



NAUTILUS MARINE

INSURANCE
AGENCY

**MARINA OPERATORS
COMBINED LIABILITY
WORDING JUNE 2011**

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INTRODUCTION

Who is the insurer.

The insurers of this insurance are certain underwriters at Lloyd's whose definitive numbers and the proportions underwritten by them, which will be supplied on application, and in consideration of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, each for their own part and not one for another, their Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

The insurers act through their agent Nautilus Marine Insurance Agency (ABN 34 100 633 038) (AFSL 227186).

In this document, the insurers acting through their agent Nautilus Marine Insurance Agency are referred to as "We", "Us" and "Our".

Our contact details are:

Nautilus Marine Insurance Agency Pty Ltd
28-32 George Street
Sandringham VICTORIA 3191
Telephone: 1300 780 533
Facsimile: 03 8599 5099
Email: customerservice@nautilusinsurance.com.au

1. Our Agreement

Your Marina Operators Combined Liability insurance policy is a contract between You and Us.

Your Policy is made up of:

- this Policy wording;
- the most recent Schedule We give You; and
- any written endorsements to Your Policy issued by Us.

These documents set out the terms and conditions of Your cover.

Please:

- carefully read and check the above documents to make sure that the cover given is what you want. If the cover is not what You want please contact Us;
- keep the documents together and in a safe place.

We charge You a premium for Your Policy. If Your premium is not paid We may cancel our Policy.

2. What We cover You for

You are covered for:

(a) General Liability

We will pay all amounts that You become legally liable to pay by way of compensation for:

- Personal Injury;
- Property Damage; and/or
- removal of wreck;

which:

- happens during the Period of Insurance;
- is caused by an Occurrence; and
- happens in the course of or arising from Your Business,

provided that:

- the Occurrence was not caused by, did not arise out of or was not in connection with any Product unless the Product formed part of repair, installation, assembly or maintenance work carried out by You on Watercraft;
- Our liability for all compensation payable in respect of any claim or a series of claims caused by or arising out of one Occurrence shall not exceed the Limit of Liability; and
- all claims for compensation that result from one original source, or one original cause, shall be considered to have been caused by a single Occurrence.

(b) Products Liability

We will pay all amounts that You become legally liable to pay by way of compensation for:

Product Liability which:

- happens during the Period of Insurance; and
- which is caused by an Occurrence; and
- happens in the course of Your Business and arises out of general sales as an outlet for chandlery, provisions and/or general merchandise, including liability arising out of goods sold.

Excluding:

- any liability arising out of faulty design and/or manufacture;
- any liability arising out of misrepresentation or misdescription of goods for sale;
- second-hand chandlery, provisions or general merchandise;

provided that:

- our liability for all compensation payable in respect of any claim or a series of claims caused by or arising out of one Occurrence shall not exceed the Limit of Liability;
- all claims for compensation that result from one original source, or one original cause, shall be considered to have been caused by a single Occurrence.

(c) Costs and Expenses

Subject to us being liable only for the amounts specified below, We will defend in Your name on Your behalf and at Our cost any claim made or legal proceeding against You for which You are entitled to cover under sections 2(a) General Liability or (b) Products Liability above or would be entitled to were the claim or legal proceeding successful and investigate, negotiate and settle such claim or legal proceeding as We deem expedient.

In addition to the amounts payable for General Liability and Product Liability, We will pay in relation to a claim covered under sections 2(a) General Liability or (b) Product Liability of this Policy, all:

- expenses incurred by Us in defence of a claim;
- costs awarded against You and all interest accruing after judgment on an amount for which you are covered under this Policy up to the Limit of Liability until We have paid, tendered or deposited in court that part of any judgment which does not exceed the Limit of Liability for General Liability claims and for Product Liability claims;
- reasonable costs and expenses, other than loss of earnings, incurred by You with Our written consent; and
- reasonable costs or expenses incurred by You for rendering first aid to others at the time of any Personal Injury.

provided that:

- if to dispose of or settle a claim covered under this Policy, compensation is payable in excess of the Limit of Liability, Our liability in respect of these costs and expenses will be limited to the proportion of the costs and expenses as the Limit of Liability bears to the total compensation payable to dispose of or settle the claim;
- We will not pay for any costs or expenses that are incurred after We have paid or agreed to pay an amount equal to the Limit of Liability; and
- in relation to any claim made and actions instituted within the United States of America or the Dominion of Canada or their territories, protectorates or dependencies, Our liability to pay any of the costs or expenses detailed above shall be included in the Limit of Liability, and not paid in addition to the Limit of Liability.

