



# QUAY MARINE AND NTI BERTH OWNERS/ OCCUPIERS LIABILITY POLICY WORDING

Marine Liability Insurance for  
owners, lessees and sub-lessees  
of individual marina berths.



EFFECTIVE DATE: 01 / 02 / 2022

This is an important document. If you cannot read and understand English please use an interpreter to explain this document before you enter into this contract of insurance.

Insurance products are provided by National Transport Insurance, a joint venture of the insurers Insurance Australia Limited trading as CGU Insurance ABN 11 000 016 722 AFSL 227681 and AAI Limited Trading as Vero Insurance ABN 48 005 297 807 AFSL 230859 each holding a 50% share.

National Transport Insurance is administered on behalf of the insurers by its manager NTI Limited ABN 84 000 746 109 AFSL 237246.

NTI337(01/02/2022)

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# INTRODUCTION

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## Important Things You Should Know

Welcome to National Transport Insurance.

Please ensure You read this document thoroughly before You enter into this contract of insurance.

You must also ensure that all details as shown in Your Policy Schedule are correct. Let Us know immediately if You need any changes.

If You do not understand any part of the Policy, please ask Us to explain it to You or contact Your insurance broker or Our authorised representative for an explanation.

To properly understand the significant features, benefits and risks of this insurance You need to carefully read:

- about the available type of Cover, benefits and exclusions in the Policy (the standard Cover provided can be affected by the following);
- the rest of this "Introduction" Section - this sets out the basis on which We insure You, the duty of disclosure You need to meet before We insure You, Our privacy information, Our dispute resolution procedures and other important information;
- the "Definitions" - this sets out what We mean by certain words used in the Policy. These words begin with a capital letter throughout this document;
- the general Conditions and Claims responsibilities sections - these set out certain general rights and obligations that You and We have and other Cover restrictions;
- the "Exclusions" set out the general exclusions and limitations that apply to the Cover and benefits;
- all of the documents that make up the Policy, including the Policy Schedule and any endorsements or other written changes to the Cover We issue You with - these contain specific details relevant to You and can affect the Cover. Your Policy Schedule may also specify Policy Excesses and other limitations on Your Cover.

Headings are provided for reference only and do not form part of Your Policy for interpretation purposes.

## Insurers

Insurance products are provided by National Transport Insurance, a joint venture of the insurers Insurance Australia Limited trading as CGU Insurance ABN 11 000 016 722 AFSL 227681 and AAI Limited Trading as Vero Insurance ABN 48 005 297 807 AFSL 230859 each holding a 50% share.

'We', 'Us', 'Our', 'NTI' means National Transport Insurance, administered on behalf of the Insurers by its manager NTI Limited ABN 84 000 746 109 AFSL 237246.

## National Transport Insurance (NTI)

Marine Protect is powered by NTI, is Australia's specialist insurer with over 40 years of experience in the insurance industry. With an award winning claims service, You can count on NTI to protect You and Your business. Two of Australia's leading general insurers - Insurance Australia Limited trading as CGU Insurance and AAI Limited trading as Vero Insurance, back NTI - so You can rest assured that You are in safe hands.

# INTRODUCTION

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## Features

The table below is summary of some of the major Coverage benefits available in the Policy.

Exclusions, limits and conditions apply so please refer to the full Policy wording in the following pages for full details.

Marine Industry Liability Insurance Policy	
<b>Cover</b>	Cover for Your liability to third parties for Personal Injury or Property Damage as a result of an Occurrence during the Period of Insurance in connection with Your Berth Owner or Occupier activities.
<b>Territorial Limits</b>	The Nominated Marina Berth(s) shown in Your Policy Schedule.

## Your duty of disclosure

Before You enter into an insurance contract, You have a duty under the Insurance Contracts Act 1984 (ICA) s.21 and the Marine Insurance Act 1909 (MIA) s. 24,25 and 26 (whichever is applicable) to tell Us pursuant to the ICA: anything that You know, or could reasonably be expected to know, which may be relevant to Our decision to insure You and on what terms; or, pursuant to the MIA: every material circumstance which is known to You or which ought to be known to You which would influence Us in fixing the Premium or determining whether to accept the risk.

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

Where the Insurance Contract Acts applies: 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.

Where the Marine Insurance Act 1909 applies: if You fail to comply with Your duty of disclosure, We may avoid the contract from its beginning.

### Who must tell Us?

Everyone who is insured under the Policy is required to comply with the duty of disclosure, including Your broker or agent.

# INTRODUCTION

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## Privacy policy

We are committed to safeguarding Your privacy. In complying with the Australian privacy principles We will collect and use Your personal information:

- Only for the purpose of providing and administering Our products and services, including keeping You up to date with Our products and services;
- Only for the purpose for which it was collected, which may include disclosing it to third parties with whom We have arrangements to protect Your privacy.

