



# PORT OPERATORS LIABILITY INSURANCE

Marine Insurance Policy

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# Welcome to Proteus Marine Insurance

## 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 *us* 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.

# Port Operators Liability Insurance Policy Wording

Subject to the prior payment of, or your agreement to pay, the premium set out in the *schedule*, we agree to provide you with insurance as set out in this policy.

In issuing this policy, we have relied on the information contained in the proposal form and/or any other information given by you or on your behalf.

## 1. Insuring Clauses

Subject to the limits, terms and conditions of this policy, we will pay:

### 1.1 Third party

all sums which you are liable to pay following an *occurrence* happening during the *period of insurance* and arising out of *your insured operations* for liability to *third parties* for:

#### 1.1.1 Property damage

physical loss or damage to property of any *third party* including ships, locomotives, rolling stock, equipment and *cargo* and *consequential loss*, loss of use, delay or *demurrage* resulting from such physical loss or damage; and

#### 1.1.2 Personal injury

*personal injury* to any *third party* including *consequential loss* resulting from such *personal injury* (including any claim for indemnity brought against you by a subrogated insurer/claimant pursuant to any Workers' Compensation or Employers' Liability Insurance of any such injured person).

### 1.2 Operational liability

all sums which you are liable to pay following an *occurrence* happening during the *period of insurance* and arising out of *your insured operations* for operational liability in the provision of *port services* when such *port services* are provided on terms agreed by us and noted in the *schedule*.

### 1.3 Fines and penalties

1.3.1 all sums which you are liable to pay following an *occurrence* happening during the *period of insurance* and arising out of *your insured operations* for fines or other penalties or fiscal charge imposed by a government or authority, provided that such liability arises from an unintentional breach of the statute, law or regulation by you, or *your contractors*; and

1.3.2 *your* loss arising from confiscation by a government or authority of any property of any person, including *your* equipment, as a consequence of *your* breach of any statute, law or regulation in the circumstances described in clause 1.3.1 (including any breach by a person).

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

### 1.4 Pollution liability

all sums which you are liable to pay following an *occurrence* happening during the *period of insurance* and arising out of *your insured operations* for:

1.4.1 any compensation to *third parties* for *personal injury* or physical loss or damage to property arising from a *pollution incident*;

1.4.2 any expense or cost incurred in removing, preventing, mitigating or cleaning up any *pollutant* following a *pollution incident*; and

1.4.3 any fine or penalty that arises from any *pollution incident* unless a competent court or tribunal determines that it is illegal or contrary to public policy for you to be insured against such liability or loss.

However, we will not pay you in respect of any *sub-surface operations liability* or *contaminated land liability*.

### 1.5 Errors and omissions

all sums which you are liable to pay following an *occurrence* happening during the *period of insurance* and arising out of *your insured operations* for *your liability to third parties* for financial loss, *consequential loss*, wrongful delivery of *cargo*, delay or *demurrage* arising from an error or omission.

### 1.6 Wreck removal

*approved costs and expenses* incurred by you in discharging *your* legal obligations to remove any *wreck* or *debris* following an *occurrence* for the purpose of avoiding or minimising a liability insured under this policy provided always that all rights of action against the owner, charterer or operator (and their respective insurers) of the *wreck* or *debris* to remove the *wreck* or *debris*, have been exhausted.

## 2. Limit of Liability

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

Unless otherwise stated in the *schedule*, *our* liability to indemnify *you* for any loss damage or liability as the result of an *occurrence* arising out of *cargo* in *your* care, custody and control is limited to \$1,000,000.

*Our* total aggregate liability any one *period of insurance* to indemnify *you* for any loss, damage or liability in respect of or in any way related to a *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 always that any contract you may have in place for *consultancy services* has been approved by us in writing and noted in the *schedule* prior to any *occurrence*.

#### **4.3 Infringement of personal rights liability**

Your legal liability to compensate *third parties* for false arrest, detention or imprisonment, libel, slander, defamation, eviction, invasion of privacy or any public or private nuisance.

#### **4.4 Tenant's legal liability**

4.4.1 Your legal liability to compensate *third parties* for physical loss or physical damage to *premises* leased or rented by you as tenant where such physical loss or damage is caused following an *occurrence*.

4.4.2 This *optional additional benefit* does not cover or attach to any *premises* owned by you and leased or rented to any *third party* nor to any *premises* leased by you and sub-leased or rented to any *third party*.

