



NAUTILUS MARINE

BOAT INSURANCE

# Nautilus Marine Marine Industry Trades Liability Insurance

Policy Wording

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# Introduction

## ABOUT NAUTILUS MARINE INSURANCE

Nautilus Marine Insurance is a business name of NM Insurance Pty Ltd ABN 34 100 633 038 AFS Licence Number 227186 (NM Insurance). NM Insurance is an underwriting agency and has been given a binding authority by the insurer, ZAIL and which allows it to arrange and administer this policy (within the terms of the binding authority). In doing so NM Insurance acts for ZAIL and not You. NM Insurance provides general advice on and arranges and administers this policy under its own AFS Licence. Any general advice is provided on behalf of NM Insurance and does not take into account Your objectives, financial situation or needs so consider whether it is appropriate for You having regard to these things.

Our contact details are:

NM Insurance

Level 7, 99 Walker Street, North Sydney NSW 2060

Telephone: (02) 8287 3790

Email: [customerservice@nminsurance.com.au](mailto:customerservice@nminsurance.com.au)

Facsimile: 02 8287 3799

## ABOUT THE INSURER

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, ZAIL may also be expressed as 'Zurich'.

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.

## ABOUT THIS POLICY

Throughout this document words are sometimes capitalised or italicised to show that words are abbreviations or have a particular defined meaning. You should refer to the Definitions section of this document on page 5, and the relevant cover sections to obtain the full meaning of such terms.

You, Your, or Yours mean the person(s) or parties shown as the Insured in the Certificate, including all Subsidiary Companies, organisations and entities incorporated in Australia in which You have a controlling interest (exceeding 50%) engaged in the Your Business described in the Certificate and not for any other purpose or activity.

## HOW TO APPLY FOR THIS INSURANCE

Throughout this document when referring to Your insurance broker or adviser, We may simply refer to them as Your intermediary.

If You are interested in buying this product or have any enquiries about it, You should contact Your intermediary who should be able to provide You with all the information and assistance You.

If You are not satisfied with the information provided by Your intermediary You can contact Us at the address or telephone number shown on the back cover of this document. However, We are only able to provide factual information or general advice about the product. We do not give advice on whether the product is appropriate for Your personal objectives, needs or financial situation.

## OUR CONTRACT WITH YOU

Your policy is a contract of insurance between You and Us and contains all the details of the cover that 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 Certificate issued by us. The Certificate 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 changes otherwise advised by Us in writing (such as an Endorsement). These written changes vary or modify the above documents.

Please note, only those cover sections shown as covered in Your Certificate are insured.

This document is also the document 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.

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## DUTY OF DISCLOSURE

Before You enter into an insurance contract, You have a duty to tell Us anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms.

You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary or reinstate an insurance contract.

You do not need to tell Us anything that:

- reduces the risk We insure You for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive Your duty to tell Us about.

## IF YOU DO NOT TELL US SOMETHING

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a Claim, or both.

## COOLING-OFF PERIOD

After You apply for cover and You have received the policy document, You have 21 days to check that the policy meets Your needs. Within this time You may cancel the policy and receive a full refund of any premiums paid, unless:

- You have made a Claim or become entitled to make a Claim under Your policy; or
- You have exercised any right or power You have in respect of Your policy or the policy has ended.

Your request will need to be in writing and forwarded to Us via Your intermediary or to the address shown on the back cover of this document.

You can cancel Your policy at any time after the cooling-off period. Please refer to 3. 'Cancellation' under General Terms and Conditions on page 32.

## HOW TO MAKE A CLAIM

If You need to make a Claim against this policy, please refer to 'Notice and Proof of Claim' under General Terms and Conditions on page 34. If You have any queries, please contact Your intermediary or Us as soon as possible.

# How We Protect Your Privacy

ZAIL and NM Insurance are committed to protecting Your privacy in accordance with the Privacy Act 1988 (Cth) (the "Act") and the Australian Privacy Principles (APPs).

In this section dealing with Privacy, "We", "Our" and "Us" refers to both ZAIL and NM Insurance.

Further information about Our Privacy Policies is available at:

- for NM Insurance at: [www.nminsurance.com.au](http://www.nminsurance.com.au) or by contacting NM Insurance at [customerservice@nminsurance.com.au](mailto:customerservice@nminsurance.com.au) or on 1300 376 959.

This Privacy Statement outlines why, how We collect, disclose and handle Your personal information (including sensitive information) as defined in the Act about:

- You, if an individual; and
- other individuals You provide information about.

Zurich is bound by the Privacy Act 1988. We collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about You ("Your details") to assess applications, administer policies, contact You, enhance Our products and services and manage claims ("Purposes"). If You do not provide Your information, We may not be able to do those things. By providing Us, Our representatives or Your intermediary with information, You consent to Us using, disclosing to third parties and collecting from third parties Your details for the Purposes.

We may disclose Your details, including Your sensitive information, to relevant third parties including Your intermediary, affiliates of Zurich Insurance Group Ltd, insurers, reinsurers, Our banking gateway providers and credit card transactions processors, Our service providers, Our business partners, health practitioners, Your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

We may obtain Your details from relevant third parties, including those listed above. Before giving Us information about another person, please give them a copy of this document. Laws authorising or requiring Us to collect information include the Insurance Contracts Act 1984, Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Corporations Act 2001, Autonomous Sanctions Act 2011, A New Tax System (Goods and Services Tax) Act 1999 and other financial services, crime prevention, trade sanctions and tax laws.

