

Vero Marine
Marina
Operators'
Liability
Wording

OMLB 0709

1 Cover

The Company hereby agrees, subject to the limitations, terms and conditions of this policy, to indemnify the Assured for all amounts the Assured shall become legally liable to pay as compensation for loss of or damage to any property of third parties, death or personal injury as a result of an occurrence in New Zealand occurring at the Marina or its nautical approaches for which the Assured is responsible, all as specified in the Policy Schedule. That occurrence must take place during the Period of Insurance and be occasioned through any of the Assured's activities as an owner and/or provider of the following Marina facilities and/or services:

- 1.1 waterborne facilities and/or services including but not limited to the provision of moorings, berths, buoys, navigational and/or other similar equipment and facilities
- 1.2 land-based vessel storage facilities but excluding drystack storage facilities unless specifically declared and agreed to by the Company

Note that clause 4.10 below excludes liability as a ship repairer or contractor for work done on vessels or their equipment.

- 1.3 hauling out and/or lifting out, slipping and/or launching and/or shifting of vessels
- 1.4 fuelling and provisioning services
- 1.5 attempted or actual raising of wreck providing such liability results from the negligence of the Assured, its servants agents or subcontractors.

The term "wreck" includes:

- (a) *Any third party ship, vessel or craft which is abandoned, stranded, or in distress, or any equipment or cargo or other articles belonging to or separated from any such ship vessel or craft; and*
- (b) *Any third party derelict ship, vessel or craft; and*
- (c) *Any third party property lost overboard or similarly separated from any ship, vessel or craft*

that are deemed by the relevant competent local or regional authority to constitute a hazard to navigation or the environment.

- 1.6 Voluntary removal of wreck expenses incurred by the Assured as marina operator for the purpose of removing a wreck or debris from the marina or its nautical approaches for the purposes of safe navigation or marina management are not so insured by this Cover Clause, *but can be so included by endorsement for additional premium.*

Definitions

"Marina facilities" includes fixed pile jetties, piers, pontoons and other marine equipment but does not include any land-based facilities, other than vessel storage facilities. *Therefore "Marine facilities" does not include, for example, owned or occupied premises, restaurants, kiosks or car parks.*

"Drystack storage facility" a vertically-orientated storage facility, either an enclosed or open structure, where vessels or marine equipment are mechanically lifted to storage spaces on open racks.

2 Deductible

The deductible specified in the Schedule shall apply to each and every claim in respect of all claims under this policy. Only one deductible shall apply per occurrence.

3 Limit of Liability

The Limit of Liability under this insurance, in respect of any one event or series of events arising out of any one occurrence shall not exceed the amount as specified in the Schedule inclusive of all costs, charges, and expenses including but not limited to legal costs.

4 Exclusions

Notwithstanding anything contained in this Policy to the contrary, it is understood and agreed that this Policy does not cover the Assured:

- 4.1 for any death, injury, liability or expense which falls within the scope of cover provided by any accident compensation legislation, or any other statutory or common law liability in respect of death or personal injury of any person or persons employed in any capacity whatsoever by the Assured, when such death or personal injury arises out of or in the course of the employment of such person or persons
- 4.2 for any loss, damage, liability or expense arising out of the maintenance, ownership and/or use of any vessel or watercraft, or motor vehicles registered for road use, unless specifically noted by the Company on the Policy Schedule or by endorsement
- 4.3 for any liability assumed under contract or otherwise in extension of the liability imposed upon the Assured by law
- 4.4 for punitive, aggravated and/or exemplary damages, demurrage, loss of hire or time or freight or charter, loss of market or any other consequential loss howsoever arising
- 4.5 for any loss, damage, liability or expense arising from any exhibition, show, demonstration, race or regatta unless specifically noted by the Company on the Policy Schedule or by endorsement
- 4.6 for any loss, damage, liability or expense to property owned, leased, rented or hired by the Assured
- 4.7 for any loss, damage, liability or expense incurred by or resulting from exceeding the registered or rated lifting capacity or weight load of any lifting device, marine slip-way or dry-dock
- 4.8 for any loss, damage, personal injury, liability or expense as a result of any infidelity or any act of dishonesty on the part of the Assured or their sub-contractors or employees
- 4.9 for any loss, damage, personal injury, liability or expense that may be recoverable under any other insurance insuring to the benefit of the Assured except as to any excess over and above the amount recoverable under that insurance
- 4.10 for any loss, damage, personal injury, liability or expense in respect of damage as a result of any repairs, maintenance or alterations undertaken by or on behalf of the Assured in the course of operating the marina or providing or facilitating any service
- 4.11 for any:
 - 4.11.1 loss, damage, personal injury, liability, expense or loss of use of property directly or indirectly caused by or contributed to or arising from
 - 4.11.1.1 seepage, pollution or contamination
 - 4.11.1.2 subsidence caused by subsurface operations of the Assured
 - 4.11.1.3 removal of, or prevention of access or loss of or damage to subsurface oil, gas or any other substance, the property of others
 - 4.11.1.4 any site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any waste materials or substances
 - 4.11.2 cost arising from evaluating and/or monitoring and/or controlling seepage and/or contaminating substances
 - 4.11.3 cost of removing and/or nullifying and/or clearing up seeping and/or polluting and/or contaminating substances
 - 4.11.4 actual or potential discharge, release, emission, spillage or leakage upon or into the seas, waters, land or air of any pollutant, living plant or organism, toxin or substance, including but not limited to oil, petroleum products, chemicals, sewage, ballast or waste water, exotic animals or plants, antifouling, paint, or cleaning or preparation materials