You may choose not to provide this information; however, NTI may not be able to process Your request.

We will take all reasonable steps to make sure that personal information that We hold about You is accurate, complete, and up to date and that it is protected from misuse, loss or unauthorised access, modification or disclosure. If any information is inaccurate You must contact Us to update Your records. You can request access to Your personal information, by phoning or writing to Us. Information security protocols are in place to minimise the risk of unauthorised access to Your personal information.

In special circumstances, We may decline to release the information but We will not do so unreasonably. In these circumstances, We will give You reasons and You will have the right to request Us to review Our decision using Our complaints handling procedures. We will provide Our reasons in writing upon request.

If You need to make a complaint regarding how We handle Your personal information or make a complaint about a privacy breach You can do so by phoning Us on (07) 3292 9800 or by writing to PO Box 13550 George Street QLD 4003.

A copy of NTI's privacy policy statement and privacy complaint process can be obtained by visiting NTI's website at [www.nti.com.au](http://www.nti.com.au)

## Resolving Your Complaints

### What You do and who You contact if You have a complaint or dispute involving us:

If You have a complaint about Your insurance policy, decisions on Your claims or any of the services You have received from Us or one of Our representatives, You may access Our Complaints process.

The first step is to contact Your closest NTI office or You can contact Us by calling 1300 308 080. Your call will be directed to an appropriate person who can assist You. NTI's details can also be obtained by visiting [www.nti.com.au](http://www.nti.com.au) and a brochure on Our Dispute Resolution System is available from all NTI offices.

### Complaints

Once You contact Us, Our staff will help You in every way they can.

We will acknowledge receipt of Your complaint promptly or as soon as practicable. We will communicate Our response taking into consideration Your preferences of communicating with Us.

If You are not satisfied with the outcome, Your complaint will be referred to the staff member's supervisor who will deal with Your complaint promptly.

### Internal Dispute Resolution

If You are still not satisfied Your complaint can be handled through Our Internal Dispute Resolution service by a different employee who has appropriate experience, knowledge and authority to conduct a full review. We will provide You with details of Our dispute service and will refer You to a Supervisor or Manager to manage Your complaint. Your complaint will then be treated as a dispute.

We have 30 calendar days to respond from the date that Your complaint is received. Our response will include:

- a. reasons for Our decision;
- b. information about how to access Our External Disputes Resolution (EDR) Scheme; and
- c. notify You of the time frame within which You must register Your dispute with the EDR Scheme, (usually within two years of Our final decision).

# INTRODUCTION

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## External Dispute Resolution

Our Internal Dispute Resolution Service is designed to seek to resolve any complaints or disputes that may arise. However, if We are unable to resolve Your dispute to Your satisfaction within 30 days, We will inform You of the reasons for the delay and that You can take Your dispute to Our EDR scheme, administered by the Australian Financial Complaints Authority (AFCA), even if We are still considering it (and provided Your dispute is within AFCA Terms of Reference). We are a member of AFCA which is an ASIC approved external dispute resolution scheme and it may be able to resolve Your dispute. You may be entitled to assistance from the AFCA, however this is subject to the claim circumstances and the AFCA eligibility criteria.

Before the end of that 30 day period We will inform You that You have this right and details of how to access Our EDR Scheme.

AFCA is responsible for monitoring compliance with the General Insurance Code of Practice. It is available to customers and third parties who fall within its Terms of Reference and is an impartial body that is completely independent of Us. AFCA will initially determine whether Your dispute falls within its Terms of Reference and will notify You whether it may proceed to review Your dispute.

Your dispute must be lodged with AFCA within two years of the date of Our final decision.

Where AFCA Terms of Reference do not extend to Your dispute We will advise You to seek independent legal advice or give You information about other external dispute resolution options, if any, that are available to You.

The contact details for AFCA are:

### Australian Financial Complaints Authority

National Toll Free number 1800 931 678

GPO Box 3 Melbourne VIC 3001

Email: [info@afca.org.au](mailto:info@afca.org.au) Web: [www.afca.org.au](http://www.afca.org.au)

A brochure on Our Dispute Resolution Service is available from all NTI offices which includes information about the IDR and EDR Services.

## General Insurance Code of Practice

We are committed to raising standards of service to Our customers. This Code sets out the minimum standards We will uphold in the services We provide to You and is a practical demonstration of Our commitment to providing a high level of service to Our customers.