Zurich's Privacy Policy, available at [www.zurich.com.au](http://www.zurich.com.au) or by telephoning Us on 132 687, provides further information and lists service providers, business partners and countries in which recipients of Your details are likely to be located. It also sets out how We handle complaints and how You can access or correct Your details or make a complaint.

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## GENERAL INSURANCE CODE OF PRACTICE

The insurer is a signatory to the General Insurance Code of Practice (the Code) and NM Insurance also proudly supports the Code.

The objectives of the Code are:

- to commit Us to high standards of service;
- to promote better, more informed relations between Us and You;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes You make about Us; and
- to promote continuous improvement of the general insurance industry through education and training.

Further information about the Code and Your rights under it is available at [www.codeofpractice.com.au](http://www.codeofpractice.com.au) or by contacting Us.

# How We Resolve Your Complaints

We welcome every opportunity to resolve any concerns You may have with Our products or service. Any enquiry or complaint relating to this insurance or NM Insurance should first be referred to:

NM Insurance Pty Ltd, Level 7, 99 Walker Street North Sydney NSW 2060

Telephone: (02) 8287 3790

Email: [customerservice@nminsurance.com.au](mailto:customerservice@nminsurance.com.au)

We will acknowledge receipt of Your complaint within 24 hours or as soon as practicable.

If this does not resolve the matter or You are not satisfied with the way a complaint has been dealt with, You may use Our internal dispute resolution process and please follow the procedure outlined below.

## STAGE 1 – HANDLING YOUR COMPLAINT

We will respond to Your complaint within 15 business days provided We have all the necessary information and have completed any investigation required. If more information or investigation is required, We will agree reasonable alternative timeframes with You. We will keep You informed of the progress of Your complaint at least every 10 business days unless otherwise agreed.

## STAGE 2 – INTERNAL DISPUTE RESOLUTION

If You are not satisfied with Our response or We cannot agree on reasonable alternative timeframes, Your complaint will be registered as a dispute and it will be reviewed through Our Internal Dispute Resolution process.

We will respond to Your dispute within 15 business days of Your request to review Our decision provided We have all necessary information and have completed any investigation required. If We cannot meet this timeframe because additional information or investigation is required, We will seek to agree an alternative timeframe with You. We will keep You informed of the progress of Your dispute at least every 10 business days unless otherwise agreed.

If You are still not satisfied with Our response or We cannot agree on reasonable alternative timeframes, You can refer the matter to the External Dispute Resolution.

## STAGE 3 – EXTERNAL DISPUTE RESOLUTION

You may take Your complaint to the Australian Financial Complaints Authority (AFCA) at any time and if We are unable to resolve Your complaint within 45 calendar days from the date You first made Your complaint.

AFCA is an independent external dispute resolution scheme. We are a member of this scheme and We agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to You.

Their contact details are:

Website: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au).

Freecall: 1800 931 678 (free call)

In writing to: The Australian Financial Complaints Authority, GPO Box 3, Melbourne, Victoria 3001.

If Your complaint or dispute falls outside the AFCA Rules, You can seek independent legal advice or access any other external dispute resolution options that may be available to You.

## FINANCIAL CLAIMS SCHEME

Zurich is an insurance company authorised under the Insurance Act 1973 (Cth) to carry on general insurance business in Australia. As such, Zurich is subject to prudential requirements and standards, regulated by the Australian Prudential Regulation Authority (APRA). This policy may be a protected policy under the Federal Government's Financial Claims Scheme (FCS), which is administered by APRA.

The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies, a person who is entitled to make a claim under this insurance policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. Further information about the FCS can be obtained at <http://www.fcs.gov.au>



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# Definitions

When used in this policy, Certificate or Endorsements the following definitions will apply:

## **Aircraft**

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

## **Berth occupier's liability**

Berth Occupier's Liability means Your legal liability arising from Your ownership, tenancy or use of a berth, jetty, pontoon or mooring in the course of Your business.

## **Boat builder**

Boat Builder means a person or company whose business activities and operations include:

1. the design, construction and modification of Watercraft for reward;
2. the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment; and
3. Watercraft inspections and the issuing of inspection reports.

## **Boat dealer**

Boat Dealer means a person or company whose business activities and operations include:

1. the purchase, sale, supply, distribution, delivery, import and export of Watercraft and other Products;
2. the testing and/or demonstration of Watercraft in the ordinary course of marketing and/or selling of Watercraft. Demonstration of Watercraft may include towing of water skiers or aquaplanes or other similar water tow sports but in no case para-sailing, kite surfing, kite boarding, teak surfing or other similarly dangerous activities;
3. the exhibiting of Watercraft at trade shows in the ordinary course of marketing and/or selling of Watercraft;
4. the collection of Watercraft from sellers or consignors and/or the delivery of Watercraft to buyers;
5. pre-delivery detailing, repairing and/or servicing of Watercraft in the ordinary course of preparing Watercraft for sale;
6. pre-delivery sale, supply and/or installation of motors, sails and rigging, trailers, equipment, contents and accessories attaching to and/or forming part of Watercraft in the ordinary course of preparing Watercraft for sale;
7. Watercraft inspections and the issuing of inspection reports; and
8. the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment.