unless caused by a sudden and unexpected and unintended happening that takes place in its entirety at a specific place and time
- 4.12 for any loss, damage, personal injury, liability or expense caused by or resulting from the failure on the part of the Assured, or their employees with the knowledge of the Assured, to comply with all statutory obligations, by-laws or regulations imposed by any public authority

- 4.13 for any loss, damage, personal injury, liability or expense directly or indirectly caused by or contributed to or arising from:
- 4.13.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
 - 4.13.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or associated nuclear component thereof
 - 4.13.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
 - 4.13.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. This exclusion in this sub-clause 4.13.4 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
 - 4.13.5 any chemical, biological, bio-chemical or electromagnetic weapon.
- 4.14 for any loss, damage, personal injury, liability or expense caused by or resulting from hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:
- 4.14.1 by any government or sovereign power (*de jure or de facto*), or by any authority maintaining or using military, naval or air forces; *or*
 - 4.14.2 by military, naval or air forces; *or*
 - 4.14.3 by any agent or any such government, power, authority or forces
- 4.15 for any loss, damage, personal injury, liability or expense resulting from any weapon of war employing atomic fission or radioactive force whether in time of peace or war
- 4.16 for any loss, damage, personal injury, liability or expense caused by or resulting from insurrection, rebellion, revolution, civil war, usurped power or action taken by government authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority
- 4.17 for any loss, damage, personal injury, liability or expense caused by or resulting from any act of terrorism.
- Definition:** "An act of terrorism means an act including but not limited to the use of force or violence and/or threat thereof, of any person or group, whether acting alone or on behalf of or in connection with any organisation or government 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.
- This exclusion 4.17 also excludes any loss, damage, death, injury, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling preventing suppressing or in any way relating to any such act of terrorism
- 4.18 for any loss, damage, personal injury, liability or expense directly or indirectly caused by or contributed to or arising (whether directly or indirectly) from the use or presence of or the ingestion inhalation absorption or exposure to
- 4.18.1 asbestos, or any product containing asbestos; *or*
 - 4.18.2 glass fibre or similar compound chemical in any form including dust, whether or not such materials are used in vessel construction alteration or repair, or from any binding curing or cleaning chemical
- 4.19 for any loss, damage, personal injury, liability or expense consequent on the publication of any libel or slander made before the inception of the period of insurance; or made with the Assured's direction with knowledge of its falsity; or relating to advertising, broadcasting or telecasting activities conducted by or on behalf of the Assured
- 4.20 for any loss, damage, personal injury, liability or expense arising from the failure of any product or product design said by the Assured to fulfil the function intended or represented by the Assured unless the failure is due to any malfunction or defect in the product or design itself
- Definition:** For the purpose of this clause 4.20, 'product' means any property or any container of the property (the container not being a vehicle or vessel) manufactured, constructed, erected, installed, repaired, serviced, treated, renovated, sold, supplied or distributed by the Assured, after the property has ceased to be in the Assured's possession or control

5 Conditions

5.1 Defence Costs

The Company agrees to indemnify the Assured to the extent of this Policy's proportion of legal costs and fees or expenses of counsel occasioned by the defence of any claim against the Assured for any liability or alleged liability of the Assured covered by this Policy, provided that such costs, charges or expenses are incurred with the prior written consent of the Company. The Company shall have the option of nominating legal representatives to represent the Assured in the defence of any claim made against the Assured, and the Company may exercise exclusive direction and control of the defence. The Assured must co-operate with the Company and shall not assume any obligation, admit any liability, or incur any expense for which the Company may be liable without prior written approval.

5.2 Cancellation

The Assured may cancel this insurance at any time by giving the Company 30 days written notice. The Company may cancel this insurance at any time by giving the Assured written notice if the Assured fails to comply with any provision of this insurance, including the payment of premium, or where the Assured is otherwise in breach of any of the terms of this insurance. The Company may cancel this insurance for any other reason allowable by law. After cancellation the Company may, at their sole discretion, refund to the Assured the amount of unearned premium calculated at the Company's usual short-term rates. Even if the insurance is cancelled, the Assured shall furnish the Company with all particulars it requires to be able to adjust the premium.