3. What is not covered

You are not covered for:

1. Vehicles

Liability caused by or arising out of the use of or ownership or operation by You of any Vehicle which is legally required to be registered or legally required to be insured.

This Exclusion shall not apply to:

- (a) liability caused by or arising from the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriage-way or thoroughfare; or
- (b) liability caused by or arising out of the use of an unregistered Vehicle whilst being driven under its own power and being used in the manner for which it was intended within Your premises,

except where:

- i. You are not otherwise covered under any form of compulsory liability insurance or a statutory indemnity and the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles;
- ii. such liability is in connection with any Vehicle (including any tool or plant forming part of or attached to or used in connection with such Vehicle) whilst being operated or used by You or on Your behalf as a tool of trade at Your premises or on any work site;
- iii. such liability is in connection with the delivery or collection of goods to or from any Vehicle;
- iv. such liability is in connection with the loading or unloading of any Vehicle; or
- v. such liability is in connection with any Vehicle temporarily in Your custody or control for the purpose of parking.

2. Aircraft, Hovercraft and Watercraft

- (a) liability caused by or arising out of the ownership, construction, maintenance, servicing, operation or use by You of any Aircraft or Hovercraft;
- (b) liability caused by or arising out of the shifting, movement or operation of Watercraft owned, chartered, used or leased by You or Your sub-contractors;
- (c) liability caused by or arising out of the use, movement or delivery of Watercraft in Your care, custody or control other than for trial trips and movement incidental to the Business within 100 kilometres of Your premises;
- (d) liability caused by or arising out of Products installed in or on any Aircraft or Watercraft owned, chartered or leased by You; or
- (e) liability caused by or arising out of the use by You as a landing area for Aircraft of any property or structure owned occupied or controlled by You. The term "landing area" includes any area on which Aircraft taxi, land, take-off, are housed, maintained or operated.

3. Employment Liability

- (a) Personal Injury to any employee arising out of or in the course of their employment in Your Business. This exclusion does not apply in respect of Your liability for injuries which are not compensated under any relevant workers' compensation legislation in respect of Occurrences where employment is not the major factor causing the injury;
- (b) liability caused by or arising out of any provision of any workers' compensation legislation or any industrial award or agreement or determination; or

- (c) liability for which You are or would have been entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmens' compensation including any legislation of any State or Territory (whether insurance is effected or not).

For the purpose of this exclusion, "employee" means any person engaged under a contract of service or apprenticeship with You but does not include any person employed under such a contract who is excluded from the definition of worker under any workers' compensation legislation.

4. Professional Service

Liability caused by or arising from the rendering of or failure to render professional advice or service by You or any error or omission connected therewith, including but not limited to surveys, inspection or condition reports, and valuations of Watercraft.

This exclusion shall not apply to:

- (a) the rendering of or failure to render medical advice or service by Medical Persons employed by You to provide first aid and other medical services on Your premises; or
- (b) claims in respect of Personal Injury or Property Damage where such professional advice or service is given without fee or charge (whether within the overall cost of services or as a separate amount).

5. Exceeding Capacity

Liability caused by or resulting from exceeding the registered or rated capacity of any lift device, marine railway or drydock.

6. Libel and Slander

Liability caused by the publication or utterance of a libel or slander:

- i. made prior to the commencement date of this Policy;
- ii. made by You or at Your direction knowing it to be false; or
- iii. related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

7. Product Recall

Liability caused by or arising from, or costs and expenses incurred by You for the recall, withdrawal, inspection, repair, replacement or loss of use of Your Products or of any property of which Your Products form a part, if these Products are withdrawn from the market or from use because of any known or suspected defect or deficiency therein, or making any refund on the price paid for Your Products.