### Certificate

Certificate means the most current 'Certificate of Insurance' issued by Us which specifies details relating to this policy.

### Claim

Claim means a written demand received by You alleging liability or responsibility for an Occurrence and seeking a remedy from You.

### Compensation

Compensation means monies paid or agreed to be paid by judgment, award, settlement for Personal Injury and/or Property Damage which is the subject of a Claim that is covered under this policy.

### 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.

### Contractor

Contractor means an independent contractor with whom You enter into a service contract for the performance of work by them.

Contractor includes any sub-contractor engaged by a Contractor with whom You enter into such service contract for the performance of work.

Contractor includes labour hire personnel.

Contractor does not mean You or Insured.

### Costs & Expenses

Costs & Expenses mean:

1. costs or expenses that We incur in the investigation, defence or settlement of a Claim for which cover is available or could be available under this policy;
2. costs awarded against You and all interest accruing after judgment until We have paid, tendered or deposited in court that part of any judgment which does not exceed the Limit of Liability;
3. reasonable costs or expenses incurred by You with prior Our written consent; and
4. reasonable costs or expenses incurred by You for providing first aid to others at the time of Personal Injury.

Costs & Expenses does not include loss of earnings.

Costs & Expenses does not include any amounts incurred after We have paid or agreed to pay an amount equal to the Limit of Liability.

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### **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.

### **Damage**

Damage means physical loss, destruction of or damage to Property or Watercraft including the resultant loss of use.

Damage also means the loss of use of Property or Watercraft which has not been physically lost, destroyed or damaged provided that such loss of use is caused by or arises from an Occurrence.

### **Diving Services**

Diving Services means a person or company whose business activities and operations include the performance of all underwater activities such as inspections, surveys, repairs, salvage, maintenance and installations.

### **Electronic Data**

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

### **Employee**

Employee means any person while employed by You in Your Business who You compensate by salary, wages, or commission and have the right at all times to govern, control and direct in the performance of their work.

Employee includes volunteers and students on work experience.

Employee does not include:

1. any broker, factor, consignee or Contractor;
2. any member of Your Family, unless that person is also an Employee; or
3. any partner, director or trustee unless that person is also an Employee.

### **Employment Practices**

Employment Practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of an Employee.

### **Endorsement**

Endorsement means documentary evidence of an alteration to this policy which forms part of this policy.

### Excess

Excess means the first amount of each claim or a series of claims under this policy caused by or arising out of any one Occurrence which You must contribute.

The Excess applicable to each claim under this policy is stated in the "Excess" section of the Certificate.

### Family

Family means any member of Your family who lives permanently with You, including Your partner.

### General Liability

General Liability means amounts that You become legally liable to pay by way of Compensation for Property Damage and/or Personal Injury.

General Liability includes Property Damage and/or Personal Injury caused by or arising from a Product but only when such Product forms part of repair, installation, assembly or maintenance work carried out by You on Watercraft.

General Liability does not mean Product Liability or Pollution Liability or Statutory Liability or Professional Services Liability.

### Gross Revenue

Gross Revenue means the total gross revenue arising from Your Business during the Period of Insurance.

Gross Revenue does not include GST.

The estimated Gross Revenue You declare to Us is stated in the 'Gross Revenue' section of the Certificate.

### GST

GST means Goods and Services Tax as such term is defined in a New Tax System (Goods and Services Tax) Act 1999 (Cth) and A New Tax System (Goods and Services Transition) Act 1999 (Cth).

### Hot work

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

### Hovercraft

Hovercraft means any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

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## Incidental Contracts

Incidental Contracts means:

1. any written rental agreement or lease of Property or Watercraft other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires You to insure such Property or Watercraft;
2. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
3. any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings; and
4. those contracts designated in the 'Contractual Liability' section of the Certificate.

## Limit of Liability

Limit of Liability means the maximum amounts that We will pay.

A Limit of Liability is not reduced by the amount of any Excess payable by You.

Limits of Liability are stated in the 'Limits of Liability' section of the Certificate and/or elsewhere in this policy.

## Marina Operator

Marina Operator means the owner, operator, lessor, or sub-lessor of a place located on or adjacent to a body of water or a watercourse and whose business is the provision and/or supply of moorings, wet and/or dry storage, repairs, marine fuel and/or vessel wastewater pump-out facilities to Watercraft.

## Medical persons

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

## Mooring Contractor

Mooring Contractor means a person or company whose business activities and operations include the design, supply, construction and/or installation, testing, inspection, repair, modification and/or servicing of moorings.

## 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 stated in the Certificate and any subsequent period We have agreed to renew this policy for.

### Personal injury

Personal Injury means:

1. bodily injury, death, sickness, disease, disability, shock, fright, mental anguish, mental injury;
2. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
3. libel, slander or defamation;
4. 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 and 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.

### 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 the 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.

### Professional Skipper

Professional Skipper means a person or company whose business activities and operations include the command, operation, navigation, control and general management of Watercraft and crew (if applicable).

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## Property damage

Property Damage means physical loss, damage or destruction of Tangible Property that is not owned, used or leased by you.

Property does not mean:

1. Watercraft;
2. Products; or
3. intangible property.

## Regatta Organiser

Regatta Organiser means all aspects of organising a yachting or sailing race.

