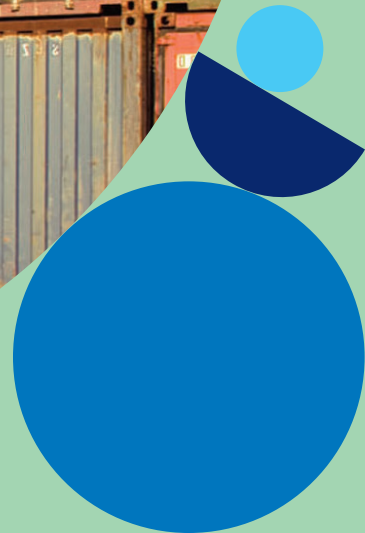


# Cargo Handling Facility Liability Insurance

Policy Wording



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# Welcome to Zurich

## About Zurich

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', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

## 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.

If *your* failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Our contract with you

This policy is a contract of insurance between the *insured* and Zurich and contains all the details of the cover that we provide.

This policy is made up of:

- the policy wording. It states 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;
- the most current policy *schedule* issued by us. The *schedule* is a separate document unique to the *insured*. It includes any changes, exclusions, terms and conditions made to suit the individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only covers shown in the *schedule* are insured. This document is used for any offer of renewal we may make, unless we tell *you* otherwise. Please keep *your* policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

## Privacy

Zurich is bound by the Privacy Act 1988 (Cth). 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, other insurers and 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 (Cth), Anti-Money Laundering and Counter-*Terrorism* Financing Act 2006 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) 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.

## General Insurance Code of Practice

We are signatories to the General Insurance Code of Practice (the Code) and support 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.

The Code Governance Committee is an independent body that monitors and enforces insurers compliance with the Code.

Further information about the Code or the Code Governance Committee and *your* rights under it is available at <https://insurancecouncil.com.au/cop/> or by contacting us.

## Complaints and Disputes Resolution process

If *you* have a complaint about an insurance product we have issued or the service *you* have received from us, please contact *your* intermediary to initiate *your* complaint with us. If *you* are unable to contact *your* intermediary, *you* can contact us directly on 132 687. We will acknowledge receipt of *your* complaint within 24 hours or as soon as practicable.

If *you* are not satisfied with our initial response, *you* may access our internal dispute resolution process. Please refer to the general insurance fact sheet available on our website for details of our internal dispute resolution process.

We expect that our internal dispute resolution process will deal fairly and promptly with *your* complaint, however, *you* may take *your* complaint to the Australian Financial Complaints Authority (AFCA) at any time.

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

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*.

# Cargo Handling Facility 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 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 Limit of Liability, and the terms and conditions of this policy, we will pay 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:

### 1.1 Cargo liability

physical loss or damage to *cargo* and *consequential loss* resulting from such loss or damage.

### 1.2 Third party

liability to *third parties* for:

#### 1.2.1 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.

#### 1.2.2 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).

### 1.3 Operational liability

*operational* liability arising from any *occurrence* in the provision of port services provided that such port services are provided on *your* terms and conditions as provided to and agreed by us at inception of the policy and noted in the *schedule*.

### 1.4 Fines and penalties

finances and penalties, provided always that the statute, regulation, or law that is breached relates to the importation or exportation of *cargo*, the importation or exportation of equipment (other than equipment owned by *you* or equipment in the process of acquisition or disposal by *you*), immigration, security or anti terrorism, work place safety, pollution, navigation aids, marine traffic control or pilotage.

We will pay:

1.4.1 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

1.4.2 *your* loss arising from confiscation by a government or authority of any property of any person, including *your* equipment, as a consequence of an unintentional breach of any statute, law or regulation by *you* or *your* contractor in the circumstances described in 1.4.1 (including any breach by a person).

However, we will not indemnify *you* in respect of fines and penalties as set out in Exclusions 6.3 'Fines and penalties'.