4.4.3 Infringement of personal rights liability.

### **5. Definitions**

When used in this policy, *schedule* or endorsements, the following definitions will apply:

#### **5.1 Approved costs and expenses**

*approved costs and expenses* mean costs and expenses that you notify to us and obtain our agreement to pay in advance of you incurring them and which are in any event properly and reasonably incurred.

#### **5.2 Approved legal costs and expenses**

*approved legal costs and expenses* mean legal costs and expenses that you notify to us and obtain our agreement to pay in advance of you incurring them and which are in any event properly and reasonably incurred.

#### **5.3 Blockage**

*blockage* means a blockage of any part of the port, or berth arising from an *occurrence* which results in the sinking or stranding of a ship, or the inability of a ship to gain access to a berth.

#### **5.4 Cargo**

*cargo* means goods, including anything (other than items supplied by you) used, or intended to be used, to pack or secure goods carried from one place to another place in respect of which you contract to provide services, or in which you have an insurable interest.

#### **5.5 Carrying or lifting equipment**

*carrying or lifting equipment* means an item of equipment used for lifting, carrying or moving of *cargo* including any item of equipment mounted on a *vehicle* for the purpose of lifting or securing *cargo* but not a shipping container, aircraft, ship or train.

#### **5.6 Co-assured**

*co-assured* means any legal entity noted in the *schedule* as a Co-assured.

#### **5.7 Consequential loss**

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

### **5.8 Construction activity**

*construction activity* means construction of any building, infrastructure or civil works including refurbishment but not land reclamation activity that is not otherwise part of any *construction activity*.

### **5.9 Consultancy services**

*consultancy services* means any agreement for the provision of advice, information or associated services by you to a *third party* relating to *port management* or *port operations* for a specific fee.

### **5.10 Contaminated land liability**

*contaminated land liability* means any legal liability, fine, penalty, clean-up costs or expenses relating to the contamination of any land, including sub-surface land, unless arising from a *pollution incident*.

### **5.11 Contraband**

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

### **5.12 Contractual liability**

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

### **5.13 Contractors**

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

### **5.14 Costs arising from a blockage**

*costs arising from a blockage* means such costs reasonably incurred by you after any *occurrence* that may give rise to a claim under the 'Port and berth blockage' *optional extension* for investigating the *occurrence*, assessing its financial impact or protecting your interests in relation to such *occurrence*.

### **5.15 Dangerous cargo**

*dangerous cargo* means any *cargo* specified as such in the Australian Dangerous Goods code (ADG) or in the International Maritime Dangerous Goods Code (IMDG) or which may become a *dangerous cargo* while in your possession or control for whatever reason.

### **5.16 Debris**

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

### **5.17 Declared value cargoes**

*declared value cargoes* means any *cargo* received by you for carriage, storage or handling purposes that are declared by the shipper to have a specific value, Ad Valorem, for carriage.

### **5.18 Deliberate, reckless or wilful conduct**

*deliberate, reckless or wilful conduct* means any conduct being an act or omission to act where such act or omission is with intent to cause loss or recklessly and with knowledge that such loss would probably result.

### **5.19 Demurrage**

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

### **5.20 Geographical limits**

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

### **5.21 Gross charges**

*gross charges* means total charges (collected or uncollected) made by *you* during the *period of insurance* and included in the annual revenue as stated on *your* annual profit and loss statement/statement of financial performance. No deduction will be made from the *gross charges* in respect of any sub-contracted work. *You* agree to keep a complete and accurate record of all *gross charges* for *insured operations* for examination by *us* or *our* representatives and further agree to make an annual report of collected and uncollected charges to *us* within 30 days after the expiration of this policy.

### **5.22 Increased cost of working**

*increased cost of working* means such costs as may be reasonably incurred during the period of *blockage* cover for the purpose of avoiding or diminishing the potential reduction of *gross charges* or increased costs in maintaining *your insured operations* following a *blockage*.

### **5.23 Indemnity period**

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

### **5.24 Insured location(s)**

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

### **5.25 Insured operation(s)**

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

- 5.25.1 the provision and management of canteens, social, sports and welfare organisations or educational facilities which are primarily for the benefit of *your* employees;
- 5.25.2 first aid, medical, ambulance and fire services.