## Removal of wreck liability

Removal of Wreck Liability means Your legal liability for the Removal of Wreck Expenses or recovery of a Watercraft where it is damaged, stranded, abandoned or sinks accidentally.

## Removal of Wreck Expenses

Removal of Wreck Expenses mean reasonable expenses incurred by You in the removal and/or disposal of a physically Damaged Watercraft that a recognised Maritime, Port or Harbour Authority has ordered You to remove and/or dispose of.

'Removal of Wreck Expenses' does not includes any expenses incurred in the removal and/or disposal of a Watercraft owned, hired, chartered or leased by or loaned to You.

## Ship Repairer

Ship Repairer means a person or company whose business activities and operations include:

1. the maintenance and repair of Watercraft for reward;
2. the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment; and
3. Watercraft inspections and the issuing of inspection reports.

A Ship Repairer may have a principal place of business or provide a mobile service.

## Subcontractors liability

Subcontractors Liability means Your legal liability for the negligence of Your subcontractors engaged by You in the course of Your Business.

### Statutory Liability

Statutory Liability means a pecuniary penalty awarded against You in and under any Federal, State or Territory laws of the Commonwealth of Australia for a:

1. civil offence in connection with the discharge, dispersal, release or escape of a Pollutant;
2. strict liability offence in connection with the discharge, dispersal, release or escape of a Pollutant; or
3. strict liability offence in connection with a breach of any Federal, State or Territory occupational health and safety law or regulation of the Commonwealth of Australia.

Statutory Liability does not mean General Liability or Product Liability or Pollution Liability or Professional Services Liability.

### Subsidiary Company

Subsidiary Company means any company in which You have a controlling interest and which are stated in the 'Subsidiary Companies' section of the Certificate.

For the purpose of this definition the term 'controlling interest' means the beneficial ownership of shares carrying more than 50% (fifty percent) of votes capable of being cast at a general meeting of all shareholders of the Subsidiary Company.

### Tangible Property

Tangible Property means property which has physical substance and which can be touched, physically assessed for its dimensions, weight and location and is capable of being physically moved from one location to other.

Tangible Property does not mean money (in the form of coins and notes, cheques and electronic forms of money) and incorporeal property such as a license, copyright, trade mark and other forms of intellectual property.

### 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 Australia or as amended in the Certificate.



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## 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:

1. involves violence against one or more persons;
2. involves damage to property;
3. endangers life other than that of the person committing the action;
4. creates a risk to the health or safety of the public or a section of the public; or
5. is designed to interfere with or to disrupt an electronic system.

## 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.

## 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.

## Yacht Broker

Yacht Broker means a person or company whose business activities and operations include:

1. representing buyers and/or sellers in the buying and/or selling of Watercraft for reward;
2. the purchase, sale, supply, re-supply, distribution, import or export related chandlery and equipment; and
3. Watercraft inspections and the issuing of inspection reports.

### Yacht Club

Yacht Club means a sports club specifically related to yachting and/or sailing activities.

Where You declare to Us, and it is stated in the 'Your Business' section of the Certificate, the activities and operations of a Yacht Club shall extend to include the ordinary activities and operations of a:

1. Marina Operator;
2. Regatta Organiser;
3. Instructor;
4. Class Association;
5. Yacht Broker; and/or
6. Ship Repairer.

### You, your

You, Your means:

1. the Insured as named in the Certificate;
2. Subsidiary Companies of the Insured as named in the Certificate formed or constituted and incorporated in Australia;
3. the directors, Employees, executive officers or partners of the Insured as named in the Certificate but only whilst acting in such a capacity related to Your business.

### Your business

Your Business means all activities of Your Business specified in the Certificate, including repair, installation and maintenance work carried out on Watercraft and undertaken within the Territorial Limits specified in the Certificate.

### Your premises

Your Premises means the land and buildings or parts of buildings including car parks at the address noted in the Certificate, owned, leased or used exclusively by You to carry on Your Business.

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# Marine Trades Liability Insurance Policy

To the prior payment of, or Your agreement to pay, the premium set out in the Certificate, We agree to provide insurance as set out in this policy.

In issuing this policy, We have relied on the information contained in the proposal form and/or any other information given by You or on Your behalf.

## INSURING CLAUSES

Subject to the Limit of Liability, 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. Damage to Watercraft in Your care, custody or control;
2. Property Damage;
3. Personal Injury;
4. Products Liability;
5. Consequential Loss;
6. Pollution Risks;
7. Premises Occupier's Liability;
8. Berth Occupier's Liability;
9. Removal of Wreck Liability;
10. Subcontractors Liability; and
11. Temporary Hire of Equipment Liability,

resulting from an Occurrence happening during the Period of Insurance and within the Territorial Limits stated in the Certificate.

## LIMITS OF LIABILITY

NM's liability to pay Compensation as a result of an Occurrence will not exceed the Limit of Liability shown in the Certificate.

Our total aggregate liability any one Period of Insurance to pay Compensation in respect of or in any way related to Pollution Risks is \$1,000,000 unless stated otherwise in the Certificate.

Our total aggregate liability any one Period of Insurance for Temporary Hire of Equipment Liability is \$50,000 unless stated otherwise in the Certificate.

