

# POLICY WORDING

# BERTH & PONTOON LIABILITY

EFFECTIVE  
**01/05/2025**



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# PART 1 – Product Disclosure Statement

## IMPORTANT INFORMATION

This **Product Disclosure Statement (PDS)** is an important legal document that contains details of **your** insurance **policy**. This **PDS** contains important information required under Part 7.9 of the Corporations Act 2001 (Cth) and has been prepared to assist **you** in understanding the **policy** and making an informed choice about **your** insurance requirements. This **PDS** sets out the significant features of the **policy** including the benefits, limitations and risks and information about premiums.

Before **you** decide to buy insurance, please read this **PDS** thoroughly. **You** will also need to read the **policy** wording for a full description of the terms, conditions, limitations and exclusions of the insurance **policy**. If **you** have any questions, please contact **your** insurance broker.

The preparation date for this **PDS** is 1<sup>ST</sup> May 2025

From time to time **we** may need to update the **PDS** (where permitted or required by law). If this happens a new **PDS** or a Supplementary **PDS** will be sent to you.

## ABOUT THE POLICY

This policy covers your liability to third parties for **Property Damage** and **Personal Injury** as a result of an Occurrence during the **Period of Insurance** with respect to your ownership or occupier of the Nominated Berth(s).

## ABOUT AXA XL and QUAY MARINE HOLDINGS PTY LTD – THE INSURER

This product is arranged and issued by Quay Marine Holdings Pty Ltd ABN 82 010 671 851 AFS License No: 238 271 through their Corporate Authorised Representative Quay Marine Insurance Pty Ltd Licence No: 001265363, acting under a binding authority given to it by XL Insurance Company SE (Australia Branch), to administer and issue policies, alterations, renewals, to collect and process premiums and to manage and settle claims for and on behalf of XL Insurance Company SE (Australia Branch).

AXA XL is authorised and regulated in Australia by the Australian Prudential Regulation Authority (APRA) to conduct general insurance **business**.

Throughout this **PDS**, references to '**we**', '**our**' or '**us**' means AXA XL, XL Insurance Company SE (Australia Branch) and Quay Marine Holdings Pty Ltd through Corporate Authorised Representative, Quay Marine Insurance Pty Ltd.

## GOVERNING LAW

Depending on the nature and circumstances of the risk for which we are covering under this policy, the Marine Insurance Act 1909 (Cth) or the Insurance Contract Act (Cth) 1984 may apply.

Where the Marine Insurance Act 1909 (Cth) applies, it places certain rights and responsibilities on both **You** and **Us** for which **You** or **We** must comply. **You** should make yourself aware of these rights and responsibilities.

## DUTY OF DISCLOSURE UNDER THE MARINE INSURANCE ACT 1909 (CTH) AND INSURANCE CONTRACTS ACT 1984 (CTH)

**You** should also be aware of Sections 23 to 27 of the Marine Insurance Act 1909 (Cth) and Sections 21 to 22 of the Insurance Contracts Act 1984 (Cth), and, in particular, that any contract of marine insurance is based on utmost good faith and in the absence of such good faith, may be avoided. So in addition to the above, **You** have an obligation to disclose to the **Insurer** every material circumstance which is known to **You** and/or which in the ordinary course of **business** ought to be known to You. Every circumstance is material if it would

influence the judgement of a prudent **insurer** in fixing the premium or determining whether they will take the risk. If there is a failure to make such disclosure, **We** may avoid the contract.

### **Duty of Disclosure**

If **you** are applying for or renewing any other insurance, which is not consumer insurance contract, **you** must tell the **Insurer** all information that is known to you, that a reasonable person could be expected to know that is relevant to the **Insurer's** decision to insure **you** and on what terms. This includes all relevant information that **you** ought to know in the ordinary course of **your business**.

**You** do not need to tell the **Insurer** anything:

- that reduces the risk it insures **you** for;
- is common knowledge;
- that the **insurer** knows or should know; or
- which the **insurer** waived **your** duty to tell it about.

### **Non-disclosure**

If **you** fail to comply with **your** Duty of Disclosure, the **Insurer** may cancel **your** contract or reduce the amount it will pay **you** if **you** make a claim, or both. If **your** failure to comply with the Duty of Disclosure is fraudulent, the **insurer** may refuse to pay a claim and treat the contract as if it never existed.