8. Faulty Workmanship

The cost of performing, completing, correcting or improving any work undertaken by You.

9. Faulty Design

The cost of repairing, modifying or replacing any part by reason of faulty design.

10. Loss of Use

Liability for loss of use of tangible property which has not been physically damaged or destroyed resulting from or connected with:

- (a) a delay in, or lack of performance by You or on Your behalf of any contract or agreement; or
- (b) the failure of Your Products to meet the level of performance, quality, fitness or durability expressly warranted or represented by You. This exclusion shall not apply to loss of use of other tangible property resulting from sudden and accidental physical damage to or destruction of Your Products after Your Products have been put to use by any person or organisation other than You.

11. Property in Your Physical or Legal Control

- (a) Property Damage in relation to property used by You for rental or chartering purposes whilst rented or chartered to other parties and not under Your direct control;
- (b) Property Damage in relation to property in Your care, custody or control (other than Watercraft);
or
- (c) Property Damage in relation to property held by You for sale.

However this exclusion will not apply and You will be covered for Property Damage to property in Your care, custody or control (other than Watercraft) up to \$100,000 for any one Occurrence and in the aggregate during any one Period of Insurance.

12. Contractual Liability

Liability assumed by You under any contract, warranty or agreement.

This exclusion shall not apply to:

- (a) liability that would have been implied by law in the absence of such contract, warranty or agreement;
- (b) liability assumed by You under a warranty of fitness or quality regarding Your Product;
- (c) liability assumed under an Incidental Contract; or
- (d) written contracts, warranties or agreements agreed by Us and specified in the Schedule.

13. Asbestos

Death, injury, loss, damage or liability of any nature which is directly or indirectly connected in any way with asbestos.

14. Pollution

Liability directly or indirectly caused by or arising out of the actual or potential discharge, dispersal, release, escape or seepage of Pollutants into or upon any property, land, the atmosphere, seas, watercourse or body of water. We shall also not be liable to pay any costs and expenses incurred in the prevention, removal or clean up of such Pollutants.

15. Radioactivity/Nuclear, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste 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; or
- (e) any chemical, biological, bio-chemical, or electromagnetic weapon.

16. War

Liability directly or indirectly caused by, arising out of or in consequence of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, capture, seizure, arrest, restraint or detainment (barratry and piracy excepted) and the consequences thereof or any attempted threat, derelict mines, torpedos, bombs or other derelict weapons of war, destruction of or damage to property by or under the order of any government or public or local authority.

17. Fines and Penalties

Punitive, aggravated, liquidated or exemplary damages, fines or penalties (civil or criminal) imposed by law and or any damages resulting from the multiplication of compensatory damages.

18. Territorial Limits

Liability occurring outside Australia.

19. Legal Jurisdiction

Liability for a claim:

- (a) brought against You in any country outside Australia;
- (b) arising as a consequence of You entering into contractual obligations submitting to the jurisdiction of a Court other than a Court of any State or Territory of Australia; or
- (c) arising as a consequence of any agreement by You to indemnify any other party in respect of awards, judgments or settlements made under the jurisdiction of a Court other than a Court of any State or Territory of Australia.

20. Assault and Battery

Liability caused by or arising from assault and battery committed by or at the direction of You unless reasonably necessary for the protection of persons or property.

21. Underground/water Pipes and Cables

Liability for damage to pipes and cables unless the appropriate authorities have been consulted prior to work commencing and written details have been obtained from them as to the position of such underground pipes and cables together with their supports and fittings.

22. Terrorism

Liability directly or indirectly caused by, arising out of or in consequence of any act of Terrorism. For the purpose of this Exclusion, Terrorism means an act including but not limited to the use or threat of force or violence by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is committed for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any Government and/or to put the public or any section of the public in fear.

This Policy also excludes liability directly or indirectly caused by, arising out of or in consequence of any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

23. Strikes

Liability for Property Damage or Personal Injury arising from any strike, lockouts, labour disturbance, riot, civil commotion or act of any person taking part in any such occurrence.

24. Infidelity

Liability for loss due to infidelity or any such act of a dishonest nature on Your part or Your sub-contractors or employees.

