

# Dive Master Australia Insurance Policy



## Contents

|    |  |    |
|----|--|----|
| 1  | Our agreement in general   | 3  |
| 2  | Insured section A - Public liability                                   | 7  |
| 3  | Insured section B - Products liability                                 | 9  |
| 4  | Insured section C - Pollution liability                                | 10 |
| 5  | Insured section D – Coverage extensions to insured sections A, B and C | 11 |
| 6  | Exclusions to insured sections A, B C and D                            | 15 |
| 7  | Duties in the event of a claim or potential claim                      | 20 |
| 8  | General terms and conditions   | 23 |
| 9  | General definitions and interpretation                                 | 27 |
| 10 | Complaints   | 33 |

# 1 Our agreement in general

## 1.1 Parties to this agreement

This Dive Master Australian Insurance Policy is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

1.1.1 This **policy** has been exclusively arranged by:

Dive Master Insurance Consultants Ltd  
17-23 Rectory Grove, Leigh-on-Sea, Essex, SS9 2HA  
Tel: +44 (0) 1702 476902 Fax: +44 (0) 1702 471892  
e-mail: sales@dive-master.net

## 1.2 Words in bold

Words in bold type face used in this **policy** document, other than in the headings, such as **insured** in clause 1.1 above, have specific meanings attached to them as set out in clause 9, the General definitions and interpretation section of this document.

## 1.3 Primary purpose of the policy

By this **policy**, the **insurer** agrees, subject to the **policy's** terms, limitations, exclusions and conditions, to:

1.3.1 indemnify the **insured** up to the **limit of indemnity** under **insured section A, B and C** for all sums that the **insured** becomes legally liable to pay as damages, including claimant costs recoverable from the **insured**;

1.3.2 the full extent of the insurance by this **policy** is described in each **insured section** set out in clauses 2 - 4 below and stated as insured in the **schedule**.

## 1.4 Policy structure

1.4.1 Clauses 2 – 4 set out the scope of main coverage of each **insured section**; additional **costs and expenses**; extra coverage and the circumstances in which the **insurer's** liability to the **insured** is limited, or may be excluded. Also, each clause sets out other terms and conditions.

1.4.2 Clause 5 sets out coverage extensions shared by **insured sections A, B and C**.

1.4.3 Clause 6 sets out limitations and exclusions shared by **insured sections A, B and C**.

1.4.4 Clauses 7 - 10 are applicable to all **insured sections** and set out the **insurer's** ;

- a) claims handling terms and conditions, including further conditions precedent,
- b) general terms and conditions, including further conditions precedent,
- c) definitions,
- d) complaints procedure

## 1.5 Policy period and premium

1.5.1 The **policy** will provide insurance as described in clauses 1.3 and 1.4 above for the **period of insurance** it being a condition precedent that the premium and other charges are paid to and accepted by the **insurer** on or before the forty fifth (45<sup>th</sup>) day from the inception of the **policy** (and, in respect of instalment premiums, by the date they are due). The premium is deemed paid and accepted on receipt by the **insurer**.

1.5.2 Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

1.5.3 If any instalment of premium is not paid and accepted by the **insurer** on or before its payment date shown in 1.5.1, the **insurer** shall have the right to cancel the **policy** by notifying the **insured** via the broker in writing. In the event of cancellation, premium is

due to the **insurer** on a proportionate basis for the period that the **insurer** is on risk, but the full premium shall be payable to the **insurer** in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this **policy**

- 1.5.4 It is agreed that the **insurer** shall not give less than fifteen (15) days prior notice of cancellation to the **insured** via the broker. If the **premium** due is paid in full to the **insurer** before the notice period expires, notice of cancellation shall be automatically revoked. If not, the **policy** shall automatically terminate at the end of the notice period.

## **1.6 Basis for the policy**

- 1.6.1 All information supplied by the **insured** in connection with the application for insurance including any **proposal** form, application form or otherwise and supplied by or on behalf of the **insured** will be incorporated into and form the basis of the **policy**. It shall be a condition precedent of the **policy** that all such information is true so far as it is within the **insured's** knowledge or could, with reasonable diligence, have been ascertained.

- 1.6.2 It is a further condition precedent of the **policy** that any material change in, or material addition to, the information mentioned in clause 1.6.1, either before or during the **period of insurance**, shall be notified in writing immediately (but in any event no later than 30 days) after the **insured** becomes aware of any such change or addition, to the **insurer** who will continue the **policy** on such terms and conditions as it may determine.