## 1.5 Pollution liability

- 1.5.1 any compensation to *third parties* for *personal injury* or physical loss or damage to property arising from a *pollution incident*;
- 1.5.2 any expense or cost incurred in removing, preventing, mitigating, or cleaning up any *pollutant* following a *pollution incident*; and
- 1.5.3 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, cover is specifically excluded for any *sub-surface operations* liability or *contaminated land liability*.

## 1.6 Errors and omissions

liability to *third parties* for financial loss, *consequential loss*, wrongful delivery of *cargo*, delay or *demurrage* arising from an error or omission.

## 2. Limits 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*.

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

Our total aggregate liability any one *period of insurance* to indemnify you for any losses, damages, or liabilities in respect of, or in any way related to, *valuable cargoes* is limited to \$250,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify you for any losses, damages, or liabilities in respect of, or in any way related to, property or equipment damage under any *temporary hire agreement* is limited to \$100,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify you for any liabilities in respect of, or in any way related to, fines and penalties is limited to \$500,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify you for any losses, damages, or liabilities in respect of, or in any way related to, a *pollution incident* is limited to \$1,000,000 unless otherwise stated in the *schedule*.

Our total aggregate liability any one *period of insurance* to indemnify you for any liabilities in respect of, or in any way related to, errors and/or omissions is limited to \$500,000 unless otherwise stated in the *schedule*.

## 3. Extension of Cover

Zurich will, in addition to the Limits of Liability shown in the *schedule*, 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*;
- 3.1.4 *approved costs and expenses* incurred by you in discharging your legal obligations in respect of quarantine, fumigation, or disinfection of *cargo*, ships, rolling stock, containers, or equipment as a result of an *occurrence*.

If, due to the circumstances of the claim, *you* are required to incur legal costs and expenses and/or costs and expenses to:

- (a) limit any liability insured under this policy;
- (b) prevent property damage, *personal injury*, operational liability, or pollution liability;
- (c) to otherwise preserve property and evidence; or
- (d) to preserve or enforce any legal right against a *third party*;

*you* must notify us as soon as possible of the cost incurred, or to be incurred. We will cover costs and expenses which are properly and reasonably incurred.

## 4. 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 optional additional benefit is noted as being covered in the *schedule*. Otherwise, such cover is excluded.

### 4.1 Tenant's legal liability

4.1.1 *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*.

4.1.2 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*.

### 4.2 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.

### 4.3 Wreck removal liability

*your 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.

If there is an enforceable legal obligation of any *third party* to pay the costs and expenses of the removal of any *wreck* or *debris*, we will:

- (a) consider, in consultation with *you*, whether any indemnity provided by this policy should be reduced to take into account that enforceable legal obligation;
- (b) negotiate with the *third party* and/or their insurer to remove any *wreck* or *debris*; or
- (c) recover from that *third party* the costs of removing any *wreck* or *debris*.

## 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 for which approval will not to be unreasonably withheld), 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 for which approval will not to be unreasonably withheld), and which are in any event properly and reasonably incurred.

### 5.3 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, or in which *you* have suffered a pecuniary or economic loss by reason of those goods being damaged or destroyed.

### 5.4 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.

### 5.5 Co-assured

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

### 5.6 Communicable disease

*communicable disease* means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- 5.6.1 the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism, or any variation thereof, whether deemed living or not; and
- 5.6.2 the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- 5.6.3 the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of, property insured hereunder,

and includes, but is not limited to, a disease that is or becomes listed on the National Notifiable Disease List and/or is or becomes a temporary addition to the National Notifiable Disease List and/or has or could give rise to a public health event of national significance and/or is or becomes a listed human disease (where National Notifiable Disease List means the list established and in force from time to time under section 11 of the National Health Security Act 2007 (Cth) and listed human disease has the meaning given by section 42 of the Biosecurity Act 2015 (Cth), or in each case any subsequent amendment, replacement or successor legislation of the Commonwealth of Australia).

### 5.7 Consequential loss

*consequential loss* means loss of income, loss of profit, loss of opportunity, market loss, loss of use, loss from business interruption, 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 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*.