5.3 Inspection

The Company may at any time through a duly authorised representative examine the premises or facilities of the Assured and the Assured shall give all reasonable assistance. In the event of any defects or deficiencies being found the Company shall notify the Assured of the particulars of such defects and shall agree a specified time to correct such faults. In the event that a time frame cannot be agreed to correct such faults the Company may cancel the policy as provided above.

5.4 Claims

- 5.4.1 As soon as possible after an occurrence which may give rise to a claim under this insurance the Assured shall give the Company notice in writing containing full particulars of any claim to be made. The Assured shall give to the Company all further particulars, documents, evidence and access to relevant persons as may reasonably be required by the Company without delay.
- 5.4.2 In respect of any occurrence likely to give rise to a claim under this insurance, the Assured is obligated to and shall take such steps to protect their (and the Company's) interests as would reasonably be taken in absence of this or similar insurance.
- 5.4.3 If a claim is made or suit is brought against the Insured the Insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative
- 5.4.4 The Insured shall co-operate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organisation, who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this policy, and the Insured shall attend hearing and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- 5.4.5 In the event of any accident, loss, damage or injury for which a claim may be made under this Policy, the Assured agrees to subrogate to the Company all rights which the Assured may have against any other person or entity with respect to the accident, loss or occurrence.
- 5.4.6 The Insured shall not admit liability for or settle any claim, or incur any costs or expenses in connection with a claim, without the prior written consent of the Company which shall be entitled to take over and to conduct in the name of the Insured (which shall be a condition precedent to the Insured's right to be covered under this Policy) the defence or settlement of any claims, and any counterclaim. Nevertheless, neither the Insured nor the Company shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed) shall advise that such proceedings should be contested.
- 5.4.7 No liability shall attach under this insurance until the liability of the Assured has been determined by final judgement against the Assured or by agreement between the Assured and the claimant with the written consent of the Company. In the event the Assured shall fail or refuse to settle any claim, as authorised by the Company, the liability of the Company to the Assured shall be limited to the amount for which settlement could have been made at the time of such failure or refusal.
- 5.4.8 No claim or demand against the Company under this Policy shall be assigned or transferred, and no person, excepting a legally appointed receiver of the property of the Assured, shall acquire any rights against the Company by virtue of this insurance without the expressed consent of the Company.

6 Jurisdiction and Law & Practice

This Insurance shall be subject to New Zealand Law and Practice.

Any dispute, of whatever nature, arising out of or in relation to any matter relating to this Policy shall be determined by court proceedings issued in New Zealand. New Zealand courts shall have exclusive jurisdiction to hear and determine any such Proceedings and resolve any such dispute.

Liability Claims Procedure

Vero Marine Insurance
P O Box 1759
Auckland
New Zealand

Tel +64 9 363-2600
Fax +64 9 363-2601
E-mail claims@veromarine.co.nz
Website <http://www.veromarine.co.nz>

Notification

Please advise your nearest office of Vero Marine Insurance (either directly or through your broker) immediately should any of the following occur:

- Claim - this includes any legal proceedings and/or allegations of wrongdoing coupled with a demand for compensation
- Complaint - this includes allegations of incompetence, poor performance or expressions of dissatisfaction, as well as complaints lodged with any professional body or association
- Circumstance that might give rise to a claim - this includes any mistake, error or problem that the policyholder ought to reasonably identify as possibly giving rise to a subsequent claim.

Further Action Required

Following initial advice to Vero Marine Insurance, as soon as reasonably practicable you must

- Provide in writing to Vero Marine details of the circumstances, and any documents and information which we deem necessary to obtain; and
- On receipt, forward to Vero Marine every letter, writ, summons, process and claims; and
- Inform Vero Marine in writing of notice of any prosecution or inquest

It is good practice to note the names and addresses of witnesses, to take photographs and to video, and to draw diagrams as soon as possible after the occurrence.

Important

Notification should be given irrespective of the perceived merit of any actual or potential claim or the quantum at issue.

You should not:

- admit liability without our written consent; or
- take any action which may be considered an admission of liability; or
- repudiate or settle a claim

If you do not follow these instructions, you may prejudice your insurance claim

Subrogation Clause

1. If the Company has accepted liability for a claim under this policy, it is entitled to become subrogated to your rights of recovery or indemnity from any other person or entity.
2. The Company has the sole right and option to act in your name and on your behalf to negotiate, defend or settle any claim and to make over for its own benefit any legal right to recovery you might have, whether before or after you have been indemnified by the Company.
3. Where the Company recovers from other parties a sum more than the amount of its loss (including administrative, survey and legal costs), then the order in which the sum recovered is to be applied shall be as follows
 - i) First - in meeting the Company's loss;
 - ii) Second - in compensating the Company for interest foregone in respect of its loss for the period commencing from the date of the Assured's claim/s to the date of receipt of moneys recovered from other parties calculated at the current market "on call" rate and compounded 6 monthly;
 - iii) Third - in meeting the Assured's uninsured losses (if any); and
- iv) Fourth - for the benefit of the Company.