### **5.26 ISPS code**

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

### **5.27 Liquidated damages**

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

### **5.28 Loss of profits**

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

### **5.29 Occurrence**

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

### **5.30 Optional additional benefits**

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



### **5.31 Optional additional benefits deductible**

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

### **5.32 Optional additional benefits sub-limit**

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

### **5.33 Overload or overloaded**

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

### **5.34 Period of insurance**

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

### **5.35 Personal injury**

*personal injury* means:

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

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

and includes hospital, funeral and medical expenses.

### **5.36 Pollutant**

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

### **5.37 Pollution incident**

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

5.37.1 it is an identifiable specific incident;

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

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

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

### **5.38 Port management**

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

### **5.39 Port operations**

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

#### **5.40 Port operator**

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

#### **5.41 Port services**

*port services* means services provided by the port including towage, pilotage, line boats, stevedoring, marshalling, storage, *terminal operator* and other services provided by *your port operations* as agreed by *us* and shown in the *schedule*.

#### **5.42 Premises**

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

#### **5.43 Product**

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

#### **5.44 Product liability**

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

#### **5.45 Schedule**

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

5.45.1 first buy the policy from *us*;

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

5.45.3 renew the policy with *us*.

#### **5.46 Security legislation**

*security legislation* means the *ISPS Code*, the Maritime Transport and Offshore Facilities Security Act and any other similar or associated regulations or orders.

#### **5.47 Sub-surface operations liability**

*sub-surface operations liability* means any legal liability, fine, penalty, clean-up cost or expense resulting from subsidence causing damage to any activity or infrastructure below ground or under water.

#### **5.48 Temporary hire agreement**

*temporary hire agreement* means an agreement to lease, hire, rent or borrow any property or equipment for a period not exceeding 120 consecutive days.

#### **5.49 Terminal operator**

*terminal operator* means the legal entity that technically and commercially operates any container, break-bulk, bulk liquid or dry-bulk commodity marine terminal for the purpose of loading or unloading *cargo* from or to a ship and the marshalling and storage of such *cargo*.

### **5.50 Terrorism**

*terrorism* means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connections with any organisation(s) or government(s) de jure or de facto, and which:

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

### **5.51 Third party**

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

### **5.52 Tool of trade**

*tool of trade* means any *vehicle* which has a tool or plant attached to, forming part of or used in connection with it while such tool or plant is engaged on a work site but does not include such *vehicle* whilst it is in transit to or from any work site.

### **5.53 Valuable cargoes**

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

### **5.54 Vehicle**

*vehicle* means any type of machine (other than ship-lifters, marine travel lifts, jinkers, slipways, cradles or any other mobile ship-lifting device) including attachments that is designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.

### **5.55 We, us, our**

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

### **5.56 Wear and tear**

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

### **5.57 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.

### **5.58 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:

- 5.58.1 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;
- 5.58.2 new organisations acquired by the named Insured or any named *co-assured* in the *schedule*, during the *period of insurance*, through consolidation, merger, purchase of the assets of or assumption of control and active management, provided such acquisition or assumption is reported to *us* within 90 days after it is effected and provided further such acquisition is endorsed onto this policy;
- 5.57.3 director, officer or employee acting in the course of their employment.

## 6. Exclusions

Notwithstanding anything contained anywhere in this policy to the contrary, *you* are not insured for any losses, damages or liabilities in accordance with the exclusion clauses below.

### 6.1 General exclusions

This policy does not insure *you* for *your* legal liability:

- 6.1.1 for *personal injury* to any employee or worker arising out of, or in the course of, their employment in *your* business to the extent that *you* are indemnified or entitled to be indemnified under a policy of insurance or self insurance arrangements in accordance with any workers' compensation or accident compensation legislation, or to the extent that *you* would have been entitled to be indemnified had *you* arranged insurance as required by such legislation.
- 6.1.2 arising out of the provision of any workers' compensation legislation or industrial award or agreement or determination.
- 6.1.3 for *personal injury* to any person arising directly or indirectly from:
  - (a) exposure to noxious or inherently harmful substances (including but not limited to radio-active substances, asbestos, cadmium or hydrocarbons); or
  - (b) repetitive stress, strain or cumulative trauma.
- 6.1.4 for damage or loss to:
  - (a) any *premises* occupied by *you* unless the appropriate tenant's legal liability' extension applies and is noted in the *schedule*; or
  - (b) any property or equipment leased, hired, rented or borrowed by *you* unless such property or equipment is leased, hired, rented or borrowed by *you* under a *temporary hire agreement* and the damage or loss arises from *your* negligence.
- 6.1.5 for damage or loss to any property (including damage or loss to *cargo* or equipment including shipping containers and *cargo* handling equipment) caused by or arising from:
  - (a) routine *wear and tear* or gradual deterioration when *you* are responsible for the maintenance or care, custody and control of such property;
  - (b) inherent vice, ordinary leakage, or ordinary loss in weight or volume;
  - (c) defective or insufficient packaging of the *cargo* by *your* customer, their subcontractor or agent; or
  - (d) unexplained losses discovered on inventory/stocktaking unless established by *you* to have been caused by an *occurrence*.
- 6.1.6 arising from the release of *cargo* without production by the person claiming release of the *cargo*, of the original bill of lading or other sea-carriage document.
- 6.1.7 arising from damage or loss to *declared value cargoes* to the extent that any claim is increased by the declaration of value by *your* customer, their contractors or agents.
- 6.1.8 arising from damage or loss to *valuable cargoes* unless:
  - (a) *your* customer did not inform *you*, and *you* could not have reasonably known, that *you* were handling such *cargoes*; or
  - (b) *you* handle such *valuable cargoes* only on specific terms of *your contract* that has been previously approved by *us*;

