



# PROTEUS CARRIERS CARGO LIABILITY

Marine Insurance Policy

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# Welcome to Proteus Marine

## About Proteus Marine Insurance

Nautilus Marine Underwriting Agency Ltd, trading as Proteus Marine Insurance NZBN: 9429031454261, FSP: 388326, is an insurance underwriting agency and has a binding authority from ZAIL which allows it to enter into policies of insurance. Proteus Marine Insurance acts on behalf of ZAIL and not *you* when providing these services. Always consider the relevant policy wording before purchasing an insurance policy.

ZAIL is a signatory to the Fair Insurance Code. This aims to raise standards of practice and service in the insurance industry. Proteus Marine Insurance supports and adheres to the Code.

## 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'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. The Zurich Insurance Group provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. The Group'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 *we* and contains all the details of the cover that *we* provide.

*Your* policy is made up of:

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

# Carriers Cargo Liability Insurance Policy Wording

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

## Definitions

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

### Excess

*excess* means the proportion of the risk *you* retain for each claim (the amount shown in the *schedule*) and *you* will pay the *excess* before we pay the remainder of the claim.

### Period of insurance

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

### Schedule

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

- (a) first buy the policy from *us*; or
- (b) change any part of the policy or any personal details relevant to it; or
- (c) renew the policy with *us*.

### We, Us, Our

*we, us, our* means Proteus Marine Insurance NZBN: 9429031454261, FSP: 388326 acting as agent of ZAIL trading as Zurich New Zealand.

### You, Your or Named Insured

*you, your or named insured* means the person or persons/company named in the *schedule*.

## The cover

1. We insure *you* against *your* liability as a carrier under the Contract and Commercial Law Act 2017, Part 5 - Subpart 1, and any amendments thereto, for loss of or damage to goods or livestock specified in the *schedule* that occurs while the insured goods or livestock are in *your* custody within the radius of transit during the *period of insurance* each as specified in the *schedule*.

However, the policy will only insure the liability under 'Declared Terms' contracts as if the goods or livestock were carried under a 'Limited Carriers Risk' contract unless we have agreed to extend the policy to provide insurance subject to such 'Declared Terms' contracts.

## Additional benefits

### 2. Extensions to liability

We will not rely on section 260(2)(d) of the Contract and Commercial Law Act 2017, which states that *you* shall not be liable for the loss of or damage to goods that occurs while *you* are responsible for the goods under a contract of carriage to the extent that *you* prove that the loss or damage resulted directly and without fault on *your* part from saving or attempting to save life or property in peril, unless specifically requested by *you*.

### 3. Subcontractors

This insurance is extended to cover the liability of *your* subcontractors carrying on *your* behalf as if the subcontractors were *you*.

#### 4. Debris removal

This insurance is extended to cover *your* liability for the cost of removal and disposal of damaged goods or livestock (this includes the cost of cleaning the accident site but not any expense or liability of any kind incurred as a result of the actual or potential discharge, emission, spillage or leakage of any liquid or gas pollutant of any kind or nature beyond the road surface and the road verge at the accident site) up to a limit of \$50,000.

#### 5. Incorporation of terms

Provided *you* have an effective process and practice of incorporating *your* standard terms and conditions into a contract of carriage as approved by *us*, if *you* unintentionally fail to incorporate those approved standard terms and conditions into a contract of carriage, this policy will, nevertheless, insure *your* liability.

However, if *you* intentionally agree to carry goods or livestock, either as a principal or as a subcontractor, under any different terms to the approved standard terms and conditions, this policy will only insure *your* liability as if the goods or livestock were carried subject to *your* approved standard terms and conditions unless we have agreed to extend the policy to insure *your* liability subject to different terms.

#### 6. Legal costs

In addition, we will pay legal costs incurred by *you* with *our* consent.

### Optional additional benefits

#### 7. Warehouse liability

If specified in the *schedule* and notwithstanding exclusion 10.1:

7.1 we will, at *your* request, indemnify the owner of the goods in *your* custody under a contract for the storage of goods, not being a contract of carriage (as defined in the Contract and Commercial Law Act 2017, Part 5-Subpart 1), as if the contract was a contract of carriage at 'Limited Carrier's Risk' terms and defined in the Act;

7.2 this insurance is further extended to insure *you* against *your* liability as a bailee under a contract for the storage of goods, not being a contract of carriage, as defined in the Act.

#### 8. Consequential Loss

If specified in the *schedule* and notwithstanding exclusion 10.3.2, this insurance is extended to cover *your* liability for delay, loss of market or consequential loss that is caused solely by the loss of or damage to the insured goods or livestock.

### Limits on cover

9.1 The insurance is limited to the maximum liability stated in the *schedule* of any one loss or series of losses arising from the same event.

9.2 If an excess is specified in the *schedule*, *you* must bear that amount first in respect of a claim under this policy.

