

Vero Marine
Ship
Repairers'
Liability
Wording

OSRL 0405

1 The Cover

It is agreed, subject to the limitations, terms and conditions of this Policy, to indemnify the Insured for all sums which the Insured shall become legally liable to pay by reason of the activities of the Insured as ship repairers within New Zealand (and including whilst within the waters of New Zealand's exclusive economic zone) for:

- 1.1 loss of or damage to any vessel or craft which is in the care, custody or control of the Insured for the purpose of being worked upon
- 1.2 loss of or damage to any vessel or craft upon which the Insured is working, whether moored afloat, or on land or that is under way within the limits of the port at which the work is being carried out for the purposes of relocation or trial trips, or being transported by land
- 1.3 loss of or damage to cargo of or other property on or discharged from any of the vessels or craft referred to above
- 1.4 loss of or damage to machinery or equipment of any vessel or craft, whilst such machinery or equipment is removed from such vessel or craft and is in the care, custody or control of the Insured for the purpose of being worked upon, including whilst in transit between such vessel or craft and the premises of the Insured or whilst in transit to or from or at specialist repairers' or manufacturers' premises
- 1.5 removal of wreck
- 1.6 personal injury and for loss of or damage to third party property (other than property referred to in 1.1, 1.2, 1.3 and 1.4 above) occurring in the course of or arising from the ship repairing operations of the Insured

where such liability results from negligence of the Insured, their employees, agents or sub-contractors occurring during the period of this Policy.

Ship Repairers

For the purposes of this Policy, "ship repairers" means: workmen who carry out servicing, repair, installation or maintenance work to vessels or craft, including the supply of equipment (excluding chandlery) but excludes the activities of building, rebuilding, constructing or converting any vessel or craft as boat builders or shipwrights.

Vessel or Craft

A vessel or craft shall mean any boat or structure (excluding oil and drilling rigs) used or intended to be used for navigation on, under or in water.

2 Exclusions

- 2.1 Notwithstanding anything contained herein to the contrary, this Policy shall not cover any liability:
 - 2.1.1 in respect of property owned by, used by or leased to the Insured
 - 2.1.2 in respect of property in the care, custody or control of the Insured (other than property referred to in Clause 1.1, 1.2, 1.3 or 1.4 above)
 - 2.1.3 being collision liability, liability arising from towage or liability arising from the navigation of any vessel or craft owned or operated by the Insured or any affiliated or subsidiary concern or party
 - 2.1.4 in respect of or arising in connection with any vessel or craft, equipment, spares, tools or any other property accepted by the Insured solely to be stored
 - 2.1.5 in respect of any vessel, tank, enclosure, vent, void or any space engaged (or previously engaged) in carrying explosive or inflammable liquids or solid fuels or gases or arising in connection with work on or near any fuel tank, bunker or pipeline, unless there has been compliance with all rules regulations requirements and recommendations of the port, competent New Zealand authorities and relevant professional bodies. This includes but is not limited to gas free certificates and similar, and recommended practices and methods and systems of working such as hot work permits

- 2.1.6 in respect of or arising in connection with any new vessel or craft being built by the Insured
- 2.1.7 for loss of market; detention, demurrage, loss of time, or loss of freight; or loss of fishing time; or loss of charter hire; or any consequential loss whatsoever
- 2.1.8 for the costs and expenses of rectifying the part or parts affected by faulty workmanship; however, any resultant physical loss or physical damage, or any legal liability to salvors for the direct costs of towage to the nearest port of safety, arising from such faulty workmanship is not excluded
- 2.1.9 for any claim arising directly or indirectly under the Accident Compensation and Rehabilitation Insurance Act 1992 and its subsequent amendments or any replacing legislation, Workmen's Compensation or Employers Liability Acts or any other Statutory or Common Law Liability in respect of loss of life or personal injury to or illness to any visitor or workman or other person employed in any capacity whatsoever by the Insured, their agents or sub-contractors when such loss of life, personal injury or illness arises out of or in the course of the employment of such workman or other person.
- 2.1.10 arising from
 - 2.1.10.1 the existence, maintenance, or use of any truck, automobile or other mechanically propelled vehicle registered or which should be registered for road use
 - 2.1.10.2 the Insured exceeding the registered or rated lifting capacity of any lifting device, marine railway or dry dock
- 2.1.11 in respect of loss or damage specified in Clause 1 above unless discovered and reported in writing to the Company within three hundred and sixty five (365) days of the delivery to Owners or within three hundred and sixty five (365) days after the work is completed by the Insured, whichever may first occur
- 2.1.12 which is or but for the existence of this Policy would be covered under any other indemnity or insurance inuring to the benefit of the Insured, except for any deductible of the amount which would be recoverable under such other indemnity or insurance had this Policy not been effected, but only to the extent that the deductible amount is covered by this insurance even if any other indemnity or insurance has a condition to the same or similar effect
- 2.1.13 arising from any strike, lockout, labour disturbance, riot, civil commotion or act of any person taking part in any such occurrence, or from any act of any person acting maliciously
- 2.1.14 directly or indirectly occasioned by, happening through or in consequence of:
 - 2.1.14.1 war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or piracy
 - 2.1.14.2 destruction of or damage to property by or under the order of any government or public or local authority
 - 2.1.14.3 derelict mines, torpedoes, bombs or other derelict weapons of war
 - 2.1.14.4 any act of terrorism. For the purposes of this sub-clause, an act of terrorism means any 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 done 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
- 2.1.15 assumed under contract or otherwise in extension of the liability imposed upon the Insured by law in the absence of a contract
- 2.1.16 for personal injury or loss of or damage to or loss of use of property directly or indirectly caused by asbestos
- 2.1.17 for payments under any penalty clause; or in respect of fines, penalties, liquidated damages, punitive or exemplary damages, however described