25. Private health insurance

Where the payment of the claim for the liability would constitute the carrying on of "Health Insurance Business" as defined in the Private Health Insurance Act 2007 (Cth) or any succeeding or previous legislation relating to "Health Insurance Business" or which would result in a breach of the provisions of the Health Insurance Act 1973 (Cth).

26. Smoking

Liability for Personal Injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke; or
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

27. Default judgment

Liability under or arising from a judgment entered against You by reason of Your failure to defend the claim, unless We gave You prior written consent to this course of action.

28. Participation

Liability for Personal Injury to a person or Property Damage to their property caused by, arising from or in any way connected with that person and/or their property participating in (including training or practice for) or supervising any sport, exercise, game, match, practice, trial or any other sporting activity.

29. Cyber liability

Liability incurred directly or indirectly by or in connection with any operations involving the internet, intranet or extranet.

However, this exclusion will not apply to Your liability arising from:

- (a) any negligent act, error, omission and/or negligent misrepresentation and/or negligent misstatement;
- (b) defamation, malicious falsehood (including slander of title and slander of good), unintentional false attribution of authorship or passing off;
- (c) any unintentional infringement of intellectual property rights (including copyright, trademark, services mark, moral rights, patent rights, registered design, breach of confidence or infringement of any rights or privacy);
- (d) any unintentional misuse of any information, which is either confidential or subject to statutory restrictions on its use; or
- (e) any documentation or material created by a manufacturer in support of its product (including, but not limited to instruction manuals and safety guidelines) which are already in print and which are also reproduced on the manufacturer's website.

But despite this, in relation to any operations involving the internet, intranet or extranet no cover is provided for Your liability incurred directly or indirectly in connection with any:

- (a) fraudulent use of Your electronic or external email by any of Your employees;
- (b) failure of systems to function and/or inability to transact/trade business for any reason, unless covered by "negligent act, error, omission and/or negligent misrepresentation and/or negligent misstatement" above;
- (c) bulletin boards or chat rooms; or
- (d) failure by You to take precautions to prevent unauthorised access or use of an electronic system or programme.

30. Silica

Liability directly or indirectly caused by, contributed to or arising out of, in whole or in part, the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation You have to indemnify any party because of Personal Injury or Property Damage arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

31. Welding

Liability directly or indirectly caused by, arising out of or in any way connected with You or any person working on Your behalf not complying with Australian Standard 1674.1-1997 – Safety in Welding and Allied Process – Fire Precautions when carrying out welding, thermal or oxygen cutting, grinding, flame heating or other related activities.

32. Mould

Liability directly or indirectly caused by, arising out of or in any way connected with:

- (a) the existence of mould, fungus/fungi, Spore(s), mildew(s), mushroom(s), yeast(s) or biocontaminant(s) or any by-product therefrom; or
- (b) clean-up, remediation, containments, removal or abatement, caused directly or indirectly, in whole or in part, by any:
 - (i) Fungus/Fungi, Mould (s), mildew or yeast or Spore(s) or toxins created or produced by or emanating from such Fungus/Fungi, Mould mildew or yeast;
 - (ii) substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any Fungus/Fungi, Mould(s), mildew or yeast; or
 - (iii) material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures or acts as a medium for any Fungus/Fungi, Mould(s), mildew, yeast, or Spores(s) or toxins emanating therefrom, regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that liability, loss, destruction, damage, cost or expense.

For the purpose of this exclusion, the following definitions apply:

- (a) “Fungus/Fungi” means any plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including moulds, rusts, mildews, smuts and mushrooms;
- (b) “Mould(s)” means, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produced moulds; and
- (c) “Spore(s)” means any dormant or reproductive body produced by or arising or emanating out of any fungus/fungi, mould(s), mildew, plants, organisms or micro organisms.