If **you** are in doubt about whether or not a particular matter should be disclosed, please contact your Broker.

### **People You Represent**

**You** must make sure **you** explain the Duty of Disclosure or Duty not to misrepresent to any person **you** represent when **we** arrange any insurance cover for you. Alternatively, **you** may ask any person **you** represent to contact Quay Marine Insurance and they will explain their Duty of Disclosure or Duty not to misrepresent to them directly.

## **NON-DISCLOSURE**

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.

## **GENERAL INSURANCE CODE OF PRACTICE**

The General Insurance Code of Practice was developed by the Insurance Council of Australia to further raise standards of practice and service across the insurance industry.

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

You can obtain more information on the Code of Practice and how it assists You by contacting Us via Our website: [www.quaymarineinsurance.com.au](http://www.quaymarineinsurance.com.au).

For more information on the Code Governance Committee (CGC) go to <https://insurancecode.org.au/>

## **RETAIL CLIENTS**

Under the Corporations Act 2001 and associated Regulations (The Act) Retail Clients are provided with additional levels of protection from other insurance purchasers. The Act defines Retail Clients as:

1. individuals or a small manufacturing **business**, employing less than 100 people or any other **business** employing less than 20 people;
- and
2. that are being provided financial services or **products** that relate to insurance covers including personal property and contents whilst being moved and stored.

Some of the information in this **PDS** only applies to Retail Clients and it is important that **you** understand whether **you** are covered by the additional protection provided.

## IMPORTANT DOCUMENTS

When **we** accept **your** application, **your** contract of insurance is made up of the **policy** wording, the **policy schedule**, the proposal (the information **you** provided to **us** when applying for the policy) and any other written change to the terms of the **policy** (such as an endorsement or supplementary **PDS**).

## COOLING-OFF PERIOD

**You** have the right to cancel the **policy** within 14 days of the date that the cover is inceptioned, unless a claim is made under the **policy**. If **you** return the **policy** during the cooling off period, **we** will refund the full amount of the premium less any duties or taxes payable. The **policy** will be terminated from the inception date.

## CANCELLING THE POLICY

- a. You or Your broker on Your behalf may cancel Your Policy at any time by notifying Us in writing;
- b. We have the right to cancel Your Policy where permitted by law.

### Where the Insurance Contracts Act 1984 applies

The Insurance Contracts Act 1984 permits Us to cancel policies in a number of situations, including but not limited to:

- (i) where You failed to comply with Your Duty of Disclosure; or
- (ii) where You have made a misrepresentation to Us during negotiations prior to the issue of Your Policy; or
- (iii) where You failed to comply with a provision of Your Policy, including the term relating to payment of Premium; or
- (iv) where You made a fraudulent claim under Your Policy or under some other contract of insurance that provides cover during the same period of time that Your Policy covers You.

### Where the Marine Insurance Act 1909 applies

We may cancel this Policy in the event of non-payment of the Premium or for any other reason available at law by giving 30 days notice of cancellation in writing.

**You** shall then be entitled to a refund of Premium for any unexpired **Period of Insurance** provided the premium has been paid.

## COST OF THE POLICY

The cost of **your policy** is the premium due detailed in **your policy schedule**.

It is made up of **your** premium plus any applicable government taxes and charges. All taxes and charges are shown as separate items on the **policy schedule**, (e.g. fire service levy, stamp duty depending upon location and GST).

If **you** have failed to pay the total premium due, **we** may cancel the **policy**.

## MAKING A CLAIM

Benefits are payable if **you** suffer a loss that is covered under the **policy** during the **policy** period, except if an exclusion or condition applies. If **you** have a loss under the **policy** **you** must notify **us** or **your** insurance broker as soon as practicable. Full details of the claims notification procedure is set out in the **policy**.

## DEDUCTIBLES/EXCESS

If **you** make a claim under the **policy**, **you** may be required to pay a **deductible** or excess. Details of applicable **deductibles** are provided in **your policy schedule**.

## POLICY CONDITIONS

There are some conditions, stipulations, limitations, and exclusions that apply to **your policy**. Please see the full details in Part 2 of this document.

There shall be no amendments, modifications, or alterations to this **policy**, unless specifically agreed to by the **Us** in writing.