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

'The customer shall have a clause in their bill of lading or other contract of carriage giving *you* the benefit of provisions therein excluding or limiting the customer's liability including any liability in negligence to the extent permissible by law and the customer undertakes to defend and indemnify *you* and hold *you* harmless against any claim by, or liability to, the customer or any other party to the extent that such claim or liability exceeds the lesser of:

1. *your* liability under *your* contract with the customer; or
2. the liability that *you* would have incurred if *you* had been able to rely on the provisions in the bill of lading or other contract of carriage excluding or limiting the customer's liability and which would have applied had the scope of such bill of lading or contract of carriage included the services of *you*; and
3. *you* ensure that reasonable security measures are employed in the handling of such *valuable cargoes*'.

- 6.1.9 arising from the use, ownership or operation by *you* of any *vehicle* in circumstances in which the *vehicle* is required by law to have compulsory insurance against such liability.
- 6.1.10 arising from the use, ownership or operation by *you* of any registered *vehicle*, such liability being for property damage unless such *vehicle* is being used as a *tool of trade*.
- 6.1.11 arising from the ownership, operation, management, maintenance, lease, rental, charter or use by *you* of any vessel or water-borne craft, locomotive or rolling stock.
- 6.1.12 arising from any dredging operations performed by *you* or any *third party*.
- 6.1.13 arising from the disposal, treatment, storage, carriage or processing of waste materials, spoil or operation of any land-fill or similar facility by *you* or any *third party* or relating to any contamination of land (including any sub-surface land) (other than where arising from a sudden accidental event constituting a *pollution incident*) or any remediation of contaminated land (including any sub-surface land) (whether pursuant to an order or directive of any competent authority or otherwise).
- 6.1.14 assumed by *you* under contract, including liability for delay and payments under penalty clauses or liability arising under 'liability without fault' or 'performance guarantee' or 'declared value' or '*liquidated damages*' clauses or similar provisions or liability otherwise accepted by *you* under any express or implied contract, but this exclusion will not apply to the extent that:
- (a) *you* would incur legal liability in the absence of any specific contractual provision and as a result of *your* negligence; or
  - (b) we have specifically agreed to insure the contractual liabilities assumed by *you*.
- 6.1.15 incurred to any *third party* to the extent that any such liability is in excess of any statutory immunity or limit of liability or restriction of liability that would otherwise be available to *you*.
- 6.1.16 incurred in relation to the provision of any advice, information or service for a specific fee, relating to *port management, port operations* or other similar activity unless the '*Consultancy services legal liability optional additional benefit*' has been agreed and is noted in the *schedule*.
- 6.1.17 arising from loss or damage caused by or resulting from *you* deliberately, recklessly or wilfully exceeding the registered or rated capacity or 'safe working load' or any *overload* of any *carrying or lifting equipment*.
- 6.1.18 arising from *deliberate, reckless or wilful conduct* by *you* or *your contractors*.
- 6.1.19 arising from the wrongful delivery of *cargo* to the extent that a competent court or tribunal determines that it is illegal for *you* to be insured against such liability; or for any criminal proceedings associated with any wrongful delivery of *cargo*.
- 6.1.20 arising from any *deliberate, reckless or wilful* non-compliance with, or breach of the *ISPS Code* or any other relevant *security legislation*.