# Extensions of Cover

NM will, in addition to the Limits of Liability shown in the Certificate, cover You for:

## 3.1 DEFENCE AND COSTS COVER

Your legal defence, investigation and mitigation costs.

## 3.2 FIRST AID

any reasonable costs incurred by You for first aid rendered to third parties at the time of any Personal Injury.

Provided that:

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; 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.

## 3.3 RECTIFICATION OF FAULTY WORKMANSHIP EXTENSION

The 'Faulty Workmanship' exclusion clause contained in 'What is Not Covered' of this policy shall not apply to the extent of the provisions of this 'Rectification of Faulty Workmanship Extension' clause.

Subject to the terms and conditions of this policy, We will pay for costs and expenses incurred in undertaking completion, re-performing, recompleting, improving or otherwise rectifying any work previously undertaken by You or on Your behalf during the Period of Insurance which is considered faulty workmanship and gives rise to, or is expected may give rise to, General Liability and/or Product Liability.

Unless We have given You Our prior written approval for You to undertake such rectification work, the rectification work shall be undertaken by a third party chosen by Us.

If the Occurrence causing or giving rise to such rectification work also gives rise to General Liability and/or Product Liability then Our liability to pay for such rectification work is in addition to the Limit of Liability but in no case to exceed an amount equivalent to the Limit of Liability.

Unless stated to the contrary on the Certificate:

1. the Excess applicable to this 'Rectification of Faulty Workmanship Extension' clause is AUD5,000 (five thousand Australian Dollars); and
2. the Limit of Liability applicable to this 'Rectification of Faulty Workmanship Extension' clause is AUD50,000 (Fifty Thousand Australian Dollars) for all amounts payable in respect of each claim or a series of claims under this policy caused by or arising from one Occurrence and in the aggregate during the Period of Insurance.

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# Optional Additional Benefits

The optional additional benefits are only applicable to this policy if We have agreed to provide the cover to You, You have paid any additional premium required and the additional benefit is noted as being covered in the Certificate. Otherwise such cover is excluded. We will cover You for You legal liability caused by or arising in connection with:

## EXTENDED HOT WORK

Unless You have told Us that You undertake Hot Work and this is stated in the 'Your Business' section of the Certificate, We do not cover any liability caused by or arising from Hot Work whatsoever.

Notwithstanding that You may have told to Us that You undertake Hot Work, in no case do We cover liabilities caused by or arising from Hot Work:

1. performed on or in Watercraft previously engaged in carrying explosives or flammable liquids or gases;
2. performed on or near any fuel tank, pipeline or fuel bunker space; and/or
3. not performed in accordance with the provisions of Australian Standard 1674.1-1997 – Safety in Welding and Allied Process – Fire Precautions.

## PERSONAL INJURY TO CONTRACTORS EXTENSION

The 'Personal Injury to Contractors' exclusion clause contained in 'What is Not Covered' of this policy shall not apply to Contractors engaged by You in the ordinary course of Your Business for the purpose of:

1. maintaining or otherwise providing services to Your Watercraft, marina, business premises, plant, equipment or other Property; and/or
2. providing services to the Watercraft or Property of others that is in Your physical or legal control.

Nothing herein shall be construed to alter the requirement that all Contractors be declared to and accepted by Us as specified in the 'Contractor' clause contained in 'What Is Not Covered' of this policy.

Unless stated to the contrary on the Certificate:

1. the Excess applicable to this 'Personal Injury to Contractors Extension' clause is AUD25,000 (twenty five thousand Australian Dollars), and
2. the Limit of Liability applicable to this 'Personal Injury to Contractors Extension' clause is AUD5,000,000 (five million Australian Dollars) for all amounts payable in respect of each claim or a series of claims under this Policy caused by or arising from one Occurrence and in the aggregate during the Period of Insurance.

## PHYSICAL OR LEGAL CONTROL EXTENSION

The 'Physical or Legal Control' exclusion clause contained in 'What is Not Covered' of this policy shall not apply to Damage to:

1. Watercraft in Your physical or legal control in the ordinary course of Your Business; or
2. any of the items specified in sub-clauses (i) – (v) below in Your physical or legal control in the ordinary course of Your Business:
  - i. Watercraft other than that specifically provided for in sub-clause (1) above;
  - ii. the personal tools, clothing or effects of Your directors, partners, proprietors, officers, executives or Employees, or the clothing and personal effects of any of Your visitors;
  - iii. a premises (including its contents) leased or rented to or temporarily occupied by You;
  - iv. a Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) provided that such Vehicle is:
    - not hired, leased by or loaned to You; and
    - is in a car park that is owned or operated by You; and
    - that You do not operate such car park for a fee as a principal part of Your Business; and
  - v. any Property not more specifically provided for in sub-clauses (i) to (iv) above.

Unless stated to the contrary on the Certificate, the Limit of Liability applicable to the cover provided by the provisions of sub-clause (2) of this 'Physical or Legal Control Extension' clause is AUD500,000 (five hundred thousand Australian Dollars) for all amounts payable in respect of each claim or a series of claims under this policy caused by or arising from one Occurrence and in the aggregate during the Period of Insurance.

## OTHER WORK

other work that does not fall within the scope of Your Business and which is specified in the Certificate and provided that You have declared to Us Your Gross Revenue in respect of such business and We have agreed to provide cover.

## STORAGE

Watercraft in Your care, custody and control solely for the purpose of being stored.