## SUBROGATION

**You** may prejudice **your** rights with regard to a claim if, without prior approval from **us**, **you** make an agreement with a third party that would prevent **us** from recovering any applicable loss (in whole or in part) from that, or another party.

**Your policy** may contain provisions that have the effect of excluding or limiting **our** liability for a claim under the **policy** if **you** have entered into any agreement that excludes, limits, or delays **your** right to recover damages from another party in respect of such claim.

## COMPLAINTS AND DISPUTE RESOLUTION

There are established procedures for dealing with complaints and disputes regarding **your policy** or claim. These services are free to all policyholders and may be of assistance, should the need arise.

If **you** have any concerns or wish to make a complaint in relation to **your policy**, **our** services, or **your** insurance claim, please contact **us** using the details below, and **we** will attempt to resolve **your** concerns in accordance with **our** Internal Dispute Resolution procedure.

Quay Marine Insurance Pty Ltd  
Level 3, 182 Bay Terrace,  
Wynnum, Qld, 4178  
Email: [compliance@quaymarineinsurance.com.au](mailto:compliance@quaymarineinsurance.com.au)

**We** will acknowledge receipt of **your** complaint and do **our** utmost to resolve the complaint to **your** satisfaction within 10 business days. Where **we** are unable to do so, **our** final decision will be provided to **you** within 30 calendar days of the date on which **you** first made the complaint.

**You** may refer **your** complaint to the Australian Financial Complaints Authority (AFCA) at any time, if **your** complaint is not resolved to **your** satisfaction within 30 calendar days of the date on which **you** first made the complaint. AFCA's contact details are as follows:

Australian Financial Complaints Authority  
GPO Box 3, Melbourne VIC 3001  
Telephone: 1800 931 678  
Web: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)

Should **you** choose to refer **your** complaint to AFCA, **you** must do so within 2 years of **our** final decision.

## FINANCIAL CLAIMS SCHEME

The **policy** may be a protected **policy** under the Federal Government's Financial Claims Scheme (FCS), which is administered by APRA. The FCS may apply in the event that a general insurance company (such as XL Insurance Company SE (Australia Branch)) becomes insolvent. If the FCS applies to the **policy**, **you** may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. **You** may obtain further information about the FCS from <http://www.fcs.gov.au> and the APRA hotline on 1300 55 88 49.

## PRIVACY COLLECTION STATEMENT – QUAY MARINE

**We** are committed to safeguarding and protecting **your** privacy. **We** are bound by the provisions of the Privacy Act 1988 (Cth) which sets out the standards to meet in the collection, use and disclosure of personal information. **We** will only collect personal information from **you** to allow **us** to quote on and insure **your** risks and matters incidental thereto, including investigating, processing and managing claims.

**We** may provide **your** personal information to others, such as **our** related bodies corporate, other **insurers** or **our** reinsurers, claims investigators, lawyers and other professionals, and government bodies. Some of these recipients may be outside of Australia, such as to Europe, the United Kingdom, India, Poland and the United States. Any disclosure outside Australia will be in compliance with the Privacy Act. **We** will not under any circumstances trade, rent or sell **your** information.

If **you** do not provide **us** with complete, accurate and up-to-date information, **we** cannot properly quote for **your** insurance and **we** cannot insure you. If **you** provide **us** with personal information about anyone else, **we** will rely on **you** to have told them that **you** will provide their information to **us**, to whom **we** may provide it, the purposes for which **we** will use it and that they can access it. If the information is sensitive, **we** rely on **you** to have obtained their consent on these matters.

If **you** wish to access or correct **your** personal information, or wish to raise any concerns as to how **we** handle **your** personal information, please write to:

The Privacy Officer  
Quay Marine Insurance Pty Ltd  
Level 3, 182 Bay Terrace,  
Wynnum, Qld, 4178  
Email: [info@quaymarineinsurance.com.au](mailto:info@quaymarineinsurance.com.au)

**Our** full privacy **policy** is available at [www.quaymarineinsurance.com.au/privacy-policy](http://www.quaymarineinsurance.com.au/privacy-policy).

## PRIVACY COLLECTION STATEMENT – AXA XL

**We** are committed to safeguarding and protecting your privacy. **We** are bound by the provisions of the Privacy Act 1988 (Cth) which sets out the standards to meet in the collection, use and disclosure of personal information. **We** will only collect personal information from you to allow us to quote on and insure your risks and matters incidental thereto, including investigating, processing and managing claims.