- 1.6.3 In the event of a breach of this clause 1.6, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach, and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**.

## **1.7 Goods and Service Tax (GST)**

- 1.7.1 The premium charged for this policy will include an amount on account of GST, where applicable.

- 1.7.2 The **insured** shall inform the **insurer** of the extent to which the **insured** is entitled to an Input Tax Credit for the **premium**, in relation to the period during which the insured event happened, each time that a **claim** is made under this **policy**. No payment will be made to the **insured** for any GST liability that the **insured** may acquire on the settlement of a **claim** if the **insured** has not informed the **insurer** of their entitlement or correct entitlement to an Input Tax Credit.

- 1.7.3 Despite the other provisions of this insurance (including the provisions in the **policy**, any **schedule** and any endorsements), the **insurer's** liability will be calculated taking into account any Input Tax Credit to which the **insured** is entitled for any acquisition relevant to a **claim**, or to which the **insured** would have been entitled were the **insured** to have made a relevant acquisition.

- 1.7.4 If the sum insured or **limit of indemnity** is not sufficient to cover the **insured's** loss, the **insurer** will only pay GST (less any relevant Input Tax Credit) that relates to the **insurer's** proportion of the **insured's** loss. The **insurer** will pay that GST amount in addition to the **limit of indemnity**.

- 1.7.5 GST, Input Tax Credit, "acquisition" and "supply" have the same meaning as in the New Tax System (Goods and Service Tax) Act 1999 and related legislation as amended.

## **1.8 Insurance Contracts Act 1984**

Nothing in this policy will affect the rights of the insured or insurer under the Insurance Contracts Act 1984 as amended from time to time. Where such Act is applicable and in the event that there is a conflict between the provisions of the policy and the Act, then the provisions of this policy shall be amended as necessary in order to comply with the requirements of the Act.

## 1.9 Duty of Disclosure

### 1.9.1 Non-Disclosure

Before the **insured** enters into a contract of general insurance with the **insurer**, the **insured** has a duty under the Insurance Contracts Act 1984, to disclose to the **insurer** every matter that the **insured** knows, or could reasonably be expected to know, is relevant to the **insurer's** decision whether to accept the risk of the insurance, and if so, on what terms

1.9.2 The **insured** has the same duty to disclose those matters to the **insurer** before any action to renew, extend, vary or reinstate a contract of general insurance

1.9.3 The **insured's** duty, however, does not require disclosure of matters:

- that diminish the risk to be undertaken by the **insurer**;
- that are of common knowledge;
- that the **insurer** knows or, in the ordinary course of business, ought to know;
- as to which compliance with the **insured's** duty is waived by the **insurer**

1.9.4 Examples of information which are relevant to the **insurer** are:

- past claims experience;
- a cancellation of a previous insurance policy or refusal by an insurer to renew a policy previously held by the **insured**;
- any unusual features of the subject matter of the insurance which might increase the likelihood of a **claim** under the **policy**

1.9.5 If the **insured** is uncertain about whether or not a particular matter should be disclosed to the **insurer**, please contact the **insurer's** office as stated in the **schedule**

1.9.6 If the **insured** fails to comply with the duty of disclosure, the **insurer** may be entitled to reduce its liability under the **policy** in respect of a **claim** or may cancel the **policy**

1.9.7 If the **insured's** non-disclosure is fraudulent, the **insurer** may also have the option of avoiding the **policy** from its beginning

## 1.10 Privacy Statement

The Privacy Act 1988 (as amended) now applies and requires the **insurer** to inform the **insured** that:

### 1.10.1 Purpose of Collection

The **insurer** collects personal information (this is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained and which relates to a natural living person) for the purpose of:

- providing insurance services to the **insured**, including to evaluate the **insured's** application;
- to evaluate any request for a change to any insurance provided;
- to provide, administer and manage the insurance policy following acceptance of an application;
- to investigate and, if covered, manage claims made in relation to any insurance the **insured** has with the **insurer** or other members of the group of companies to which the **insurer** belongs

1.10.2 The personal information collected can be used or disclosed by the **insurer** for a secondary purpose related to those purposes listed above, but only if the **insured** would reasonably expect the **insurer** to use or disclose the information for this secondary purpose. However, for sensitive information, the secondary purpose must be directly related to the purposes listed above