33. Electronic Data

Liability with respect to loss of or damage to Electronic Data unless such loss or damage arises from:

- (a) the theft of any computer or computer hardware, firmware or any device containing a microchip or integrated circuit containing Electronic Data;
- (b) water and/or other liquids or any other substances being discharged from or leaking or overflowing from any apparatus or appliance or pipes;
- (c) the breakage of glass;
- (d) impact;
- (e) storm, tempest, rainwater, wind, hail, fire, lightning, earthquake, explosion, implosion, sonic boom or volcanic eruption;
- (f) riot, civil commotion, acts of locked out workers or people taking part in labour disturbances that are not uprisings; or
- (g) aircraft or other aerial devices or articles dropped from them.

For the purpose of this exclusion, “Electronic Data” means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

4. Conditions

1. Reconstruction or Conversion

You must notify Us prior to commencing work on a Watercraft that will result in any change in the dimension, tonnage or type of Watercraft and pay an additional premium if requested by Us.

2. Claims Procedure

You will:

- (a) give to Us immediate notice in Writing with full particulars of every Occurrence, circumstance, claim, writ, summons, proceedings, impending prosecution, inquest and the like in respect of which there may arise liability under the Policy;
- (b) use Your best endeavours to preserve any damaged or defective property which may prove necessary or useful by way of evidence in connection with any claim and, so far as may be reasonably practicable, no alteration or repair shall be made to any premises, machinery, fittings, appliances or plant until We have had an opportunity to inspect and given Our consent;
- (c) not make any admission, offer, promise or payment in connection with any Occurrence or claim without Our written consent; and
- (d) give to Us all information and assistance as We may reasonably require in the prosecution, defence or settlement of any claim.

We will:

- (e) be entitled to take over and conduct in Your name the defence or settlement of any claim; and
- (f) have full discretion in the conduct of any negotiations or proceedings in connection with any claim.

3. Discharge of Liabilities

We may at any time pay to You in respect of damages payable as a result of any Occurrence or number of Occurrences arising directly or indirectly from one source or original cause the amount of the Limit of Liability or such limit specified in this Policy in respect thereof (after deduction of any amount or amounts already paid in respect thereof) or any lesser amount for which the claim or claims can be settled.

Upon such payment We shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for costs, charges and expenses incurred by Us or by You with Our written consent prior to the date of such payment.

4. Goods and Services Tax (GST)

All of the amounts insured by this Policy exclude GST.

Any claim settlements, up to the total of all amounts insured, will exclude GST. However, if there is a shortfall between the GST component of Your claim and the amount of input tax credit You are entitled to, We will pay this shortfall in addition to the claim settlement.

We will not be liable to pay any GST, or any fine, penalty or charge that You are liable for arising out of Your misrepresentation of, or failure to disclose, Your proper input tax credit entitlement in the settlement of any claim or premium relating to the Policy.

5. Prevention of Accidents

You must:

- (a) exercise reasonable care to ensure that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition;

- (b) take all reasonable precautions to:
- (i) prevent Personal Injury and Property Damage;
 - (ii) prevent the manufacture, sale or supply of defective Products; and
 - (iii) comply and ensure that You, Your employees, servants and agents comply with all statutory obligations, by laws or regulations imposed by any public authority for the safety of persons or property; and
- (c) take reasonable action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect any defect or deficiency.

6. Cross Liability

Where “You” comprises more than one party, each of the parties shall be considered as a separate legal entity and the words “You” and “Your” shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each party provided that nothing in this Condition shall result in an increase in Our Limit of Liability in respect of any Occurrence or Period of Insurance.

7. Joint Insureds

Where “You” comprises more than one party, information supplied to Us shall be deemed to have been furnished by or on behalf of all parties, and any information supplied to Us or any omission or non-disclosure in relation to any renewal or extension thereof shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such parties.

8. Cancellation

- (a) You may cancel this Policy at any time by giving Us notice in writing. We will refund to You the pro-rata premium less 10% calculated for the unexpired Period of Insurance from the date of cancellation.
- (b) We may also cancel this Policy in any of the circumstances detailed in the Insurance Contracts Act 1984. In the event that We cancel this Policy, We will refund to You the pro-rata premium calculated for the unexpired Period of Insurance from the date of cancellation.

9. Subrogation

In the event of a payment under this Policy to You or on Your behalf, We shall be subrogated to all Your rights of recovery against any person or organisation. At Our request and Our expense, You shall do all things reasonably required by Us for the purpose of enforcing any rights and remedies or of obtaining indemnity from other parties to which We are entitled pursuant to this Policy.