We may provide your personal information to others, such as our related bodies corporate, other insurers or our reinsurers, claims investigators, lawyers and other professionals, and government bodies. Some of these recipients may be outside of Australia, such as to Europe, the United Kingdom, India, Poland and the United States. Any disclosure outside Australia will be in compliance with the Privacy Act. We will not under any circumstances trade, rent or sell your information.

If you do not provide us with complete, accurate and up-to-date information, we cannot properly quote for your insurance and we cannot insure you. If you provide us with personal information about anyone else, we will rely on you to have told them that you will provide their information to us, to whom we may provide it, the purposes for which we will use it and that they can access it. If the information is sensitive, we rely on you to have obtained their consent on these matters.

If you wish to access or correct your personal information, or wish to raise any concerns as to how we handle your personal information, please write to:

The Privacy Officer  
AXA XL  
Level 28, Angel Place  
123 Pitt Street

Sydney NSW 2000

E: [privacyaustralia@axaxl.com](mailto:privacyaustralia@axaxl.com)

Our full privacy policy is available at <https://axaxl.com/privacy-notice>. If you require further information about how we deal with your personal data under European Economic Area (EEA) data protection laws, please refer to the our European Privacy Notice at <https://axaxl.com/privacy-notice> or contact the Privacy Officer using the contact details above.

## PART 2 – INSURING AGREEMENT

### Section 1 – Indemnity

We will indemnify **You** in respect of sums which **You** will become legally liable to pay as compensation for:

- a. **Personal Injury**; and/or,
- b. **Property Damage**

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

### Section 2 - Legal costs and Defence Costs

Subject to there being a claim occurring under Section 1 and **We** agree to indemnify you, **We** will also indemnify you for:

- a. All legal costs, fees, charges, or associated costs incurred by **You**, in the defence or settlement of a claim for compensation under section 1, subject to our prior written approval which shall not be unreasonably withheld.
- b. Any costs incurred in connection with any coroners inquest or inquiry, subject to our prior written approval which shall not be unreasonably withheld.
- c. Any additional charges, expenses and legal costs recoverable from You resulting from any Occurrence giving rise to legal liability under this Policy, subject to our prior written approval which shall not be unreasonably withheld.
- d. Costs/Expenses incurred by you in the provision of first aid services to a third party at the time of personal injury. This shall not include those costs associated with the payment of medical expenses, or any such costs prohibited by law.
- e. reasonable expenses incurred by You for temporary repairs, the shoring up of 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 is sinking, has sunk, or is otherwise wrecked, disabled or destroyed during the Period of Insurance at the Nominated Berth, but only when ordered to do so by a regulatory authority subject to our prior written approval which shall not be unreasonably withheld.

as a result of an Occurrence in the Period of Insurance at the Nominated 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.

### Section 3 - Pollution

Subject to there being a claim occurring under Section 1 and **We** agree to indemnify you, **We** will also indemnify you for Your legal liability arising out of or in any way connected with **Personal Injury, Property Damage** and **Consequential Loss** caused by or arising out of a sudden and accidental discharge, dispersal, release, seepage, migration or escape of pollutants into or upon land, the atmosphere or any water course or

body of water, emanating from your **Nominated Berth** shown in **Your** schedule and in connection with **Your Berth Owner or Occupier** activities.

**We** will also indemnify you for costs and expenses incurred in the removing, nullifying or clean-up of such contamination or pollution or prevention of further contamination or pollution.

This additional benefit does not include any pollution emanating from any vessel/s occupying your **Nominated Berth**.

## PART 3 – GENERAL EXCLUSIONS

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

### **Vessel Exclusion**

any vessel/s occupying or utilising your **Nominated Berth**, howsoever caused.

This exclusion does not apply to Your Legal Liability to any vessel owners/operators rightfully occupying your **Nominated Berth**.

### **Asbestos**

Asbestos or any materials containing asbestos howsoever caused.

### **Contractual Liability**

any liability or obligation;

- a) Assumed under the terms of a contract, agreement or warranty; or
- b) Which requires the **Insured** effect or maintain insurance with respect to premises, property or goods not owned by the **Insured**.