### 5.10 Contraband

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

### 5.11 Contractual liability

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



#### 5.12 Contractors

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

#### 5.13 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.

#### 5.14 Debris

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

#### 5.15 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.

#### 5.16 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.

#### 5.17 Demurrage

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

#### 5.18 Gross charges

*gross charges* mean 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 for purposes of calculating any applicable premium adjustment.

#### 5.19 Insured location(s)

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

#### 5.20 Insured operation(s)

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

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

5.20.2 first aid, medical, ambulance, and fire services.

#### 5.21 ISPS code

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

#### 5.22 Liquidated damages

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

### 5.23 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*.

### 5.24 Optional additional benefits

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

### 5.25 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*.

### 5.26 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*.

### 5.27 Overload or overloading

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

### 5.28 Period of insurance

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

### 5.29 Personal injury

*personal injury* means:

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

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

and includes hospital, funeral, and medical expenses.

### 5.30 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. Waste includes material to be recycled, reconditioned, or reclaimed.

### 5.31 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:

5.31.1 it is an identifiable specific incident;

5.31.2 the specific incident occurred, and was discovered, during the *period of insurance* on an identifiable date at a specific time; and

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

### 5.32 Premises

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

### 5.33 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.

### 5.34 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*.

### 5.35 Schedule

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

- 5.35.1 first buy the policy from us;
- 5.35.2 change any part of the policy or any details relevant to it; and/or
- 5.35.3 renew the policy with us.

### 5.36 Security legislation

*security legislation* means the *ISPS Code*, the Maritime Transport and Offshore Facilities Security Act 2003 (Cth) and any other similar or associated regulations or orders.

### 5.37 Silica

*silica* means silicon dioxide, (occurring in crystalline, amorphous, and impure forms), *silica* particles, *silica* dust or *silica* compounds.

### 5.38 Silica related dust

*silica related dust* means a mixture or combination of *silica* and other dust or particles.

### 5.39 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.

### 5.40 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.

### 5.41 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:

- 5.41.1 involves violence against one or more persons;
- 5.41.2 involves damage to property;
- 5.41.3 endangers life other than that of the person committing the action;
- 5.41.4 creates a risk to the health or safety of the public or a section of the public; or
- 5.41.5 is designed to interfere with or to disrupt an electronic system.

**5.42 Third party**

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

**5.43 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.

**5.44 Valuable cargoes**

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

**5.45 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 are designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.

**5.46 Wear and tear**

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

**5.47 Wreck**

*wreck* means whatever may remain of a ship and its *cargo* (but excluding any *pollutant* from the ship) following a shipwreck, found in or on the shores of the sea or any tidal waters or navigable waters of *your insured locations*.

**5.48 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:

- 5.48.1 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;
- 5.48.2 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; or
- 5.48.3 director, officer or employee acting in the course of their employment.

## 6. Exclusions

### 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);
  - (b) repetitive stress, strain, or cumulative trauma; or
  - (c) alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, actual, alleged, threatened, or suspected inhalation or *absorption of silica or silica related dust*.
- 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:
  - 6.1.8.1 *your* customer did not inform *you*, and *you* could not have reasonably known, that *you* were handling such *cargoes*; or
  - 6.1.8.2 *you* handle such *valuable cargoes* only on specific terms of *your* contract that has been previously approved by us; or



6.1.8.3 *your* customer's bill of lading or other contract of carriage, in respect of such *valuable cargoes*, contains the following:

- (i) provisions excluding or limiting the customer's liability including any liability in negligence to the extent permissible by law; and
- (ii) provisions undertaking 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:
  - (a) *your* liability under *your* contract with the customer; or
  - (b) 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 *your* services.

Any legal liability arising under 6.1.8.2 and 6.1.8.3 will be subject to the provision that *you* have ensured, as far as reasonably practicable, that adequate security measures are employed in the handling of such *valuable cargoes*, relevant to the type of *valuable cargoes* that are being carried at any or the relevant time.