10. Increase in Risk

You must immediately give Us full particulars in writing of any alteration to the Business and/or holdings in any subsidiary company which increase the risk of loss, damage or injury and You will pay such reasonable additional premium as We may require.

11. Premium Adjustment

Where premium has been calculated on estimates furnished by You, You shall, within 30 days after the expiry of each Period of Insurance, furnish to Us such information as We may require to adjust the premium for the Period of Insurance. Any difference in premium shall be paid by or allowed to You. You shall allow Us to inspect Your records to ascertain or verify such information if required.

12. Headings

Headings have been included for ease of reference and the terms and conditions of this Policy are not to be construed or interpreted by reference to such headings.

13. Other insurance

You must give Us full particulars of any other insurance which provides indemnity, in full or in part, for any of the liabilities covered under this Policy within 21 days of entering into any such insurance.

14. How the Insurance Contracts Act may affect this policy

Any terms and conditions of this Policy which are invalid, illegal or unenforceable as a result of the operation of the Insurance Contracts Act 1984 (as amended or modified from time to time or any other Federal, State or Territory legislation enacted in substitution or replacement thereof) shall be ineffective only to the extent of the invalidity, illegality or unenforceability without invalidating the remainder of such term or condition or the remaining terms and conditions of this Policy.

15. Audit

We may audit and examine Your books and records as they relate to the Policy at any time during the Period of Insurance or any time after the expiration or termination of the Policy.

16. Inspection

We have the right, but are not obligated, to inspect Your premises, property and operations at any time without prior notice to You subject to which We will use reasonable endeavours to give You reasonable notice of any intended inspection.

Our inspections relate only to the insurability of Your premises and operations and the premiums to be charged. They are not safety inspections. You must allow Us, Our agents, representatives, employees, contractors or consultants (hereinafter referred to as the "Surveyor"):

- (a) access to Your premises and other places of the Business;
- (b) to conduct such enquiries as the Surveyor deems necessary, including (without limitation) by way of interviews with employees, representatives, contractors or consultants; and
- (c) provide all reasonable cooperation and assistance as We or the Surveyor may require.

We may give You reports on the conditions that We find. We may also recommend changes. We do not, however, undertake to perform the duty of any person or organisation to provide for the health or safety of Your employees, representatives, contractors or consultants or the public. We do not warrant the health and safety conditions of You or Your premises or operations or represent that the You or Your premises or operations comply with laws, regulations, codes or standards.

Neither Our right to inspect or failure to inspect nor the making of an inspection nor any report thereon may be used by You or others in any action or proceeding against Us.

5. Definitions

Any word or expression which this Policy has defined as having a particular meaning will have that meaning everywhere it appears. Definitions in the “singular” will also apply where the word or expression is “plural”.

“Aircraft”

means any object that is intended to fly or move in or through the air, atmosphere or space.

“Business”

means all activities involved in Your business as a marina operator which are declared to Us in the proposal for insurance accepted by Us or otherwise specified in the Schedule and also includes the marina operations listed below:

- repair, alterations or maintenance;
- storage;
- provision of moorings, berths, spaces or buoys;
- hauling and/or lifting out, slipping or launching or moving Watercraft;
- fueling and miscellaneous servicing of a transient nature to Watercraft;
- the ownership, tenancy and use of premises or car parks;
- general sales as an outlet for chandlery, provisions and/or general merchandise;
- provision and management of canteens, social and sports clubs and welfare or child care services including first aid and safety services for Your employees and Your internal first aid, fire and ambulance services.

“Excess”

means the amount specified in the Schedule and elsewhere in this Policy which You must first contribute to each claim.

“GST”

means Goods and Services Tax.

“Hovercraft”

means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

“Incidental Contract”

means:

- (a) any written agreement for the lease of property, except those agreements where there is an obligation to insure such property or where there is an agreement to accept liability regardless of fault;
- (b) any written contract made or entered into with any public authority for the supply of water, gas, electricity or telephone services, except a contract made or entered into with such authority for work done or to be done for such authority; or
- (c) any written contract made or entered into with any railway authority for the loading, unloading or transport of Your Products or any contract relating to the operation of railway sidings.