This Exclusion does not apply to;

- a) The extent that such liability or obligation would have been implied by law in the absence of such contract, agreement or warranty.
- b) Liability is assumed under an incidental contract; or
- c) Any contract specifically excepted by the **Insurer's** written agreement.

### **Fines, Penalties and Damages**

fines, penalties, punitive, exemplary, liquidated or aggravated damages or multiplication of compensatory damages.

### **Hot Work, Welding, Cutting and Grinding**

any **Hot Work**, Welding, Cutting or Grinding not carried out by a properly licensed and approved Individual and strictly in accordance with the Australian Standard AS1674 Safety in Welding and allied processes – Fire precautions and its amendments, or any other applicable Australian Standard or regulatory requirement for such works.

### **Navigational Liability**

The operation of any watercraft in which the **Insured** has an interest as owner, charterer, lessor, or financier or in which the **Insured** has an otherwise legal or equitable interest, whether or not it is used in connection with **Your Berth Owner** or Occupier activities.

### **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.

### **Pollution**

- (a) **personal injury, property damage** and **consequential loss** directly or indirectly caused by or arising out of discharge, dispersal, release, seepage, migration or escape of **pollutants** into or upon land, the atmosphere or any water course or body of water.
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution.

Except as provided for under Part 2, Section 3 – Pollution.

### **Communicable Disease Exclusion**

1. Notwithstanding any provision to the contrary in this (re)insurance, it is hereby agreed that this (re)insurance excludes absolutely all Communicable Disease Loss, save where the conditions of the Infected Individual Exception are met.
2.
  - 2.1 **“Communicable Disease Loss”** shall mean all loss, damage, liability, or expense of whatsoever nature, proximately caused by or significantly caused by or contributed to by or resulting from or arising out of or in connection with any of the Excluded Circumstances, those Circumstances being
    - a) a Communicable Disease, and/or
    - b) the fear or threat, whether actual or perceived, of a Communicable Disease, and/or
    - c) any recommendation, decision or measure, made or taken to restrict, prevent, reduce or slow the spread of infection of a Communicable Disease or to remove or minimise legal liability in respect of such a disease, whether made or taken by a public authority or a private entity and/or
    - d) any recommendation, decision or measure made or taken to alter, reverse or remove any circumstance falling within (c) above, whether made or taken by a public authority or a private entityregardless of any other cause or circumstance contributing concurrently or in any other sequence thereto.
  - 2.2 Without prejudice to the effect of Clauses 2.1 (a), (b) and (d), recommendations, decisions and measures by whomsoever taken to tie-up, lay-up or maintain at anchor, in port or elsewhere, any vessel, conveyance, rig or platform pending resumption of cruising, operation, trading, cargo loading or discharge or other customary use shall not constitute Excluded Circumstances,

notwithstanding they or any of them may have been taken for the reasons set out in 2 (c) above.

### 3

- 3.1 “**Communicable Disease**” shall mean any disease, known or unknown, which can be transmitted by means of any substance or agent from one organism to another where:
- a) the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and
  - b) the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas and
  - c) the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

### 4

- 4.1 The **Infected Individual Exception** shall apply where (1) the actions or decisions of any individual infected or allegedly infected with a Communicable Disease cause or contribute to an alleged loss event and (2) neither such action nor decision nor the alleged cause of the loss event itself was a recommendation, decision or measure as defined at 2.1 (c) or 2.1 (d) above.
- 4.2 Where those conditions are met, the fact or possibility that the individual’s action(s) or decision(s) were impaired or affected by or caused by that individual’s alleged or actual infection shall not exclude recovery of a Loss otherwise recoverable hereon provided always that there shall be no cover for loss, damage, liability, or expense arising from any increase in the spread, incidence, severity or recurrence of a Communicable Disease consequent on that individual’s actions or decisions.

#### **JL2020-013**

##### **Sanction Limitation and Exclusion Clause (LMA3100) - amended to include Australia**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America or Australia.

##### **Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause CL.370**

In no case shall this **Policy** cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

- 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 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.

**10/11/03**

**Marine Cyber Endorsement**

- a) 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 system programme, malicious code, computer virus, computer process or any other electronic system.
- b) 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.
- c) 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.

**LMA5403 11 November 2019**

**Terrorism exclusion**

This **Policy** excludes any damage, cost, expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

An **Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or groups(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**Terrorism** shall also mean steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived **terrorism**.