- 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 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).
- 6.1.13 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*.
- 6.1.14 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*.
- 6.1.15 incurred in relation to the provision, for a fee or payment in kind, of any professional advice or advisory service.
- 6.1.16 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*.
- 6.1.17 arising from *deliberate, reckless, or wilful conduct* by *you* or *your contractors*.
- 6.1.18 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*.
- 6.1.19 arising from any deliberate, reckless; or wilful conduct causing non-compliance with, or breach of the *ISPS Code* or any other relevant *security legislation*.

- 6.1.20 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.
- 6.1.21 arising from erection, dismantling, or movement of *carrying or lifting equipment* unless our prior written agreement has been obtained by *you*. *You* may be required to pay an additional premium, which will be assessed according to the any increased risk to any liability insured by this policy arising from the erection, dismantling, or movement of *carrying or lifting equipment*.
- 6.1.22 in respect of any goods or *products* sold by you including any *product liability*.
- 6.1.23 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 the administration of any superannuation, pension, or employee benefits scheme.
- 6.1.24 arising from any alleged or actual fraudulent, dishonest, malicious, intentional, or criminal act or omission by *you*.
- 6.1.25 arising from *you* performing any unlawful or illegal act, or knowingly providing any services in respect of illegal trade or *contraband cargo*.
- 6.1.26 for any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, medical payment, claim, cost, expense, or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a *communicable disease* or the fear or threat (whether actual or perceived) of a *communicable disease*.
- 6.1.27 arising from any loss, damage, liability, or expense directly or indirectly caused by, contributed to, by, or arising from:
  - (a) the failure, error, or malfunction of any computer, computer system, computer software programme, code, or process or any other electronic system; or
  - (b) 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 Infringement of personal rights exclusions

Notwithstanding optional additional benefit 4.2 'Infringement of personal rights liability', this policy does not cover any liability arising from:

- 6.2.1 the deliberate or reckless or wilful conduct of any statute, law, or regulation by *you* or *your* employee, officer or contractor;
- 6.2.2 any personal relationship between *you* and any *contractor*;
- 6.2.3 a contract entered into by *you*;
- 6.2.4 intentional publication of material or any utterance by *you* or *your contractors* with knowledge that such publication or utterance is false;
- 6.2.5 any advertising activity publication or utterance that promotes *your insured operations*;
- 6.2.6 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*; or
- 6.2.7 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.

### 6.3 Fines and penalties

Except to the extent specifically stated in Insuring Clause 1.3 of this policy, *your* liability is specifically excluded for fines and penalties arising from:

- 6.3.1 breach of any statute, law, or regulation in respect of freight tariffs, fair trading, or anti-competitive behaviour;
- 6.3.2 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;
- 6.3.3 breach of any statute, law, or regulation in respect of *overloading* any mechanically propelled *vehicle*, or *carrying or lifting equipment* unless such breach relates to workplace safety regulations;
- 6.3.4 breach of any statute, law, or regulation caused by deliberate or reckless or wilful conduct by *you* or by *your* servant, agent, or contractor;
- 6.3.5 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; or
- 6.3.6 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.

### 6.4 Nuclear

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

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

### 6.5 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*.

### 6.6 War

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

- 6.6.1 war, civil war, revolution, rebellion, insurrection, civil strife arising therefrom or any hostile act by or against a belligerent power;
- 6.6.2 capture, seizure, arrest, restraint, or detainment (barratry and piracy excepted) and the consequence thereof or any attempt thereat; or
- 6.6.3 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 Cancellation

7.2.1 *You* may cancel this policy at any time by notifying us in writing.

7.2.2 When the policy is subject to the Insurance Contracts Act 1984 (Cth), we may cancel the policy subject to the provisions of that Act.

7.2.3 Within 30 days of the effective date of cancellation, *you* must advise us of the actual *gross charges* figures for the period the policy has been in force to enable us to calculate the premium due for this period. The difference between this premium and the deposit premium will either be paid by you, or refunded to *you* but subject to a retention by us of reasonable reinsurance, administration and cancellation costs incurred by us as well any tax or duty paid or owing for which we are unable to obtain a refund.

### 7.3 Claims control

We may elect 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.