2.1.18 in respect of general average, sue and labour, salvage and salvage charges, and/or collision liability to any extent that they are not recoverable by reason of the agreed value and/or the amount insured in respect of the vessel or craft being inadequate.

2.2 Faulty Design

This Policy does not cover any liability for loss damage cost or expense arising directly or indirectly from or in respect of:

2.2.1 the condemnation or rejection of any part by reason of faulty design

2.2.2 any loss or expense arising from such condemnation or rejection

2.2.3 the cost or expense of repairing, modifying or replacing any part (or for any loss or expense so arising) by reason of faulty design.

2.3 Professional Advice

This Policy does not cover any liability for loss damage cost or expense arising directly or indirectly from the giving of any professional advice or service by the Insured provided for a fee, including any error or omission.

2.4 Electronic Time/Date Exclusion Clause

This Policy does not cover any liability for loss damage cost or expense that arises directly or indirectly from of the actual, alleged or anticipated failure or inability of any electronic device at any time to

2.4.1 correctly recognise any time as its correct time or any date as its true calendar date; or

2.4.2 recognise, capture, save, retain or correctly to manipulate, interpret or process any data or information or command or instruction as a result of treating any time otherwise than its correct time, or any date otherwise than as its true calendar date; or

2.4.3 recognise, capture, save, retain or correctly to process any data as a result of the operation of any command which has been programmed into any electronic device, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data on or at a specific time or on or after any date.

For the purpose of this exclusion an "electronic device" shall mean any computer or other equipment or system for processing, storing or retrieving data, including but not limited to navigation or radio equipment, audio system, any computer hardware, firmware, software, media, microchip, integrated circuit or similar device.

2.5 Pollution Exclusion Clause

This Policy does not cover any liability for any loss damage cost or expense, fine or penalty, of any kind or nature whatsoever incurred by the Insured, directly or indirectly arising from the actual or potential discharge, emission, spillage or leakage ('discharge') upon or into the seas, waters, land or air anywhere in the world, of any

2.5.1 substance, including but not limited to oil, petroleum products, radioactive material, soot, smoke, vapour, particulate, gas, acids, alkalis, chemicals, refrigerant or insulation, paints, asbestos, anti-foul, cleaning substances or debris

2.5.2 emission or broadcast, including but not limited to radio signal, electrical or electromagnetic interference, or radiation or radioactivity

2.5.3 sound or noise

2.5.4 thermal energy

This Pollution Exclusion Clause shall not apply to any such discharge caused by a sudden instantaneous unintended and unexpected identifiable happening which takes place in its entirety at a specific time and place.

All terms and conditions of this Policy shall be deemed amended to the extent necessary to give full force and effect to this Pollution Exclusion Clause.

2.6 Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause

This Clause shall be paramount and shall override anything contained in this insurance inconsistent therewith:

- 2.6.1 In no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from
- 2.6.1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
 - 2.6.1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
 - 2.6.1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
 - 2.6.1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
 - 2.6.1.5 any chemical, biological, bio-chemical or electromagnetic weapon.

3 Premium

The minimum and deposit premium shall be subject to adjustment at expiry of the period of this Policy at 100% on gross charges of the Insured.

Gross Charges are defined as total charges (collected or uncollected) made by the Insured as ship repairers during the period of this insurance. No deduction shall be made from the gross charges in respect of any sub-contracted work.

4 Deductible

This Policy is subject to the Deductible stated in the schedule. The Deductible is inclusive of GST as applicable.