## **PART 4 – GENERAL CONDITIONS**

### **Law and Jurisdiction**

This **Policy** shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of the Court of competent jurisdiction in the State or Territory of Australia in which this **Policy** has been issued and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this **Policy** shall be determined in accordance with the law and practice of such Court.

### **Amendments to the Policy**

No amendment to this **Policy** will be effective except when made by written endorsement

### **Construction**

It is a condition precedent to Indemnity under this Policy that any Nominated Berth(s) insured under this policy have been constructed and are maintained within the original Manufacturers, installers and/or remain at all times in accordance with the Statutory requirements and guidelines.

### **Goods and Services Tax**

As part of the premium, **We** will charge **You** an amount on account of GST. **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**.

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.

Despite the other terms of this **Policy 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.

### **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**.

### **Interpretation**

Any word or expression which appears in the **Policy** in bold shall have the meaning given in the **Policy** Definitions. Any other word or expression given a specific meaning in the **Schedule**, or any **Endorsement** and beginning with a capital letter, shall have the same meaning throughout the **Policy**.

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

## PART 5 – DEFINITIONS

For the purposes of this **Policy** the following words have the meaning set out below :

<b>Act of Terrorism</b>	means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or groups(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear. Act of Terrorism shall also mean steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived terrorism.
<b>Berth / Pontoon Owner or Occupier</b>	Means the ownership, lease-holding, leasing or sub-letting of the Nominated Berth(s) shown in Your Policy Schedule.
<b>Indemnity / Indemnification</b>	Means monies paid or agreed to be paid by judgment or settlement in respect of <b>Personal Injury, Property Damage</b> or <b>Advertising Injury</b> to which this <b>Policy</b> applies.
<b>Consequential Loss</b>	Means loss of use of tangible <b>property</b> , which has not been physically damaged or destroyed, resulting directly from <b>Property Damage</b> .
<b>Excess / Deductible</b>	means the payment or contribution you will need to make towards the overall cost of your claim. The applicable amount(s) stated shown in the <b>schedule</b> which must be paid by <b>you</b> and represent the amount for which this policy does not cover and will be retained and payable by you.
<b>Employee</b>	Means any person employed or deemed to be employed by the You whether pursuant to any Workers' <b>Compensation</b> Law or otherwise, including but not limited to any: <ul style="list-style-type: none"> <li>a) person under a contract of service or apprenticeship with the <b>Insured</b></li> <li>b) self-employed person working under contract with the <b>Insured</b> and under its direction.</li> <li>c) student or person undertaking work for the <b>Insured</b> under a work experience of similar scheme</li> </ul>
<b>Assured / Insured / Named Insured / You / Your</b>	Means the entity stated in the Policy Schedule as the Named Assured.
<b>Insurer / We / Us / Our</b>	Means Quay Marine Holdings Pty Ltd ABN 82 010 671 751 AFS License No: 238 271, through Corporate Authorised Representative, Quay Marine Insurance Pty Ltd, Licence No. 001265363 acting under a binding authority given to it by XL Insurance Company SE (Australia Branch), to administer and issue policies, alterations, renewals, to collect and process premiums and to manage and settle claims for an on behalf of XL Insurance Company SE (Australia Branch).
<b>Limit of Liability</b>	means the amount stated in the <b>Schedule</b> representing the limit of the Insurer's liability for any one claim or series of claims arising out of any one event.
<b>Nominated Berth(s)</b>	Means the jetty, floating pontoons, access walkways, and/or ramps (connecting the pontoon to the land), together with all fixtures, fittings, and related structures used for mooring, standing, or storing vessels, as detailed in your Policy Schedule.