### Exclusions from cover

10. This insurance does not cover *your* liability for loss, damage or expense that:

10.1 occurs during storage which is at the election of or on the instruction of the owner of the goods or livestock;

10.2 arises out of contracts for the carriage of household or office contents, coin, bank notes, currency notes, bullion and the like;

10.3 arises from any of the following:

10.3.1 intentional damage by *you* or *your* subcontractors;

10.3.2 consequential losses, fines, penalties or punitive damages;

10.3.3 war or warlike activities which means invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, evolution, insurrection of civil strife following any of these;

- 10.3.4 expropriation, which means the lawful seizure, confiscation, nationalisation or requisition of goods or livestock;
- 10.3.5 anything nuclear or radioactive, meaning the ionising radiations from or the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter or nuclear waste, weapon, device, fuel, installation, reactor or any component of these. However, this exclusion does not apply to the radioactive isotopes carried for agricultural, commercial, medical or scientific purposes;
- 10.3.6 any chemical, biological, bio-chemical or electromagnetic weapon;
- 10.3.7 terrorism and/or steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived terrorism. For the purpose of this clause, 'terrorism' means any act(s) of any person(s) or organisation(s) involving:
  - (a) the causing, occasioning or threatening of harm of whatever nature and by whatever means;
  - (b) putting the public or any section of the public in fear,
 in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of the political, religious, ideological or similar nature.
- 10.3.8 liability, damage or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

### Premium and its adjustment

**11.** For all contracts other than 'Declared Value Risk' contracts, *you* must pay *us* the deposit premium stated in the *schedule*.

The premium is based on estimated gross freight earnings for the *period of insurance* provided by *you*, *you* must keep accurate records of the equivalent actual gross freight earnings. A statement of these actual gross freight earnings (audited if requested) must be given to *us* within 30 days after the end of the *period of insurance*.

*We* will adjust the premium proportionally at the end of that period on the basis of *your* actual gross freight earnings if:

- 11.1 the adjusted premium is higher than the deposit premium stated in the *schedule*, *you* must pay *us* the difference unless the deposit premium is less than \$25,000 and the variation between estimated and actual figures for the period is less than 10 per cent when no difference in premium is payable;
- 11.2 the adjusted premium is lower, provided the words 'minimum and deposit' do not appear in the *schedule*, *we* will pay the difference to *you*. However, *we* are entitled to retain a minimum of 75 per cent of the deposit premium stated in the *schedule*.

For every 'Declared Value Risk' contract, *you* will declare to *us* the monthly values of the goods and livestock carried, which shall in no case exceed the invoice value to consignees. The appropriate premium rate shall be applied to each declaration and be paid by *you* monthly.

### Notification of material change

**12.** *You* must notify *us* as soon as possible of any material change in the risk covered by this policy, including any change to the consignment note or other document of carriage or the method of using these documents.

### Reasonable care

**13.** *You* must take reasonable care to prevent loss, destruction, damage or death covered by this policy.

## Duties in relation to an event which may give rise to a claim

- 14.** When an event happens which may give rise to a claim under the policy the following rules apply:
- 14.1 *you* must do everything reasonable to prevent anything else happening which may give rise to or increase the amount of the claim;
  - 14.2 *you* must do everything reasonable to make sure that any rights against anyone else in respect to the event are maintained;
  - 14.3 if the event involves a vehicle owned or operated by *you*, and either a theft has occurred and the policy covers *you* against theft or an accident has occurred involving another vehicle, *you* must notify the police as soon as possible and, if *we* require, obtain a written police report;
  - 14.4 *you* or anyone else entitled to make a claim under this insurance must not admit liability or pay or offer to pay any claim without *our* written consent and must deny liability in writing if entitled to do so in accordance with the terms and conditions of carriage and the Contract and Commercial Law Act 2017, Part 5 -Subpart 1 for any claim made on *you*;
  - 14.5 *you* must notify *us* immediately of what happened and send *us* full details of what has happened, forwarding any letters or documents giving notice of a claim made on *you* together, if applicable, with written denial of liability within 30 days.

## Fraudulent claim

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

## Settlement of claims

- 16.** *We* have the option of settling a claim by payment, repair, reinstatement or replacement.

## Goods and Services Tax

- 17.** All sums insured and limits in this policy (except for any excess) exclude Goods and Services Tax (GST). Where GST is recoverable by *us* under the Goods and Services Tax Act 1985, *we* will add GST, where applicable, to claim payments.

## Third parties

- 18.** If anyone else is entitled to make a claim under this policy, that person must also comply with its terms.

## Conduct of claims

- 19.** *We* are entitled to:
- 19.1 conduct on *your* behalf any legal proceedings or negotiations relating to claims made against *you*; or
  - 19.2 authorise *you* to defend any legal proceedings brought against *you* on the understanding that *we* will be kept fully informed and will be consulted and will participate in decision-making regarding liability or any negotiations with other parties; and
  - 19.3 to exercise any rights *you* may have against anyone else in relation to liability for which *we* have paid any amount under this policy.

*You* and anyone else entitled to make a claim under this policy must cooperate fully with *us* in the exercise of these rights and must give *us* any information or assistance *we* may require.

## Transfer

- 20.** *You* may only transfer a right under this policy with *our* written consent.

## Cancellation

**21.** You may cancel this policy at any time by giving *us* notice in writing. You should send the notice to *us* via *your* intermediary.

We may cancel this policy by giving *you* 30 days notice in writing.

## Other insurance

**22.** This policy does not cover loss or liability where cover is already provided by other insurance. We will not contribute towards any claim under any other policy.

## Jurisdiction

**23.** This policy is subject to New Zealand law and jurisdiction.

## Sanctions regulation

**24.** Notwithstanding any other terms or conditions under this policy, we 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 any business or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.



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