1.10.3 **Disclosure**

The **insurer** may disclose the **insured's** personal information (and receive some personal information from), when necessary and in connection with the purposes listed above, to other members of the group of companies to which the **insurer** belongs, to the **insured's** insurance broker or the **insurer's** agent, Government bodies, loss assessors, claims investigators, reinsurers, other insurance companies, mailing houses, claims reference providers, other service providers, hospitals, medical and health professionals, legal and other professional advisers

1.10.4 **Consequences if information is not provided**

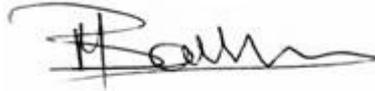
If the **insured** does not provide the **insurer** with the information the **insurer** needs, the **insurer** will be unable to consider the **insured's** application for insurance cover, administer the **insured's policy** or manage any **claim** under the **insured's policy**

1.10.5 **Access**

The **insured** may request access to their personal information by contacting the **insurer** at the address shown in the **schedule**

1.11 **Signature**

In evidence of the **insurer's** intention to be bound by this insurance, it prints the signature of its Chief Underwriting Officer - Property, Casualty and Motor.

A handwritten signature in black ink, appearing to read "H. Ball", is written over a horizontal line.

## 2 Insured section A - Public liability

### 2.1 Public liability cover

2.1.1 The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured**, as a result of **bodily injury** or **damage** that occurs during the **period of insurance** and arises out of and in connection with the **business**

### 2.2 Additional public liability costs and expenses

2.2.1 Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses** which are payable in addition to the **limit of indemnity**, incurred in respect of any insured event under this **insured section**

### 2.3 Public liability extensions

#### 2.3.1 Cloakrooms/Changing Rooms/Equipment Storerooms

Notwithstanding exclusion 6 34 the **insurer** will indemnify the **insured** in respect of **damage** to property deposited in any cloakroom/changing room/equipment storeroom owned or operated by the **insured** except that the insurance granted by this clause excludes and does not cover:

- a) any amount in excess of AUD20,000 for each and every loss;
- b) the first AUD250 for each and every claim;

and provided that the **insured** complies with the following conditions:

- c) an attendant shall be on duty therein throughout the whole of the time the cloakroom is in use or adequately locked if unattended
- d) a disclaimer notice is prominently displayed in or adjacent to the cloakroom/changing room/equipment storeroom

#### 2.3.2 Instruction and Advice

Notwithstanding exclusion 6 2 the **insurer** will indemnify the **insured** in respect of **bodily injury** or **damage** caused by or arising from any instruction or advice given or lack of advice given by or on behalf of the **insured** in the course of providing **recreational water sports services**

#### 2.3.3 Food and Drink

The **insurer** will indemnify the **insured** or **participant** in respect of legal liability for **bodily injury** or **damage** arising out of the supply or consumption of any food or drink in connection with the **insured's business**

#### 2.3.4 Participant to participant

The **insurer** will indemnify the **insured** in respect of **bodily injury** or **damage** caused to one **participant** by another **participant** in any event organised by the **insured**, provided that:

- a) such **participant** is not entitled to indemnity under any other policy; and
- b) the **insurer** will not be liable for any amount in excess of the **limit of indemnity** stated in the **schedule**

### 2.3.5 Use of Manufactured Equipment and Supply of Breathing Air or Gases

The **insurer** will indemnify the **insured** in respect of legal liability for **bodily injury** or **damage** arising out of the use of standard manufacturers diving equipment and the supply of breathing air or gases and the filling, servicing and inspection of cylinders

## 2.4 Public liability limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** in clause 6, this **insured section** excludes and does not cover:

### 2.4.1 Consequential damage from work away

- a) **damage** to materials, parts or equipment furnished in connection with performance of the **work away** but this limitation shall not be applied to **products** previously supplied under any previous contract; or
- b) **damage** to property that is removed, repaired, adjusted, altered, reinstated, withdrawn or disposed of in the course of and necessitated by the performance of the **work away**; or
- c) any expenditure incurred by the **insured** or others for the removal, repair, adjustment, alteration, reinstatement, withdrawal, inspection or disposal of the **work away** as a result of any defect (suspected or known) in or unsuitability for the intended purpose of the **work away**