If You are interested in obtaining more information about this important industry initiative, You can contact the Insurance Council of Australia or access the Code directly at: [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code aims to:

- describe standards of good practice and service to be met by participating insurers; promote disclosure of information relevant and useful to consumers so as to allow them to make an informed choice and compare one product with another;
- facilitate the education of consumers about their rights and obligations with insurance contracts;
- promote informed and effective relationships between consumers, insurers and authorised representatives; and
- ensure insurers have fair procedures for resolution of disputes between consumers and insurers or consumers and authorised representatives.

More information about the Code can be obtained from Us direct or Our website [www.nti.com.au](http://www.nti.com.au) or contacting the Insurance Council of Australia ("ICA") directly (the ICA has an office in most capital cities) or via their website at [www.insurancecouncil.com.au](http://www.insurancecouncil.com.au).

# DEFINITIONS THAT APPLY TO THIS POLICY

Except where the context otherwise requires it, when reading this document:

In this Policy, certain words have special meanings. They have the same meanings wherever they appear.

- a. the singular includes the plural and the plural includes the singular;
- b. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- c. words importing a gender include every other gender; and,
- d. headings are purely descriptive in nature and are not intended to be used for interpretative purposes.

Word	Meaning
<b>Berth Owner or Occupier</b>	means the ownership, lease-holding, or sub-let of the Nominated Marina Berth(s) shown in Your Policy Schedule.
<b>Contractor</b>	includes subcontractor and means any person (who is not an Employee) engaged: <ol style="list-style-type: none"> <li>a. in any aspect of Your Berth Owner or Occupier activities;</li> <li>b. in any aspect of Your Berth Owner or Occupier activities whilst employed by an employment agency, placement agency, labour hire company or any other company or person whose business is or includes the supply and/or provision of labour.</li> </ol>
<b>Cover</b>	means the benefit and protection provided by this Policy and specified in Your Policy Schedule.
<b>Employee</b>	means any person engaged in under a contract of service or apprenticeship, or so deemed at law by You (other than as specified under clause 2. of Definition of You, Your, Yours, Insured).
<b>Excess</b>	means the amount specified in Your Policy Schedule You must pay as the first part of any claim unless otherwise stated under the provisions of any applicable product.
<b>GST</b>	has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.
<b>Input Tax Credit</b>	has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.
<b>Incidental Contracts</b>	means: <ol style="list-style-type: none"> <li>a. any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault; or,</li> <li>b. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities.</li> </ol>
<b>Insurance Proposal</b>	means the particulars of insurance completed by You, as Your application for insurance, and submitted to Us either in writing or electronically on which We rely to determine whether to provide You with a Policy, and if so, upon what terms and conditions.
<b>Internet Operations</b>	means: <ol style="list-style-type: none"> <li>a. use of electronic mail systems by Your Employees, including part-time and temporary staff, and others within Your organisation;</li> <li>b. access through Your network to the world wide web or a public internet site by Your Employees, including part-time and temporary staff, and others within Your organisation;</li> <li>c. access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide web for Your customers or others outside Your organisation; and,</li> <li>d. the operation and maintenance of Your web site.</li> </ol>
<b>Limit of Indemnity</b>	means the amount specified in Your Policy Schedule, which is the maximum amount payable by Us in respect of all types of claims under all parts of the Policy for any one loss or series of losses due to or arising out of one Occurrence, and which is inclusive the application of any Excess.

# DEFINITIONS THAT APPLY TO THIS POLICY

Word	Meaning
<b>Nominated Marina Berth(s)</b>	Means: the floating pontoons, connecting access walkways and/or ramps (from pontoon to point of connection with the walkway and/or ramps with the land), including fixtures, fittings and associated structures designed for mooring, standing or storing Vessels, which is specifically shown in Your Policy Schedule.
<b>National Transport Insurance (NTI)</b>	means National Transport Insurance, a joint venture of the insurers Insurance Australia Limited trading as CGU Insurance ABN 11 000 016 722 AFSL 227681 and AAI Limited Trading as Vero Insurance ABN 48 005 297 807 AFSL 230859 each holding a 50% share.
<b>Occurrence</b>	means any event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Property Damage or Advertising Liability, neither expected nor intended by You. All events of a series consequent on or attributable to one source or original cause will be deemed one Occurrence.
<b>Period of Insurance</b>	means the period between and includes the dates in Your Policy Schedule shown as 'Insured From/To' during which We provide insurance under Your Policy.  Your Policy expires on the date specified in Your Policy Schedule as the 'To' date at 4.00pm Local Standard Time (L.S.T.) of the State or Territory within the Commonwealth of Australia in which Our office issuing Your Policy is located.
<b>Personal Injury</b>	means: a. bodily injury, death, sickness, disability, disease, shock, fright, mental injury, mental anguish or loss of consortium resulting from any of them; and b. i. false arrest, false imprisonment, malicious prosecution, wrongful eviction, wrongful detention and humiliation; ii. libel, slander, defamation of character; iii. invasion of right of privacy; iv. wrongful entry or wrongful eviction or other invasion of the right of private occupancy; v. assault and battery committed by You for the purpose of preventing or eliminating danger to a person or property to the extent permitted by law.
<b>Policy</b>	means this document, Your Policy Schedule, the Insurance Proposal, any declarations and statements You make to Us and any other notice We give You in writing, all to be read together.
<b>Policy Schedule</b>	means the most current insurance details and attachments to them, issued to You by Us. It sets out Your Policy number, the Policy applying, Excess and any special conditions, endorsements and limits which apply to Your Policy.
<b>Premium</b>	The amount payable by You for this insurance Policy. This does not include any government charges, taxes or duties.
<b>Product</b>	means any goods, product or property (including any components, packaging or container) described in Your Policy Schedule (after they have ceased to be in Your possession or under Your control) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed in or from Australia or its external territories by You, or are deemed by Australian law to have been manufactured, in the course of Your business activities, and includes directions, markings, instructions, warnings given or omitted advice in connection with such Products, but does not include the design, formula or specification of such Products.
<b>Product Liability</b>	means Personal Injury or Property Damage: a. caused by any defect, or the harmful nature of any of Your Products b. resulting from any defect or deficiency in any direction or advice given at any time or intended to be given by You concerning the use or storage of Your Products.