- 6.1.21 arising from *construction activity*, or any other reclamation or demolition activities undertaken by *you* or *third parties* that would be covered under the scope of most industry standard 'Contract Works including Public Liability insurance' in respect of the property and liability interests associated with such activities.
- 6.1.22 arising from erection, dismantling or movement of *carrying or lifting equipment* unless *our* prior written agreement has been obtained by *you* and *you* agree to pay any additional premium that *we* require.
- 6.1.23 in respect of any goods or *products* sold by *you* including any *product liability*.
- 6.1.24 arising in relation to any:
  - (a) trademark, copyright or patent infringement;
  - (b) breach of directors' and officers' duties;
  - (c) breach of fidelity obligations of employees, company directors, officers or company servants;
  - (d) conduct of directors, officers, employees or company servants acting outside the course and scope of their employment, authority or contract as the case may be; or
  - (e) fault, error or omission on *your* part in the course of administration of any superannuation, pension or employee benefits scheme.
- 6.1.25 arising from any alleged or actual fraudulent, dishonest, malicious, intentional or criminal act or omission by *you* or *your contractors*.
- 6.1.26 arising from *you* performing any unlawful or illegal act or knowingly providing any services in respect of illegal trade or *contraband cargo*.
- 6.1.27 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.

## 6.2 Fines and penalties

This policy does not insure *you* for *your* legal liability:

- 6.2.1 breach of any statute, law or regulation in respect of freight tariffs, fair trading or anti competitive behaviour;
- 6.2.2 breach of any statute, law or regulation in respect of ownership, lease or operation of a mechanically propelled *vehicle* that is required to be licensed or permitted to be licensed for use on a public road unless being used as a *tool of trade*;
- 6.2.3 breach of any statute, law or regulation in respect of *overloading* any mechanically propelled *vehicle*, *carrying or lifting equipment* unless such breach relates to workplace safety regulations;
- 6.2.4 breach of any statute, law or regulation caused by *deliberate, reckless or wilful conduct* by *you* or *your* servant, agent or *contractor*;
- 6.2.5 any fine, penalty, customs duty, sales tax, excise tax, similar financial charge or loss arising from confiscation, to the extent that a competent court or tribunal determines that it is illegal or contrary to public policy for *you* to be insured against such liability or loss;
- 6.2.6 any fine, penalty or loss arising from any criminal conviction, to the extent that a competent court or tribunal determines that it is illegal or contrary to public policy for *you* to be insured against such liability or loss; or
- 6.2.7 any amount that would have been payable by *you* in the ordinary course of events, notwithstanding any breach of regulation, statute or law.

### 6.3 Berth and/or port blockage

Notwithstanding *optional additional benefit* 4.1 'Berth and/or port blockage', this policy does not cover any liability arising from *your* failure to take all reasonable steps to:

- 6.3.1 prevent the *occurrence*;
- 6.3.2 maintain all approaches and channels to the *insured locations* and any approaches, channels, turning basins and berth(s) within the *insured locations* in good working order, cleared to marked depths and fit for intended purposes;
- 6.3.3 comply with all statutory regulations and requirements relating to the operation and inspection of all approaches, channels, turning basins and berth(s) and the access to and from all such berths;
- 6.3.4 manage the *insured locations* so that all users comply with all statutory regulations and requirements relating to the use of all approaches, channels, turning basins and berth(s) so as to avoid the *occurrence*; or
- 6.3.5 rectify or minimise all consequences of any *blockage* that may occur.

### 6.4 Infringement of personal rights

Notwithstanding *optional additional benefit* 4.3 'Infringement of personal rights liability', this policy does not cover any liability arising from:

- 6.4.1 the *deliberate or reckless or wilful breach* of any statute, law or regulation by *you* or *your* employee, officer or contractor;
- 6.4.2 any personal relationship between *you* and any *contractor*;
- 6.4.3 a contract entered into by *you*;
- 6.4.4 intentional publication of material or any utterance by *you* or *your contractors* with knowledge that such publication or utterance is false;
- 6.4.5 any advertising activity publication or utterance that promotes *your insured operations*;
- 6.4.6 repeating the same or similar act, utterance or publication of material made by *you* or *your contractors* prior to the commencement of the *period of insurance*;
- 6.4.7 any claim against *you* by any person claiming or asserting any breach by *you* of any discrimination, anti-vilification, harassment or equal opportunity or employment or similar legislation.