### 2.4.2 Pollution and products

**bodily injury** or **damage** arising out of or from or:

- a) brought about by or contributed to by **pollution**;
- b) in connection with the **insured's products**;

### 3 Insured section B - Products liability

#### 3.1 Products liability cover

3.1.1 The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured** as a result of **bodily injury** or **damage** that occurs during the **period of insurance** and arising out of or from or in connection with the **insured's products**

#### 3.2 Additional products liability costs and expenses

3.2.1 Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses** which are payable in addition to the **limit of indemnity**, incurred in respect of any insured event under this **insured section**

#### 3.3 Products liability extensions

Not applicable to this **insured section B**

#### 3.4 Products liability limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** in clause 6, this **insured section** excludes and does not cover:

##### 3.4.1 Aircraft

liability arising out of any **product** or part thereof which with the **insured's** knowledge is intended to be incorporated into the structure, machinery or controls of any aircraft or other aerial device or satellite;

##### 3.4.2 Pollution

liability arising out of or from or brought about by or contributed to by **pollution**

## 4 Insured section C - Pollution liability

### 4.1 Pollution liability

4.1.1 The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured** as a result of **bodily injury** or **damage** arising out of or from **pollution** occurring during the course of **business** provided that the **pollution** is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance**

### 4.2 Additional pollution liability costs and expenses

4.2.1 Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses** which are payable in addition to the **limit of indemnity**, incurred in respect of any insured event under this **insured section**

### 4.3 Pollution liability extensions

Not applicable to this **insured section C**

### 4.4 Pollution liability limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** in clause 6, this **insured section** excludes and does not cover:

#### 4.4.1 Owned or previously owned premises

liability for **damage** or **denial of access** to land or **premises** (including land or water within or below the boundaries of such land or **premises**) that are presently or were at any time previously owned, leased, hired or tenanted by the **insured** or otherwise in the **insured's** care, custody or control

#### 4.4.2 Public liability and products

**bodily injury** or **damage** arising out of or from:

- a) liability which does not arise out of **pollution** occurring during the course of the **business**;
- b) in connection with the **insured's products**

## 5 Insured section D – Coverage extensions to insured sections A, B and C

### 5.1 Cross liabilities

For each legal entity comprising the **insured**, the **insurer** will separately indemnify each party under this **insured section** as if a separate **policy** had been issued to each but in respect of claims made or **suits** brought against any of them by any other **insured** the **insurer's** total liability to all parties, will not exceed the **limit of indemnity**. Further, where requested by the **insured**, the **insurer** will waive all rights of subrogation against a subsidiary of the **insured** or from a subsidiary against the parent (the **insured**).

### 5.2 Indemnity to other parties

5.2.1 At the request of the **insured**, the **insurer** will separately indemnify each **other insured party** provided that the:

- a) **insured** would have been entitled to indemnity by this insurance had the claim or **suit** been made against the **insured**;
- b) **other insured party** is not indemnified under any other insurance or in any other way;
- c) **insurer** has the sole conduct and control of any claim;
- d) **other insured party** agrees it will be bound by this **policy** (other than in respect of premium) as if it were the **insured**.

### 5.3 Motor liability

Provided the **insured** has arranged appropriate insurance as required and is not more specifically insured under a compulsory class of insurance the **insurer** will indemnify the **insured** in the terms of this **policy** in respect of legal liability for **bodily injury** or **damage** caused by any motor vehicle:

- a) which is owned by or in possession of or being used by or on behalf of the **insured**;
- b) which is not licensed for road use and is being used in circumstances which do not require insurance or security under any road traffic legislation;
- c) whilst in use as a tool of trade but this indemnity shall not apply to liability in respect of which insurance or security is required under any road traffic legislation;
- d) happening during the act of loading or unloading.

This extension does not replace any compulsory motor insurance required under any legislation.

### 5.4 Concessionaire or franchisee insurance check

It is a condition precedent to the **insurers** liability under this insurance that whenever any concessionaire or franchisee operating under licence or trading under the **insured's** name or brand on behalf of the **insured**, the **insured** will at all times establish, maintain and abide by an administrative procedure for obtaining and storing evidence for the **insurer's** inspection that such concessionaire or franchisee effect public liability insurance that:

- 5.4.1 covers the operations to be undertaken by the concessionaire or franchisee;
- 5.4.2 is subject to a **limit of indemnity** of not less than the **insured's** own or AUD1,000,000, whichever is the greater,
- 5.4.3 includes an 'indemnity to principals' clause,
- 5.4.4 the insurance is revalidated every twelve (12) months throughout the duration of their contract with the **insured**.