# DEFINITIONS THAT APPLY TO THIS POLICY

Word	Meaning
<b>Property Damage</b>	<p>Means:</p> <p>a. physical damage to or loss or destruction of tangible property including financial loss resulting from such damage, loss or destruction.</p> <p>loss of use of tangible property which has not been physically injured or destroyed or lost which is caused by physical injury to or destruction or loss of other tangible property which occurs during the Period of Insurance.</p>
<b>Public Liability</b>	means liability Covered by this Policy but does not include Product Liability.
<b>Terrorism</b>	means an act, including but not limited to the use of force or violence (or the threat of force or violence), of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or governments(s), committed for political, religious, ideological ethnic or similar purposes including the intention to influence any government and/ or to put the public, or any Section of the public in fear.
<b>Vessel</b>	means any ship, boat, water craft or other description of vessel or structure which is a private pleasure craft or commercial vessel used or intended to be used for navigation on or under water.
<b>We/Our/ Ours/ Us/ NTI</b>	means National Transport Insurance, administered on behalf of the Insurers by its manager NTI Limited: ABN 84 000 746 109; AFSL 237246.
<b>You/ Your/ Yours/ Insured</b>	<p>for the purposes of this policy means:</p> <p>a. a. the client (person or company) named in Your Policy Schedule whose place of residence or if a company, whose place of incorporation, is within Australia or its external territories;</p> <p>b. all Your subsidiary companies (now or hereafter constituted) whose place of incorporation is within Australia and whose business falls within the definition of Berth Owner or Occupier;</p> <p>c. any personal representatives in the event of the death of a client but only in respect of liability incurred by the client;</p> <p>d. any director, partner, executive officer or shareholder of the client or any Employee but only for liability in respect of which the client would have been entitled to indemnity if the claim had been made against the client.</p> <p>but only in respect of any liability incurred as part of Your Berth Owner or Occupier activities.</p>

# THE COVER

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## Our agreement with You

Based on the information in Your Insurance Proposal, and the statements and declarations that You have made in support of Your application for insurance and provided that You have paid the Premium by the due date, We will indemnify You for the Cover specified in Your Policy Schedule, subject to the terms, conditions and exclusions that are set out in this Policy.

Your Policy consists of:

- a. this Policy document, which sets out the conditions of Cover, exclusions and the terms and conditions that apply to the Policy or level of Cover You have chosen;
- b. the Policy Schedule is a separate document and shows the insurance details that are relevant to Your insurance;
- c. any endorsements noted on Your Policy Schedule or otherwise notified by Us to You in writing; and,
- d. Your Insurance Proposal, the declarations and statements that were made when You applied for Cover from Us and every other matter which You subsequently declare or state to Us when You replace, vary, extend or reinstate Your Policy.

They are all to be read as if they are the one document.

THIS SPACE INTENTIONALLY LEFT BLANK

# SECTION 1 – LIABILITY

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## What You are insured for by this Policy

### 1. Compensation

Subject to the Limit of Indemnity specified in Your Policy Schedule, We will indemnify You in respect of all sums which You will become legally liable to pay as compensation for:

- a. Personal Injury; and,
- b. Property Damage

as a result of an Occurrence in the Period of Insurance at the Nominated Marina Berth shown in Your schedule and in connection with Your Berth Owner or Occupier activities, less the Excess amount specified in Your Policy Schedule as applicable to this Policy.