“Limit of Liability”

means the Limit of Liability specified in the Schedule.

“Medical Persons”

means qualified medical practitioners, nurses, dentists and first aid attendants.

“Occurrence”

means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Property Damage or removal of wreck neither expected nor intended by You.

“Period of Insurance”

means the period specified in the most recent Schedule or any subsequent period for which this Policy has been renewed. A new Period of Insurance begins each time this Policy is renewed.

“Personal Injury”

means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) libel, slander, defamation;
- (d) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- (e) assault and battery committed by You or Your employees for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury arising from latent injury, latent sickness, latent disease or latent disability, that Personal Injury shall be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

“Policy”

means this document, the most recent Schedule We give You and any written endorsements to Your Policy issued by Us.

“Pollutant”

means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

“Product”

means anything (after it has ceased to be in Your possession or in Your legal control) which has been manufactured, extracted, produced, processed, constructed, erected, installed, assembled, altered, repaired, serviced, treated, sold, supplied or distributed by You in the course of Your business, including any packaging or containers (other than a Vehicle) used to package or contain Your Product(s).

“Product Liability”

means any liability for an Occurrence that is caused by or arises out of any Product.

“Property Damage”

means physical loss, physical damage or physical destruction of tangible property or Watercraft including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or physically destroyed, provided such loss of use is caused by an Occurrence.

In the event of a claim arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such Property Damage shall be deemed to have occurred on the day such deterioration or damage was first discovered.

“Schedule”

means the attachment which forms part of this Policy and specifies the Policy number and other details relating to this insurance.

“Vehicle”

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

“Watercraft”

means anything made or intended to float on or in or travel on or through or under water other than pontoons, berths or jetties.

“We” “Us” “Our”

means the insurers acting through their agent Nautilus Marine Insurance Agency ABN 34 100 633 038.

“You” “Your”

means:

- (a) the Insured specified in the Schedule;
- (b) subsidiary companies of the Insured specified in the Schedule whose place of incorporation is within Australia;
- (c) the directors, employees, executive officers or partners of the Insured specified in the Schedule or of a company designated in (b) above, but only whilst acting within the scope of their duties in such capacity;
- (d) every principal of the Insured specified in the Schedule or of a company designated in (b) above in respect of the liability of such principal arising out of the performance by the Insured specified in the Schedule or by a company designated in (b) above of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement, but limited to the coverage provided by this Policy; and/or
- (e) every office bearer of social or sporting clubs or welfare organisations formed with the Insured's consent (other than an Insured designated in (d) above) in respect of claims arising from the duties of, or connected with the activities of, any such club or organisation.

Optional Extensions of Cover – not effective unless specifically arranged and noted in the policy schedule

Pollution Inclusion Endorsement

Notwithstanding Exclusion Clause 14 in Section 3 'What is not covered', if this Extension applies You are covered for Your legal liability for Personal Injury and/or Property Damage as a result of sudden accidental discharge, emission, spillage or leakage upon or into the seas, waters, land or air of oil, petroleum products, chemical or other substances of any kind or nature whatsoever, excluding Your legal liability in consequence of, with respect to, or arising out of:

1. contractual or assumed liability;
2. any loss of use or any consequential loss;
3. fines or penalties of any kind whatsoever;
4. punitive or exemplary damages; or
5. the provision of any Federal, State or local legislation regulating or controlling the discharge, emission, spillage or leakage of oil or any other substance into navigable waters or elsewhere and/or the removal of or liability for the removal of such discharge, emission, spillage or leakage. The phrase "Federal, State or local legislation" will include laws or regulations of any foreign national or political sub-division thereof and any treaty or convention.

Notwithstanding the above, You are not covered in respect of any discharge, emission, spillage or leakage which arises from Your wilful negligence or wilful misconduct.

We also cover the costs of clean up and/or mitigation of a pollution hazard limited to the lesser of \$250,000 and any sub Limit of Liability specified in the Schedule in respect of any one Occurrence less any Excess specified in the Schedule.