## 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 Business up to a maximum period of 12 months.

## WORLDWIDE SERVICES

work performed by You outside Australia and provided that any claim or proceeding in relation to such work is brought against You within Australia.

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# Exclusions

This policy does not insure You for Your legal liability caused by or arising out of:

## AIRCRAFT AND WATERCRAFT

- Your ownership, construction, maintenance, servicing, operation or use by You of any Aircraft or Hovercraft;
- Your ownership, charter or lease of any Watercraft;
- 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;
- Products installed in or on any Aircraft, Hovercraft or Watercraft owned, chartered or leased by You; or
- the use by You as a landing area for Aircraft or Hovercraft 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

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

## ASSAULT AND BATTERY

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

## CONFISCATION

confiscation, nationalisation, requisition, embargo or destruction of or Damage to Property or Watercraft by order of any government, public or local authority.

## CONTRACTORS

the acts or omissions of Contractors, unless You have informed Us that You engage Contractors and this is stated in the 'Your Business' section of the Certificate.

## CONTRACTUAL LIABILITY

liability assumed by You under any contract or agreement. This exclusion shall not apply to:

- the liability or obligation arises from Incidental Contracts;
- liability that would have been implied by law in the absence of such contract or agreement;
- written contracts or agreements agreed by Us and specified in the Certificate or to the extent that they adopt the standard terms published by peak industry bodies such as the Australian Ship Repairers Group or similar organisation approved by Us in writing.

## CYBER ATTACK

the use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

This exclusion is paramount and shall override anything contained in this policy inconsistent therewith.

## DEFECTIVE PRODUCT

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

## DIVING SERVICES

the provision of Diving Services.

## ELECTRONIC DATA

loss of or Damage to Electronic Data.

This exclusion shall not apply if such loss or Damage arises from:

1. the theft of any computer or computer hardware, firmware or any device containing a microchip or integrated circuit containing Electronic Data;
2. water and/or other liquids or any other substances being discharged from or leaking or overflowing from any apparatus or appliance or pipes;
3. the breakage of glass;
4. impact;
5. storm, tempest, rainwater, wind, hail, fire, lightning, earthquake, explosion, implosion, sonic boom or volcanic eruption; or
6. Aircraft or other aerial devices or articles dropped from them.



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## EMPLOYMENT LIABILITY

- 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;
- any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- any claim for Employment Practices.

## EXCEEDING CAPACITY

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

## FAULTY DESIGN

- the condemnation or rejection of any part or Product by reason of faulty design, specification, formulae or pattern;
- the need to repair, modify or replace any part or Product by reason of faulty design, specification, formulae or pattern.

## FAULTY WORKMANSHIP

for the costs incurred in performing, completing, correcting or improving any work undertaken by You, except to the extent provided for in the 'Rectification of Faulty Workmanship Extension' clause contained in 'What We Cover You For - Additional Benefits' of this policy.

## FINES, PENALTIES AND PUNITIVE DAMAGES

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

## HOT WORK

from any Hot Work whatsoever, unless You have told Us that You undertake Hot Work and this is stated in the 'Your Business' section of the Certificate.

Notwithstanding that You may have told to Us that You undertake Hot Work, in no case do We cover liabilities caused by or arising from Hot Work:

1. performed on or in Watercraft previously engaged in carrying explosives or flammable liquids or gases;
2. performed on or near any fuel tank, pipeline or fuel bunker space; and/or
3. not performed in accordance with the provisions of Australian Standard 1674.1-1997 – Safety in Welding and Allied Process – Fire Precautions.

## INFIDELITY

infidelity or any act of a dishonest nature on Your part or on the part of Your subcontractors or Employees.

## LIBEL, SLANDER AND DEFAMATION

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

- made prior to the commencement date of this policy;
- made by You or at Your direction knowing it to be false; or
- related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

## LIQUIDATED DAMAGES

liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

## LOSS OF USE

loss of use of Property or Watercraft which has not been physically lost, destroyed or Damaged when such loss of use arises directly from:

1. a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
2. failure of any Product or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You.

This sub-clause (2) shall not apply to Your liability for loss of use of other Property or Watercraft resulting from sudden and accidental physical loss, destruction of or Damage to any Product or work performed by You or on Your behalf after such Product or work have been put to use by any person or organisation other than You.

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## MOORING CONTRACTOR

the provision of Mooring Contractor services.

## NUCLEAR, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS

- ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;
- any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 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
- any chemical, biological, bio-chemical, or electromagnetic weapon.

## OTHER CONSEQUENTIAL LOSS

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, except to the extent specified above as consequential Loss, this Policy excludes any liability.

## ORGANISATION

Your failure to comply fully with all regulations prescribed by any applicable governing body or authority and/or any local authority regulations in relation to the organisation of a regatta.

## PERSONAL INJURY TO CONTRACTORS

Personal Injury to Contractors, except to the extent provided for in the 'Personal Injury to Contractors Extension' clause contained in 'What We Cover You For - Additional Benefits' of this Policy.

## PHYSICAL OR LEGAL CONTROL

Damage to any Property or Watercraft in Your physical or legal control, except to the extent provided for in the 'Physical or Legal Control Extension' clause contained in 'What We Cover You For - Additional Benefits' of this Policy.