### 2. Legal costs/solicitors fees/ claimants costs

In addition We will pay:

- a. all charges, expenses and legal costs incurred by Us and/or You provided that such charges, expenses and legal costs were incurred with Our written consent in the settlement or defence of any claim for compensation for which You may be liable under this Policy;
- b. Your legal costs of representation at any coroner's inquest or inquiry incurred with Our prior written consent;
- c. all charges, expenses and legal costs recoverable from You resulting from any Occurrence giving rise to legal liability under this Policy;
- d. all expenses incurred by You for first aid to others at the time of Personal Injury (other than payment of medical expenses which are prohibited by law);
- e. pay reasonable expenses incurred by You for temporary repairs, shoring up or protection of property of others which has been damaged; and,
- f. reasonable costs and expenses incurred by You for removal, salvage or recovery of any Vessel that has sunk, or is wrecked, disabled or destroyed during the Period of Insurance when ordered by a maritime, port, harbour or marina authority.

All of these costs, expenses or charges must be incurred in connection with claims for compensation which if sustained would be indemnified under Section 1 of this Policy.

# CONDITIONS THAT APPLY TO THIS POLICY

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## 1. Your 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, which 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:

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

Before You enter into an insurance contract, You have a duty under the Insurance Contracts Act 1984 (ICA) s.21 and the Marine Insurance Act 1909 (MIA) s. 24,25 and 26 (whichever is applicable) to tell Us pursuant to the ICA: anything that You know, or could reasonably be expected to know, which may be relevant to Our decision to insure You and on what terms; or, pursuant to the MIA: every material circumstance which is known to You or which ought to be known to You which would influence Us in fixing the Premium or determining whether to accept the risk.

### 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.

Where the Marine Insurance Act 1909 applies;

if You fail to comply with Your duty of disclosure, We may avoid the contract from its beginning.

### Who must tell Us

Everyone who is Covered under the Policy is required to comply with the duty of disclosure, including Your broker or Your agent.

## 2. Due observance

If You fail to comply with any provision of Your Policy, We may reduce or refuse to pay a claim, but in any event Our rights will be subject to the Insurance Contracts Act 1984 (Cth) or the Marine Insurance Act 1909 (Cth), whichever is applicable.

## 3. Alteration of risk

You must provide Us with immediate written notice of:

- a. every change which materially varies any of the facts or circumstances existing at the commencement of this Policy that comes to Your knowledge, which will also be deemed to include the knowledge of any Person whose knowledge would in law be Your knowledge; and
- b. if You do not provide such notification before an Occurrence giving rise to a claim under this Policy then, subject to either the Insurance Contracts Act 1984 (Cth), or the Marine Insurance Act 1909 (Cth), We may refuse to pay a claim, either in whole or in part.

# CONDITIONS THAT APPLY TO THIS POLICY

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## 4. Cancellation

- a. You may cancel Your Policy at any time by giving Us written notification;
- b. We may cancel only when the law allows Us to do so, and We will allow three business days' notice for You to seek alternative insurance or as otherwise required under the Insurance Contracts Act 1984 (Cth), or the Marine Insurance Act 1909 (Cth);
- c. Where You represent more than one person or entity, We will only carry out Your request for cancellation where a written notification to cancel is received from all parties named in Your Policy Schedule;

In providing any refund of Premium some government taxes and duties are not refundable. If this applies to Your Policy, then no refund of such taxes and duties will be made.

## 5. Goods and Services Tax

- a. The amount of Premium paid by You for Your Policy includes an amount for GST on the Premium. As You are a commercial entity, You must inform Us of the extent to which You are entitled to an input tax credit for that GST amount each time that You make a claim under Your Policy;
- b. No payment will be made to You for any GST liability that You may incur on the settlement of a claim if You do not inform Us of Your entitlement or correct entitlement to any input tax credit;
- c. Despite the other provisions of this insurance (including provisions in the wordings, Your Policy Schedule or any endorsement) Our liability to You will be calculated taking into account any input tax credit to which You are entitled for any acquisition which is relevant to Your claim, or to which You would have been entitled were You to have made a relevant acquisition; and if the Sum Insured is not sufficient to Cover Your loss, We will only pay any GST (less any relevant input tax credit) that relates to Our proportion of Your loss.

## 6. Government taxes and duties

You must pay all levies, taxes, imposts and/or charges, including but not limited to stamp duty and other similar charges which may be payable to or required to be paid to any government in Australia whether acting through any agency, instrumentality or otherwise in relation to Your Policy.

## 7. Law & jurisdiction

This Policy is subject to Australian law and practice. Either the Marine Insurance Act 1909 (Cth) or the Insurance Contracts Act 1984 (Cth) may apply to this Policy.

Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within Australia and to comply with all requirements necessary to give such court jurisdiction. All matters arising under this Policy will be determined in accordance with the law and the practice of such courts.

## 8. Notices

Where there is more than one of You, any notice given by Us under Your Policy to any one of You will be deemed to be notice given to all of You.

## 9. Other Insurances

You must give Us written notice of any policies of insurance already effected, or which may be subsequently effected, covering either in whole or in part the subject matter of the various parts of the Policy. Subject to either the Insurance Contracts Act 1984 (Cth), or the Marine Insurance Act 1909 (Cth), We reserve the right to seek contribution from such other insurers.

## 10. Causing or contributing to loss

We may refuse to pay a claim, or may reduce the amount payable under a claim, to the extent that Your breach of any condition of Your Policy causes or contributes to loss, damage or liability or prejudices Our interests or rights, in respect of that claim.

# CONDITIONS THAT APPLY TO THIS POLICY

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## 11. Reasonable care

At Your own expense You and any person acting for You or on Your behalf must exercise reasonable care and take precautions and use all due diligence to:

- a. prevent loss or damage to and ensure the safety and security of any item or thing which is the subject of the Cover provided under any part of Your Policy;
  - b. employ only competent Employees;
  - c. comply with all statutory obligations and by-laws or regulations and recognised standards imposed by any public authority;
  - d. prevent Personal Injury or Property Damage ;
- a. employ safe work practices; and

## 12. Subrogation

Upon the payment of any claim under this Policy and subject to any restrictions imposed by the Insurance Contracts Act 1984 (Cth) or the Marine Insurance Act 1909 (Cth) We will be subrogated to all Your rights and remedies arising out of such claim against any Person or organisation whatsoever and if there is any recovery by way of subrogation that includes both Our loss and Your loss, then We and You will be entitled to Our individual pro-rata proportions of the recovered amount (that includes any interest component) subject to any such legislation. For the purposes of this clause, loss includes any legal and administrative costs incurred by either party in the recovery.

## 13. Right of recovery

Where another Person other than a Person exempted by law, is liable to compensate You for any loss or damage covered by the Policy, but You have agreed with, or given an undertaking to, that Person without Our written authority, either before or after the loss or damage occurred, that You would not seek to recover any moneys from that Person, We will not Cover You under Your Policy for any such loss or damage.

## 14. Other interested parties

Your Policy does not provide Cover in respect of the interest of any Person or entity not named in Your Policy Schedule. We will however recognise a government agency or Your personal representative in the event of Your death or incapacity whether temporary or permanent.

All Persons entitled to any benefit under Your Policy will be bound by the terms of Your Policy.

## 15. Assignment of interest

No change in, or modification of, or assignment of interest under this Policy will be effective except when made by written endorsement to this Policy and signed by Us.

## 16. Fraudulent disclosure or misrepresentation

You must not make any disclosures or misrepresentations that are fraudulent when proposing Your insurance to Us. Subject to the Insurance Contracts Act 1984 (Cth) or the Marine Insurance Act 1909 (Cth) , We may in certain circumstances cancel the Policy or declare it never existed because it was not properly entered into due to Your fraudulent misrepresentation or disclosure. If We are not entitled to avoid the contract from the beginning, We may be entitled to reduce Our liability under the contract in respect of a claim.

## 17. Prohibited by law

Where this Policy provides any indemnity to You which is prohibited by law, this Policy will be varied by operation of this clause so that this Policy does not respond to the extent that the indemnity is prohibited by law.

# CONDITIONS THAT APPLY TO THIS POLICY

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## **18. Payment of Limit of Indemnity**

We may at any time pay to You the appropriate Limit of Indemnity (after deducting any sum or sums already paid) or any lesser amount for which a claim or claims may be settled and thereupon We will relinquish the conduct and control of and will be under no further liability in connection with such claim or claims except for those costs and expenses incurred prior to the date of such payment.

## **19. Contribution to costs**

If We have not exercised Our rights under clause 21: Payment of Limit of Indemnity (above), Our liability to pay costs and expenses, where any sum or sums exceeding the appropriate Limit of Indemnity have to be paid to dispose of a claim or claims, will be limited to such proportion of the said costs and expenses as such Limit of Indemnity bears to the amount actually so paid, or to be paid.

## **20. Medicare notification**

We will notify Medicare under the Health and Other Services (Compensation) Act 1995, where any payment is due or claim for compensation is lodged under that Act. If a Commonwealth issued 'Notice of Charge' deems that an amount is due to the Commonwealth, that amount will be paid to the Commonwealth prior to and nett of any further compensation payment being made.

## **21. Unintentional breach or non-compliance**

We agree that any breach or act of non-compliance by one party insured by this Policy will not prejudice the rights of any other party Covered by the Policy, provided that such other party was not aware of, and did not participate in or condone, such breach or non-compliance.

