8.2 testing for a *communicable disease*;
- 6.8.3 failure to prevent the spread of the disease; or
- 6.8.4 failure to report the disease to authorities.

6.9 Cyber risks

This policy excludes any liability of whatsoever nature in respect of any liability of whatsoever nature in connection with or contributed to, or from a *cyber event*.

7. General Conditions

7.1 Assignment

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.

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 may, at our own cost, elect 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 may settle *your* loss by payment, repair, reinstatement or replacement; whichever is the lesser.

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 legislative requirements 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 as soon as reasonably 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 provide us with 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 be a minimum of a proportionate rate of 75 per cent of your 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* will pay any additional premium calculated by applying the agreed rate stated 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* will, if we request it, provide us with a complete and accurate record of all *gross charges* for operations covered by this policy.

If we require it, *you* will also provide us with an annual report of collected and uncollected charges, following 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.

Where there is 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 Reference to any statute, regulation or subordinate legislation

A reference to any statute, regulation or subordinate legislation in this policy includes any amendment, replacement, successor or subsequently enacted equivalent to or of that statute, regulation or subordinate legislation.

7.15 Rights of subrogation

In the event of a payment made under this policy to *you* or on *your* behalf, we shall be subrogated to all *your* rights of recovery against any person or organisation. At our request and our expense, *we may require you* 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 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.

7.17 Valuation and foreign currency

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in 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.

7.18 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 as soon as reasonably practicable:

7.18.1 advise us full particulars of every *occurrence*, circumstance, claim, writ, summons, proceedings, impending prosecution, inquest or the like known to *you*;

- 718.2 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;
- 718.3 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;
- 718.4 not make any admission, offer, promise of payment in connection with any *occurrence* or claim under this policy without our written consent; and
- 71785 give to us all information and assistance as we may reasonably require in the prosecution, defence or settlement of any claim.

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

7.19 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.

Zurich Australian Insurance Limited

(incorporated in Australia)

Trading as Zurich New Zealand

ABN 13 000 296 640, AFS Licence No: 232507

Level 9, 29 Customs Street West, Auckland Central 1010

Client Enquiries

Telephone: 0508 987 424

www.zurich.co.nz



ZURICH[®]