### 6.5 Nuclear

This policy excludes loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from:

- 6.5.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 6.5.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- 6.5.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 6.5.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- 6.5.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

### 6.6 Terrorism

This policy excludes any loss any act of *terrorism* or steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived *terrorism*.

## 6.7 War

This policy excludes loss, damage, liability or expense directly or indirectly occasioned by, happening through or in consequence of:

- 6.7.1 war, civil war, revolution, rebellion, insurrection, civil strife arising therefrom or any hostile act by or against a belligerent power;
- 6.7.2 capture, seizure, arrest, restraint or 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.

## 7. General Conditions

### 7.1 Assignment

It is agreed that no assignment of this policy or any monetary sum which may be or may become payable under this policy is to be binding on or recognised by *us* unless a dated notice of such assignment signed by *you* and by the assignor in the case of subsequent assignment, is endorsed on this policy and the insurance with such endorsement is produced before payment of any claim or return of premium under this policy but nothing in this condition is to have effect as an agreement by *us* to the assignment of this policy in the event of a sale or transfer to a new management.

### 7.2 Claims control

We are entitled (but not obliged) at *our* own cost to control or take over the conduct of the investigation, defence and/or settlement of any claim, suit or proceeding against *you* which is or is likely to be the subject of indemnity under this policy.

### 7.3 Claims settlement

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

### 7.4 Cross liability

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

### 7.5 Dangerous cargo

*You* must act diligently to ensure compliance with all regulations, laws and international conventions relating to the handling and storage of *dangerous cargo*.

### 7.6 Deductible

Any claim recoverable under this policy will be subject to the deduction of the sum stated in the *schedule* in respect of *your* ultimate net loss resulting from any one *occurrence*.

### 7.7 Goods and Services Tax

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

### 7.8 Joint insureds

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



### **7.9 Notification of material change**

You must notify us in writing as soon as possible of any material change in the risk covered by this policy and pay any additional premium we may require.

### **7.10 Other insurance**

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

### **7.11 Policy cancellation**

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

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

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

Within 30 days of the effective date of cancellation you must advise us of the actual *gross charges* figures for the period the policy has been in force to enable us to calculate the premium due for the period. The difference between this premium and the deposit will either be paid by or allowed to you but subject to a retention by us of a minimum premium of 75 per cent of the proportionate part of the estimated annual premium for the period the policy has been in force.

### **7.12 Premium**

Subject to any agreement to the contrary this policy is in consideration of your payment of the minimum and deposit premium as stated in the *schedule*. If your actual *gross charges* for the *period of insurance* exceed the estimated *gross charges* on which the deposit premium was based, you agree to promptly pay any additional premium calculated by applying the agreed rate to the amount of such excess charges.

No deduction will be made from the *gross charges* in respect of any subcontracted work. You agree to keep a complete and accurate record of all *gross charges* for operations covered by this policy for examination by us or our representatives and you further agree to make an annual report of collected and uncollected charges to us within 30 days after the expiration of the *period of insurance*.

### **7.13 Proper law and jurisdiction**

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

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

### **7.14 Rights of subrogation**

In the event of a payment made under this policy to you or on your behalf, we shall be subrogated to all your rights of recovery against any person or organisation. At our request and our expense, you shall do all things reasonably required by us for the purpose of enforcing any rights and remedies or of obtaining indemnity from other parties to which we are entitled pursuant to this policy.

### **7.15 Sanctions regulation**

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

### **7.16 Valuation and foreign currency**

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

### **7.17 What you should do in the event of a claim**

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

You must:

- 7.17.1 advise *us* within 30 days of full particulars of every *occurrence*, circumstance, claim, writ, summons, proceedings, impending prosecution, inquest or the like known to *you*;
- 7.17.2 use *your* best endeavours to preserve any damaged or defective property which may prove necessary or useful by way of evidence (together with any relevant documentation or records) in connection with any claim and, so far as may be reasonably practicable, no alteration or repair shall be made to any watercraft, *premises*, machinery, fittings, equipment or plant until *we* have had an opportunity to inspect and have provided *our* consent;
- 7.17.3 retain and preserve from destruction any business documents and records that might foreseeably be connected with potential future claims, for a period of at least seven years;
- 7.17.4 not make any admission, offer, promise of payment in connection with any *occurrence* or claim under this policy without *our* written consent; and
- 7.17.5 give to *us* all information and assistance as *we* may reasonably require in the prosecution, defence or settlement of any claim.

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

### **7.18 Waiver of privilege**

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

**Proteus Marine Insurance**

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