## POLLUTION

from the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water, and/or for the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants, except to the extent provided for in the 'Pollution Liability Extension' clause contained in 'What We Cover You For - Additional Benefits' of this Policy.

## PRODUCT GUARANTEE

any Product warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal, State or Territory legislation as to Product safety and information.

## PRODUCT RECALL

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

## PROFESSIONAL ADVICE

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

This exclusion shall not apply to the rendering of or failure to render medical advice or service by Medical Persons employed by You to provide first aid and other medical services on Your premises.

## PROFESSIONAL SKIPPERING

Professional Skippering.

## PROPERTY IN YOU PHYSICAL OR LEGAL CONTROL

Damage to property owned by, used by or leased by You, but excluding Temporary Hire Equipment.

## RECKLESS CONDUCT

the Deliberate, Reckless or Wilful Conduct of You or Your subcontractors.

## SILICA

from silica or silica Products or silica contained in any Products.

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## SPRAY PAINTING

Property Damage occurring as a result of overspray of paint or other substance and where such Property Damage is caused by You or Your subcontractor failing to erect a purpose built spray booth or implement similar protective measures.

## STRIKES

Property Damage or Personal Injury arising from any strike, lockouts, labour disturbance, riot, civil commotion or act of any person taking part in any such activity.

## TERRORISM

any act of Terrorism or steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived Terrorism.

## TERRITORIAL LIMITS

1. costs or expenses relating to any Claim:
  - i. brought against You in any country, state or jurisdiction other than the Commonwealth of Australia and its external territories;
  - ii. arising as a consequence of You entering into contractual obligations submitting to the jurisdiction of a court other than a court of a State or Territory of the Commonwealth of Australia; or
  - iii. arising as a consequence of any agreement by You to indemnify any other party in respect of awards, judgments or settlements made under the jurisdiction of a court other than a court of a State or Territory of the Commonwealth of Australia,  
except as provided for in (2) below.
2. The exclusion contained in (1)(i) above shall not apply to any liability, costs or expenses relating to any Claim brought against You in any country, state or jurisdiction other than the Commonwealth of Australia and its external territories provided that the Occurrence giving rise to the Claim:
  - i. happens in the ordinary course of overseas business travel by You but not if You perform manual work in North America;
  - ii. relates to Products supplied from the Commonwealth of Australia to anywhere in the world except North America; or
  - iii. relates to Products supplied from the Commonwealth of Australia to North America but not if such Products were supplied to North America with Your knowledge.

## VEHICLES & TRAILERS

the ownership, possession or use by You of any Vehicle or trailer used to transport Watercraft by road:

1. which is registered or which is required under any legislation to be registered; or
2. in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected).

These sub-clauses (1) and (2) above shall not apply to Personal Injury where:

- i. that compulsory liability insurance or statutory indemnity does not provide indemnity, and
  - ii. the reason why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of any legislation relating to Vehicles or trailers used to transport Watercraft by road;
3. any Vehicle (including any tool or plant forming part of or attached to or used in connection with such Vehicle) or trailer used to transport Watercraft by road whilst being operated or used by You or on Your behalf in connection with Your Business at Your Premises or on any work site;
4. the delivery or collection of goods to or from any Vehicle;
5. the loading or unloading of any Vehicle;
6. any Vehicle temporarily in Your custody or control for the purpose of parking; or
7. Damage caused by or arising from the movement of any Vehicle (which is required to be conditionally registered in accordance with the law of any state or territory in the Commonwealth of Australia) in the event of Your inadvertent and unintentional failure to effect conditional registration.

## WAR, STRIKES, RIOTS, CIVIL COMMOTIONS

1. strike, lockout, labour disturbance, riot, civil commotion or act of any person taking part in any such event;
2. person acting from a political, ideological or religious motive;
3. act of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power;
4. capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat; or
5. derelict mines, torpedoes, bombs or other derelict weapons of war.

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# General Conditions

## 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.

## ALTERATION OF RISK

If You become aware of any changes to the facts or circumstances which existed at the commencement of this policy, You must notify Us in writing within 30 (thirty) calendar days.

If We agree to the change We will do so in writing and You must pay Us any additional Premium We require.

Examples of changes You should tell Us about include but are not Limited to:

1. a change in the type of or nature of Your Business;
2. of damage or losses; or
3. Your Business is wound up or carried on by an insolvency practitioner or permanently discontinued.

Your failure to notify Us of the change could result in Us declining a Claim made under this policy and/or cancelling or avoiding this policy.

## BANKRUPTCY OR INSOLVENCY

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the settlement of any Claim because of such bankruptcy or insolvency.

In case of execution against You of any final judgment covered by this policy being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against Us in the same manner, and to the same extent as You but not in excess of any Limit of Liability.

## CANCELLATION

- You may cancel this policy at any time by notifying Us in writing.
- When the policy is subject to the Insurance Contracts Act 1984 (Cth), We may cancel the policy subject to the provisions of that Act.
- Within 30 days of the effective date of cancellation, You must advise Us of the actual Gross Revenue figures for the period the policy has been in force to enable Us to calculate the premium due for this period. The difference between this premium and the deposit premium will either be paid 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.

## 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.

## CLAIMS SETTLEMENT

In the event of a Claim, We have the option of settling Your loss by either payment, repair, reinstatement or replacement.