5 Limit of Liability

The Limit of Liability under this Policy, in respect of any one event or series of events arising out of one occurrence, shall not exceed the maximum amount as specified in the Schedule exclusive of GST, but inclusive of costs, charges and expenses as provided for in Clause 6 below.

In the event of a claim or claims being settled under this Policy, the Limit of Liability is reduced by the amount of the claim or claims paid. Reinstatement to the Limit of Liability shall be automatic, subject to payment of any additional premium requested by the Company at terms and conditions to be agreed.

6 Costs

6.1 In respect of any claim this Policy shall also cover (subject to Clause 5 above)

- 6.1.1 costs, charges and expenses which the Insured may, with the prior written consent of the Company incur; and
- 6.1.2 costs awarded against the Insured.

In the event of this Policy being one layer of a series of layers of insurance, the amount recoverable in respect of such costs, charges and expenses shall not exceed the proportion of such costs, charges and expenses that the damages recoverable under this Policy bears to the total amount of damages arising from such claims or proceedings.

6.2 In cases where:

6.2.1 the parties claiming against the Insured fail in their action, or withdraw their action, or

6.2.2 the amount of any compromise or award is such that there is no claim on this Policy or the claim on this Policy is less than the amount stated in any undertaking or formal notice under the Claim Control condition below

the lawyers, having the conduct of the investigation and defence, shall apportion the costs, charges and expenses incurred on an equitable basis between the parties concerned including the Insured, the Company and insurers (if any) concerned on other layers having due regard to the amount of the claim, the amount of any award or settlement and the amounts severally at risk by the parties concerned, taking into account also any undertaking or formal notice given by any of the interested parties as to the conduct of the defence and any settlement. In the event of any disagreement with the apportionment, the matter shall be referred to arbitration by any independent arbitrator to be agreed between the parties concerned.

7 Travelling Workmen Clause

Provided this activity has specifically been declared to the Company at inception or on renewal, the cover provided by this Policy shall be extended to cover the legal liability of any persons employed by or on behalf of the Insured whilst working as ship repairers on board a vessel or craft in any New Zealand port or on a voyage between New Zealand ports within the waters of New Zealand's exclusive economic zone. For the purposes of this Policy, it shall be of no effect that the persons employed by or on behalf of the Insured have signed on as members of crew.

8 Contract Condition

It shall be a condition precedent to cover under this Policy that any work undertaken by the Insured that is the subject of a claim was subject to the Insured's standard terms and conditions of trade.

The Company may waive the application of this Clause. Any such waiver must be in writing. The Company has the right to negotiate different terms and conditions including Limit of Liability, Premium and Deductible.

9 General Conditions

9.1 Basis of Insurance

The proposal and declaration submitted by the Insured or on the Insured's behalf, and any other documentary information, together with the Schedule, these Clauses, and any endorsements, form the basis of this Policy.

9.2 Joint Insureds

If there is more than one Insured named in the Schedule, the cover under this Policy shall be provided jointly.

Nothing in this Joint Insureds Clause shall be read as increasing the limit of the Company's Limit of Liability as shown on the Policy Schedule.

9.3 Inspection of Books

The Insured shall keep a complete and accurate record of all gross charges for operations covered by this Policy and shall make those records available to the Company upon request.

9.4 Notice of Claim and Claims Co-operation

In the event of any event which may result in a claim under this Policy the Insured shall give prompt written notice to the Company. Any and all summons or process (or copies thereof) served upon the Insured shall be forwarded to the Company as soon as received. The Insured shall keep the Company fully advised of all developments and shall co-operate fully with the Company's investigations.

9.5 Claim Control

The Company shall at any time be entitled (but not obliged) to control or take over the conduct of the investigation defence and settlement of any claim suit or proceeding against the Insured which is or is likely to be the subject of indemnity under this Policy.

Should this Policy be one layer of a series of layers of insurance, and more than one layer is likely to be involved in a particular event, the Insured shall endeavour to obtain the agreement of the insurers of each affected layer as to the manner in which such control or taking over shall be effected and the costs, charges and expenses incurred borne.

If the Company consider that a claim made against the Insured should not be contested then the Company shall be entitled at any time to give an undertaking to the Insured to indemnify him for a sum equivalent to the Limit of Liability stipulated in the Schedule and Clause 5 above or such lesser sum as would have been payable under this Policy had the claim been settled at that time. Thereupon the Company shall relinquish any control and conduct of the investigation or defence of the claim and shall thereafter have no further liability in respect of the claim or for costs, charges or expenses incurred subsequent to the giving of the undertaking. Where however the claim is thereafter settled for a lesser sum, costs, charges and expenses shall be apportioned in accordance with Clause 6.2.2 above.