# CLAIMS RESPONSIBILITIES THAT APPLY TO THIS POLICY

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When You suffer loss, damage, liability or expense claimable under this Policy, You, or anyone acting for You or on Your behalf must:

- a. take all reasonable measures to avoid or minimise any further loss, damage, liability or expense;
- b. not make any admission, offer, promise, payment or indemnity without Our written consent;
- c. tell Us all the details of the loss immediately either by submission of a claim form or by providing the information required by NTI ACCIDENT ASSIST on 1800 684 669, and in no case more than 30 days after the loss damage, liability or expense occurred.

This information should be provided to Us with any written documentation, for example, a letter of demand from a claimant, a writ, summons or process received from any third party claimant. The obligation to provide this information is ongoing;

- d. pay the Excess to Us at the time of lodgement of claim;
- e. give Us all information and assistance We require in the prosecution, defence or settlement of any claim or any action or any claim made by You for benefits under Your Policy;
- f. notify Us of any other insurance that also provides insurance for any claim under Your Policy; and,
- g. not make any false declaration or statement in support of any claim under Your Policy.

When You claim under this Policy:

- i. We may take over any right that You may otherwise have had against any Person who may be held responsible for the loss, damage, liability or expense and to take recovery action in Your name against those responsible; and
- ii. We may take over and conduct in Your name the defence or settlement of any claim or prosecute in Your name for Our benefit, any claim for indemnity or damages or otherwise and will have full discretion in the conduct of any proceedings and in the settlement of any claim.

# EXCLUSIONS THAT APPLY TO ALL SECTIONS OF THE POLICY

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We will not be liable for any loss, damage, liability, cost or expense, including without limitation compensation or costs, directly or indirectly caused or contributed to by, or in connection with, or arising from:

## **1. Sanction Limitation and Exclusion Clause 1.6.11**

This exclusion shall be paramount and shall override anything contained in this Policy that is otherwise inconsistent.

any claim or benefit hereunder to the extent that the provision of such Cover, payment of such claim or provision of such benefit would expose Us to any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

## **2. Radioactive contamination, chemical, biological, bio-chemical and electromagnetic weapons exclusion**

This exclusion shall be paramount and shall override anything contained in this Policy that is otherwise inconsistent.

- a. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
- b. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
- c. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- d. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this Sub-Clause d. 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.
- e. any chemical, biological, bio-chemical, or electromagnetic weapon.

## **3. Asbestos**

or aggravated by or in any way involving asbestos, asbestos fibres, asbestos products or by-products or derivatives of asbestos, including, but not limited to:

- a. mining, processing, transport, distribution and / or storage of asbestos;
- b. manufacture of asbestos;
- c. processing of asbestos;
- d. installation, removal, cleaning up, decontamination, control or treatment of asbestos;
- e. the inhalation of, or fears of the consequences of exposure to or the inhalation of asbestos;
- f. any Property Damage (including the resultant loss of use of such property).

## **4. Pollution**

- a. Personal Injury or Property Damage (or fines and/or penalties related thereto) caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, toxic liquids or toxic gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) unless such discharge, dispersal, release or escape:
  - i. is neither reasonably expected nor intended by You;
  - ii. is the consequence of a sudden and instantaneous cause, which cause takes place at one clearly identifiable point in time during the Period of Insurance; and,
  - iii. is not the consequence of a failure to maintain plant and equipment in sound functional order (unless such condition could not be readily detectable by You), or the consequence of prolonged wear and tear;

# EXCLUSIONS THAT APPLY TO ALL SECTIONS OF THE POLICY

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- b. any costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release or escape as described in Exclusion 4.a. above, unless:
  - i. such costs or expenses are consequent upon an unexpected, unintended, sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Period of Insurance; and,
  - ii. results in Personal Injury or Property Damage neither of which is otherwise excluded by Your Policy;
- c. the actual, alleged, or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants in North America or in any country to which the laws of North America apply,

Our total aggregate liability during any one Period of Insurance in respect of:

- 1. all claims arising from such Personal Injury or Property Damage;
- 2. all claims for such costs or expenses; and
- 3. all other claims indemnifiable under this Policy as a result of that same Occurrence,

regardless of which Section of this Policy under which they are indemnifiable, will not exceed the Limit of Indemnity specified in Your Policy Schedule under pollution limit.

## 5. Contractual liabilities

You assuming any liability under any contract or agreement unless such liability:

- a. would have attached in the absence of such agreement;
- b. is specifically approved by Our written endorsement; or,
- c. is assumed under Incidental Contracts.