If You are liable for GST in respect of any goods, services or other supply which are the subject of a Claim under this policy, We will pay You for that GST liability.

However:

- where We make a payment under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit You are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) in relation to that acquisition whether or not the acquisition is actually made;
- where We make a payment under this policy as Compensation for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit You would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

## CLAIMS PROCEDURE

You will:

1. give Us immediate notice in writing with full particulars of every Occurrence, circumstance, Claim, writ, summons, proceedings, impending prosecution, inquest and the like which may give rise to a loss recoverable under this policy;
2. use Your best endeavours to preserve any Damaged or defective Property, Products or Watercraft which may be necessary or useful by way of evidence in connection with any Claim and, so far as may be reasonably practicable, no alteration or repair shall be made to any Property, Product or Watercraft until We have had an opportunity to inspect it and given Our prior written consent;



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3. not make any admission, offer, promise or payment in connection with any Occurrence or Claim without Our prior written consent; and
  4. give Us all information and assistance as We may reasonably require in the prosecution, defence or settlement of any Claim.

We will:

5. be entitled to take over and conduct in Your name the defence or settlement of any Claim, and
6. have full discretion in the conduct of any negotiations or proceedings in connection with any Claim.

## CROSS LIABILITY

Subject to clause '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.

## DISCHARGE OF LIABILITIES

We may at any time pay to You in respect of Compensation payable as a result of any Occurrence the amount of the Limit of Liability or such limit stated in this policy in respect thereof (after deduction of any amount or amounts already paid) or any lesser amount for which the Claim can be settled.

Upon such payment We shall relinquish conduct or control of and be under no further liability under this policy in connection with such Claim except for costs or expenses incurred by Us or by You with Our written consent prior to the date of such payment.

## EXCESS

The Excess applies to all amounts for which We shall be liable, including but not limited to Costs & Expenses.

If more than one Excess can be applied to an Occurrence, then You will only need to pay the highest Excess.

## GST

All of the amounts insured by this policy exclude GST.

Any settlement under this policy, up to the total of all amounts insured, will exclude GST. However, if there is a shortfall between the GST component of the settlement and the amount of input tax credit You are entitled to, We will pay this shortfall in addition to the settlement.

We will not be liable to pay any GST, or any fine, penalty or charge that You are liable for arising out of Your misrepresentation of, or failure to disclose, Your proper input tax credit entitlement in the settlement of any Claim under this policy or Premium relating to this policy.

## HEADINGS

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

## INSPECTION & AUDIT

We shall be permitted, but are not obligated, to inspect Your Premises and operations at any reasonable time.

Neither Our right to make inspections, nor Our failure to make inspections, nor the making of any inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit Your books and records at any time during the currency of this policy and within 3 (three) years after the termination of this policy but only with regard to matters which in Our opinion are relevant to this policy.

## 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.

## NOTICE AND PROOF OF CLAIM

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

- 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;
- 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;
- 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;
- not make any admission, offer, promise of payment in connection with any Occurrence or Claim under this policy without Our written consent;
- give to Us all information and assistance as We may reasonably require in the prosecution, defence or settlement of any Claim.

NM must have full discretion in the conduct of any negotiations or proceedings in connection with any Claim.

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## 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.

## 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.

## 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 Certificate. If Your actual Gross Revenue for the Period of Insurance exceed the estimated Gross Revenue 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 Revenue in respect of any subcontracted work. You agree to keep a complete and accurate record of all Gross Revenue 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.

## PREVENTION OF ACCIDENTS

You must take reasonable precautions to prevent Personal Injury or Damage as if You were not covered by this policy. Such precautions include but are not limited to

1. if You discover Products may be defective and such defect may give rise to a Claim, at Your expense You must take reasonable steps to restrict, trace, recall, modify, replace or repair the Products;
2. maintaining and looking after other person's or organisation's Property used or occupied by You, in accordance with Your agreement with them;
3. comply and ensure that You and any Contractors comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or Property or Watercraft;
4. ensure that You and any Contractors do not exceed the registered or rated capacity of any lift device, marine railway or dry-dock;
5. if You intend digging below ground or water level, the location of underground or underwater services must be obtained from the owners of the services by You before the work is commenced, and
6. using and storing all hazardous materials as required by law.

If You do not take reasonable precautions We may decline to pay part or all of a Claim made under this policy.

## PROPER LAW AND JURISDICTION

- The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law.
- In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, You will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

## 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.

## REASONABLE DILIGENCE

You must:

- 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;
- take all reasonable precautions to:
- prevent Personal Injury and Property Damage;
- prevent the manufacture, sale or supply of defective Products;
- ensure that you, You 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
- 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;
- 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.

## RELEASE OF LIABILITY

Where You are required by contractual agreement to release any government authority or any landlord or any other person or parties from liability for loss, destruction or Damage or legal liability covered by this policy, such release is allowed without prejudice to this insurance.

We agree to waive all Our rights of subrogation against any such authority or persons or parties in the event of any Occurrence for which a Claim may be made under this policy.

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## 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.

## SANCTIONS REGULATION

Notwithstanding any other terms or conditions under this policy, NM shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to You or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of yours would violate any applicable trade or economic sanctions, law or regulation.

## VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial 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.







**Nautilus Marine Insurance**

**ABN:** 34 100 633 038 **AFSL:** 227186

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PCUS-015665-2020