In the event of this Policy being one layer of a series of layers of insurance then if the Company wished to exercise their rights under this condition and at such time the Insurers of another layer or layers reject the settlement then possible, the Company shall be entitled to give formal notice to the Insured that they consider the claim should be settled at that time. Thereafter the Company shall have no liability for any costs, charges or expenses incurred subsequent to the giving of such notice. Where however the claim is thereafter settled for a sum less than the amount at which it was capable of being settled at the date when such notice was given, costs, charges and expenses shall be apportioned in accordance with clause 6.2.2 above.

9.6 Subrogation

In the event of any claim being paid under this Policy the Company shall be subrogated to all rights and remedies of the Insured.

The Insured shall not admit liability, give any waiver of subrogation, or make any statements or instigate any conduct which may encourage a third party to make a claim against the Insured without the prior written permission of the Company.

9.7 Welding and Soldering

In respect of any welding or hot work or any process involving the application of heat by using a naked flame or open heat source including soldering ('welding work'), carried out by or on behalf of the Insured on, to or near any vessel or craft, compliance with the following conditions shall be a condition precedent to the Insured being granted indemnity under this Policy in respect of any legal liability arising out of such work.

The Insured shall comply with all relevant New Zealand safety standards, and port and statutory and local body rules and regulations with respect to welding work. In particular

- 9.7.1 all such work shall be carried out by experienced welders or workmen who have qualifications, certification and experience that is acceptable to the third party for whom the welding work is to be performed
- 9.7.2 all such work shall be carried under a hot work permit system, with trained Fire Watch personnel in attendance during and for 30 minutes after operation, with access to fire fighting equipment
- 9.7.3 the area of the work shall be cleared of combustible material for a safe distance from or beneath the place where such work is being carried out. A safe distance will be not less than ten metres when welding or cutting operations are carried out. Where such precautions are impracticable such material shall be covered with fireproof blankets or similar protective equipment. Combustible parts of the premises and/or the vessel will be similarly protected
- 9.7.4 fire extinguishers of a type and capacity suitable for the combustible material and the premises and/or vessel's construction will be kept immediately adjacent to the area of work and available for immediate use
- 9.7.5 any welding or soldering equipment shall be lit or switched on for as short a time as possible before use and extinguished immediately after use
- 9.7.6 lighted or heated equipment shall not be left unattended

9.7.7 a thorough examination for any signs of combustion shall be made within or below the area in which work has been undertaken half an hour after the termination of each period of work

9.7.8 before applying heat to metal built into or projecting through bulkheads, walls, floors or ceilings an examination will be made to ensure that the other end of the metal is not in hazardous proximity to combustible material.

9.8 Due Diligence

It is the duty of the Insured, their agents, their employees and sub-contractors at all times to take such measures as may be reasonable for the purposes of averting or minimising a loss.

9.9 Assignment

It is agreed that no assignment of or interest in this Policy or in any monies which may be or may become payable is to be binding on or recognised by the Company, unless a dated notice of such assignment or interest signed by the Insured and by the assignor in the case of subsequent assignment, is endorsed on this Policy and the Policy with such endorsement is produced before payment of any claim or return of premium, but nothing in this condition is to have effect as any agreement by the Company to a sale or transfer to new management.

9.10 Cancellation

This Policy may be cancelled by either party on giving the other 30 days notice in writing.

The Company may cancel this Policy at any time where

9.10.1 it is entitled to do so by statutory law

9.10.2 the Insured has failed to notify the Company of any specific act or omission where such notification is required under the terms or conditions of this Policy

9.10.3 the Insured has acted in contravention of or omitted to act in compliance with any terms or condition contained in this Policy which empowers the Company to refuse to pay a claim in the event of such contravention or omission

9.10.4 the Insured has failed to pay the premium

In the event of the Company giving notice then the words "minimum and" in Clause 3 above shall be deemed to be deleted. The Insured shall provide to the Company any particulars required to adjust the premium.

Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Policy Schedule shall be the agent of each of the insured persons or companies for the purposes of receiving notice of cancellation. Where the Insured has an insurance broker, the broker shall be the agent of the Insured for the purposes of tendering a notice of cancellation.

9.11 Law & Practice

This insurance is subject to New Zealand law & practice.

9.12 Jurisdiction

All disputes or claims arising from this Policy are subject to the exclusive jurisdiction of the courts of New Zealand.

Before resorting to proceedings in the courts, the parties shall exercise their best endeavours to resolve their differences by negotiation and, if necessary, by formal mediation, to be conducted in Auckland, New Zealand.

9.13 Clause Paramount

Notwithstanding anything contained in this Policy to the contrary, the Marine Insurance Act 1908 and amendments shall take precedence. However, the Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause, as above, is excluded from the operation of this Clause Paramount.