## 6. Marine Cyber Endorsement - LMA5403 11/11/19

- 1. Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability 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, computer process or any other electronic system.
- 2. Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
- 3. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

## 7. Dishonesty

any fraudulent, dishonest, criminal or malicious act or omission on Your part or any person for whose conduct You are responsible.

# EXCLUSIONS THAT APPLY TO ALL SECTIONS OF THE POLICY

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## 8. Fines and penalties

- a. any amount imposed on You in respect of any fines or other penalties by any local, State or Federal Government or other Authority.
- b. any fines, penalties, liquidated damages, punitive damages, exemplary damages, or aggravated damages and any additional damages arising from the multiplication of compensatory damages.

## 9. Hot Work, heat application welding and cutting

hot work, welding, heating, grinding and cutting.

## 10. Navigation liability

any collision, towage or navigation of any Vessel when on, under or in water and in which You have an interest as owner, charterer, lessor, lessee, financier or in which You otherwise have a legal or equitable interest, or upon which You are acting as skipper or crew.

## 11. Overseas actions

any action brought or instituted against You or any judgment obtained in any country other than the Commonwealth of Australia, although this exclusion will not apply to the extent that an order is made by an Australian Court in respect of a judgment obtained in a country other than the Commonwealth of Australia.

## 12. Ownership or control

any Person or organisation who lawfully destroys, or assumes ownership or control of, any property.

## 13. Personal Injury to Employees

- a. Personal Injury to any Employee arising out of or in the course of his/her employment;
- b. Personal Injury to any Person who is, pursuant to any legislation relating to workers' or workmen's compensation or seaman's compensation, deemed to be Your employee or worker;
- c. Any liability in respect of which You are entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to worker's or workman's compensation or seaman's compensation including any Commonwealth legislation or legislation of any State or Territory and whether or not You are party to such contract of Insurance; or
- d. any liability imposed by the provisions of any Workers' or Workmen's compensation legislation, Seaman's compensation legislation or any Accident compensation legislation or any industrial award or agreement or determination.

## 14. Statutory obligations

the failure to comply with any legal and/or statutory obligations or regulations imposed by any government, local or public authority, where such failure to comply is a direct or indirect cause of the loss.

## 15. Terrorism

- a. Terrorism; and / or
- b. steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived Terrorism.

## 16. Unlawful activities

Your participation in an unlawful trade, or unlawful venture, or unlawful act.

# EXCLUSIONS THAT APPLY TO ALL SECTIONS OF THE POLICY

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## 17. War

- a. war, civil war, revolution, rebellion, insurrection, invasion, act of foreign enemy, hostilities (whether war be declared or not), insurrection or the use of military or usurped power, any act by or against a belligerent power or civil strife arising from any such cause;
- b. mines, torpedoes, bombs, rockets, shells, explosive or other similar weapons of war, except for liabilities, costs or expenses which arise solely by reason of the transport of such weapons either as a result of government order, or with Our written consent, where the reason for such transport is the avoidance or mitigation of liabilities, costs or expenses which would otherwise fall within the Cover given under this Policy;
- c. confiscation, nationalisation, requisition or any Property Damage as a result of any order of any government, public or local authority.

## 18. Strikes

arising from any strike, lockout, labour disturbance, riot, civil commotion or act of any Person taking part in any such activity.

## 19. Silica

the inhalation of, or exposure to silica in any form whatsoever.

## 20. Property owned, leased or rented

Property Damage to property owned by or leased or rented by You. Provided that this exclusion shall not apply to liability for Property Damage to:

- a. personal property of any director, executive officer, employee, partner or visitor of Yours;
- b. premises (including landlord's fixtures, fittings and contents) which are leased or rented by You for the purpose of Your Berth Owner or Occupier activities;

Notwithstanding a. to b. above, no Cover is provided under this Policy in respect to liability assumed by You under any contract or agreement which requires You to effect material damage insurance on premises, property or goods.

## 21. Communicable or Infectious Disease

- a. The infection of property, humans, animals or other living creatures by infectious matter or parasite, or the spreading or releasing thereof whether accidentally, knowingly, wilfully, maliciously or otherwise; or,
- b. any losses caused by a disease listed in the Biosecurity Act 2015 (including consequential amendments and transitional provisions) or similar; or,
- c. Any disease in any way related to any form of Coronavirus, SARS, Avian Flu, Swine Flu or similar disease; or,
- d. any disease directly or indirectly caused by or in connection with negatively stranded RNA virus or viruses belonging to the Influenza A genus of the family: Orthomyxoviridae.

## 22. Product Liability

Product Liability.

## 23. Other Activities

- a. Any claims arising from any business or activities outside of Your Berth Owner or Occupier activities.
- b. Any Occurrences at any location other than Your Nominated Marina Berth(s).





## Contact Us

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