Statutory Liability Extension

Notwithstanding Exclusion Clause 16 in Section 3 'What is Not Covered', if this Extension applies You are covered for any Statutory Liability resulting solely from the conduct of Your Business which We are not legally prohibited from paying .

"Statutory Liability" means any pecuniary penalty awarded in and under the laws of the jurisdictions of Australia, against You for any:

- (a) civil offence in connection with the discharge, dispersal, release or escape of a Pollutant;
- (b) strict liability offence in connection with the discharge, dispersal, release or escape of a Pollutant; and
- (c) strict liability offence in connection with a breach of any Australian Federal, State or Territory occupational health and safety law or regulation.

Our aggregate liability for all claims under this Extension will not exceed \$500,000 in excess of the applicable Excess. Our liability under this Extension forms part of and is not in addition to the Limit of Liability.

We will not be liable to make any payment under this Extension for or in respect of any Statutory Liability:

- 1. arising from or contributed to, wholly or partially, by Your reckless or negligent conductor any willful, deliberate or intentional breach, contravention or violation by You of any law or regulation;
- 2. relating to the regulation of vehicular, air or marine traffic;
- 3. arising from or contributed to, wholly or partially, any dishonest, malicious or fraudulent act by You;
- 4. in connection with any consumer protection law.. However, this Exclusion does not apply to a Statutory Liability of Your officers or employees arising in connection with the performance of their duties other than a Statutory Liability arising from or connected with a contravention of a provision of the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- 5. arising from or contributed to, wholly or partially, a willful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any law or regulation;
- 6. arising from a contravention of Section 182, 183, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those Sections;
- 7. in connection with any claim brought against you prior to the retroactive date noted on the Schedule where this extension has been included and agreed.

Errors and Omissions Extension

If this Extension applies, Exclusion Clause 4 in Section 3 'What is not covered' is amended so that the Exclusion does not apply to (and therefore cover is available for) any errors or omissions in reports provided in relation to inspections of Watercraft regardless of whether a fee is charged. However, cover in relation to any errors or an omission is limited to \$200,000 for any one claim and in the aggregate during the Period of Insurance and is subject to the following conditions:

- a) No claim will be accepted where You have made a deliberate misrepresentation, error or omission;
- b) Providing inspections and reports (where they are provided for a fee) make up no more than 10% of all gross receipts of Your Business;
- c) No reports are provided by unqualified or inexperienced staff members;

- d) An approved disclaimer of liability which has been noted and agreed to by Us is included on each report provided;
- e) The Excess in respect to this extension is the greater of \$5000 and the amount shown in the Schedule.
- f) Cover does not include any reports given to clients, the date of which is prior to the retrospective date shown in the policy schedules attached to this endorsement.

The insurers are subject to the Insurance Council of Australia's General Insurance Code of Practice. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Coverholder shown above in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, You should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

who will refer Your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

The Underwriters hereon agree that:

In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

- (ii) Any summons notice or process to be served upon the Underwriters may be served upon:

Nautilus Marine Insurance Agency Pty Ltd
28-32 George Street
Sandringham VICTORIA 3191

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the Underwriters' behalf.

- (iii) If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

The amount of Premium specified within the schedule is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of the Coverholder placing this Insurance.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:

The Claims Manager
Nautilus Marine Insurance Agency Pty Ltd
28-32 George Street
Sandringham VICTORIA 3191

How we protect your privacy

We value Your privacy. Our Privacy Policy, available at www.nautilusinsurance.com.au or by calling Us, sets out how we protect your personal information. We collect, store and use Your personal information to determine whether to offer cover, to administer Your and Our rights under the Policy (e.g. to handle claims) and to provide you with and inform you about insurance and insurance related services we can provide. We may communicate Your personal information to Our service providers for these purposes (e.g. other insurers, loss assessors, claims handlers, lawyers and accountants). This will always be done as permitted by the relevant privacy legislation.

If You wish to stop receiving information about the insurance and insurance related services We can provide, You can call Us or email– customerservice@nautilusinsurance.com.au You also have a right to seek access to and correct Your personal information held by Us. If You would like to do this please call Us.



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