<b>Occurrence</b>	<p>Means An event, including continuous or repeated exposure to substantially the same general conditions, which results in <b>Personal Injury or Property Damage</b> neither expected nor intended from the Insured's standpoint during the <b>Policy</b> Period.</p> <p>All events of a series consequent on or attributable to one source or original cause shall be deemed one <b>Occurrence</b>.</p>
<b>Period of Insurance</b>	means the date/s and time/s specified within the <b>Policy Schedule</b> for which the Product shall be in force.
<b>Personal Injury</b>	Means death, bodily injury, sickness or disease sustained by a person and shall include mental injury, mental anguish, shock and loss of consortium,
<b>Policy</b>	Means This <b>Policy</b> wording including the <b>Schedule</b> and any endorsements hereto.
<b>Property Damage</b>	Means Physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom that is not owned, used or leased by <b>you</b> .
<b>Schedule / Policy Schedule</b>	Means the <b>document</b> issued with this <b>Policy</b> wording or any subsequent or amended version of that <b>document</b> , and describes is the contract of insurance between You the Insurer.
<b>Vessel</b>	Means Any <b>Vessel</b> , craft or thing designed to float on or in or travel on or through water.

## PART 6 - CLAIMS CONDITIONS

### Claims Notification

- a) In case of loss or damage which may give rise to a claim under this **Policy You** must give notice as soon as practicable to:  
Quay Marine Insurance  
Level 3, 182 Bay Tce  
Wynnum Qld  
Email: [claims@quaymarineinsurance.com.au](mailto:claims@quaymarineinsurance.com.au)
- b) **You** shall endeavour to take all reasonable measures to avoid or minimise any further loss, damage, liability or expense;
- c) At **Your** own expense, supply supporting claims documentation, along with evidence and information as may reasonably be required **Us** for the purposes of investigating or verifying the claim, including details of all other insurances covering the loss or damage or any part of it and, if requested, a sworn declaration of truth of the claim and any connected matters;
- d) **You** must preserve any damaged or defective **property** or **Goods** which might prove necessary as evidence for examination by **Us**;
- e) In the case of loss or damage due to theft or malicious act, **You** must inform the police as soon as possible and take all practicable steps to discover any guilty person and to trace and recover the missing property;
- f) **You** must not abandon any **Goods** to **Us** whether **We** have paid **Your** claim or not; and
- g) **You** must not release carriers, bailees or other third parties from liability when loss or damage is discovered and **You** must take all reasonable actions necessary to properly preserve and exercise all rights against carriers, bailees or other third parties.
- h) **You** must not make any settlement, admission of liability, payment, or promise of payment to a third party without **Our** written consent.

Notice of loss or damage which may give rise to a claim by any one **Insured**, or their agent, shall be accepted by the **Insurer** as notice of that **occurrence** by all of the **insured** parties.

Unless the terms of this Claims Notification Condition are complied with, **Our** liability may be reduced by the amount representing the prejudice caused to **Us** as a result of non-compliance with this Condition.

### Fraudulent Claims

If **You**, or anyone acting on **Your** behalf makes a claim which is fraudulent and/or intentionally exaggerated and/or supported by a fraudulent statement or other device, **We** may refuse to pay a claim and treat the contract as if it never existed.

### Payments on Account

When **We** have accepted **Your** claim, **We** may make reasonable progress payments on account of any claims to **You** at such intervals and for such amounts as **We** may both agree.

Any payment shall be a full release of liability of that part of the claim for which the payment on account is made.

### Contribution

Subject to the provisions of either the Insurance Contracts Act 1984 or the Marine Insurance Act 1909, upon the payment of any claim under this **Policy**, **We** may avail of the right to recover or obtain contribution from:

- a) any person against whom **You** may be able to claim and **We** have the right to take action in **Your** name, and
- b) other insurance covering or which may cover the same loss, the details of which **You** have advised to **Us**.

### **Subrogation**

In the event of any payment by **Us** under this **Policy**, **We** shall be subrogated up to the amount of such payment to all **Your** rights of recovery against any third party who may be held responsible for the loss, damage or expense.

**You** shall, protect and preserve any rights of recovery and, provide such assistance as **We** may reasonably require in any subrogation effort.

**We** shall have full discretion in the conduct or settlement of any recovery action. This includes the right to instruct lawyers to provide advice as to the liability and to represent **You** in such action.

If there is a loss that is partially covered by this **Policy** that **We** have paid for and there remains an uninsured loss, **We** will use **Our** best efforts to agree with **You** upon a fair and proper allocation of amounts that may be recovered from other parties who may be responsible for the losses, having regard to the Insurance Contracts Act 1984 and the Marine Insurance Act 1909 and the relative legal costs and financial exposures attributable to covered and uncovered losses.



[www.quaymarineinsurance.com.au](http://www.quaymarineinsurance.com.au)  
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