We will, whenever practically reasonable, inform *you* of the progress of any defence or prosecution, and/or consult with *you* as to its interests or concerns in relation to any claim, defence, or prosecution, but *you* agree that Zurich will have ultimate discretion in the conduct of any proceedings and in the settlement of any claim it has conduct of.

### 7.4 Claims settlement

In the event of a claim, we shall consult with *you* and take into account *your* interests regarding the option of settling the loss either by payment, repair, reinstatement or replacement, but *you* agree that Zurich will have ultimate discretion in the settlement of any claim.

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:

7.4.1 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; and

7.4.2 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.

### 7.5 Cross liability

Subject to clause "79 - Non-Imputation", 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*.

## 7.6 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*.

## 7.7 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*.

## 7.8 Headings and Interpretation

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

A reference to any statute, regulation, or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation, or subordinate legislation.

## 7.9 Non-Imputation

Where this insurance is arranged in the joint names of more than one *Insured*, it is hereby declared and agreed that:

7.9.1 each *Insured* shall be covered as if it made its own proposal for this insurance.

7.9.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each *Insured*.

7.9.3 any knowledge possessed by any *Insured* shall not be imputed to the other *Insured(s)*.

## 7.10 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:

7.10.1 advise us as soon as reasonably practicable, or within 30 days, of any *occurrence*, circumstance, claim, writ, summons, proceedings, impending prosecution, inquest, or the like known to *you*, and provide to us as much detail, information, or documents as is available to *you*;

7.10.2 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;

7.10.3 so far as may be reasonably practicable, not make any alteration or repair to any watercraft, *premises*, machinery, fittings, equipment, or plant until we have had an opportunity to inspect and have provided our consent (unless immediate steps need to be taken protect property or people, or mitigate further loss or damage);

7.10.4 retain and preserve from destruction any business documents and records that might foreseeably be connected with potential future claims:

(a) for a period of at least five years;

(b) until the conclusion of any proceedings or suit in which a claim against *you* is being defended or a recovery prosecuted; or

(c) for a longer period as advised by us (for example, a period of time reflecting a limitation period);

7.10.5 not make any admission, offer, promise of payment in connection with any *occurrence* or claim under this policy without our written consent;

7.10.6 give to us all information and assistance as we may reasonably require in the prosecution, defence, or settlement of any claim.



### 7.11 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. *you* may be required to pay an additional premium, which will be assessed according to the material change and any increased risk to any liability insured by this policy.

A material change includes, but is not limited to:

- (a) activities that are materially different from those declared to us at the inception of the policy;
- (b) activities outside the normal activities of the business;
- (c) any loss of or condition imposed upon any licence or other authority required by *you* to conduct the business;
- (d) *you* being insolvent or bankrupt, or placed into external administration;
- (e) to *your* standard terms and conditions (that was originally approved by us);

If *you* fail to comply with this condition, we may be able to:

- (a) refuse a claim;
- (b) reduce our liability to pay a claim by an amount that fairly represents the extent to which our interests are prejudiced by the failure to comply; or
- (c) cancel the policy.

### 7.12 Other insurance

Provided it is permitted by law and/or the Insurance Contracts Act 1984 (Cth), 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.

### 7.13 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, we will adjust the premium proportionally at the end of the *period of insurance* and based on a recalculation of *your* actual *gross charges*. *you* agree to promptly pay any additional premium calculated by applying the agreed rate, as noted in the *schedule*, to the amount of such excess charges.

No deduction will be made from the *gross charges* in respect of any subcontracted work.

*You* 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* for purposes of calculating any applicable premium adjustment.

### 7.14 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 State, Territory or Federal court in the Commonwealth of Australia.

**7.15 Rights of subrogation**

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

**7.16 Sanctions regulation**

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to *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.

**7.17 Valuation and foreign currency**

All premiums, limits, retentions, indemnity, and other amounts referred to in this policy are expressed and payable, where due, in 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 by the Reserve Bank of Australia 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.

**Zurich Australian Insurance Limited**

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