## 5.5 Contingent Risk

- a) It is a condition precedent to the **insurer's** liability under these **insured sections** that adequate liability insurance is held by any **operator** which the **insured** engages which includes an indemnity to the **insured** for any liability arising from the activities of the **operator** to the **insured**
- b) If at the time of any claim under this **policy** there is any other valid and collectible insurance available to the **insured** other than insurance that is specifically stated to be in excess of this **policy**, and names the **operator** for the insurance, then the insurance afforded by this **policy** shall exclude any claim falling under the terms of such other insurance whether such claim is indemnified or not or falls within the terms and conditions of this **policy**
- c) **Contingency cover**  
In the event that liability insurance held by the **operator** fails to respond to any claim and a claim is subsequently brought against the **insured** as a result of any activity of the **operator** under a service provided to the **insured**, this **policy** shall indemnify the **insured** provided such claim falls within the indemnity provided by the terms and conditions of this **policy** and the **insured** shall be subject to an **excess** of AUD1,500 No indemnity under this insurance shall be provided to the **operator**
- d) in the event that there is no liability insurance is held by the **operator** to respond to any claim and a claim is subsequently brought against the **insured** as a result of any activity of the **operator** under a service provided to the **insured**, then It is a condition precedent to the **insurer's** liability provided the **insured** can demonstrate the exercise of reasonable endeavours in checking the existence of such insurance when engaging the **operator**, the **insurer** shall upon reasonable satisfaction of such exercise of reasonable endeavours by the **insured**, indemnify the **insured** provided such claim falls within the indemnity provided by the terms and conditions of this **policy** and the **insured** shall be subject to an increased claim **excess** of AUD1,500 No indemnity under this insurance shall be provided to the **operator**

## 5.6 Operating Watercraft and Breathing Gas Compressors

Notwithstanding exclusion 6.4 the **insurer** agrees to indemnify the **insured** in respect of liability arising out of or from:

- a) the use of any **watercraft** not exceeding fifteen (15) meters in length owned or operated by the **insured** in connection with the **insured's** provision of **recreational watersports services** in the event that the **insured** has no other available insurance in place covering the loss;
- b) the use of any breathing gas compressor owned or operated by the **insured** in connection with the **insured's** provision of **recreational watersports services** in the event that the **insured** has no other available insurance in place covering the loss;

provided that as a condition precedent to the **insurer's** liability;

- i) any such equipment under a) or b) above is regularly serviced and maintained in accordance with the manufacturer's guidelines or equivalent practices;
- ii) the **insured** has the appropriate certifications and licences to operate and use any such equipment under a) or b) above and is competent in such equipments use and operation;

This extension excludes and shall not cover liability caused by or arising directly or indirectly from;

- a) any **pollution** from any **watercraft**;

- b) the breach of any regulation or law requiring the **insured** to maintain compulsory insurance

## 5.7 Principals

The **insurer** will indemnify any **principal** of the **insured**, where requested by the **insured**, but only to the extent that liability arises solely out of the work performed for the **principal** by or on behalf of the **insured** and provided that:

- a) the **principal** shall as though he were the **insured** observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity**; and
- c) the **principal** is not indemnified under any other insurance or in any other way

## 5.8 Property in the insured's care, custody and control

5.8.1 Notwithstanding the exclusions at clauses 2 4 1 3 4 2 or 6 34, but subject to the exclusion at clause 4 4 1 the **insurer** agrees to extend coverage under **insured sections A, B and C** to indemnify the **insured** in respect of liability arising out of or from:

- a) **damage** to personal effects (including vehicles and their contents) of the **insured's employees**, directors, officials, visitors or guests; or
- b) **damage** to **premises** including landlord's contents, fixtures and fittings not owned by the **insured** but leased or rented by them in the course of **business**, but always excluding liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement; or
- c) contractual liability that arises from an agreement requiring insurance to be maintained in force in respect of loss of or **damage** to such **premises** and their fixtures and fittings;
- d) **damage** to premises or the contents thereof not belonging to or leased to or rented to the **insured** or otherwise in the **insured's** custody or control but temporarily occupied by the **insured** for **work away** therein but no indemnity is provided by this clause for **damage** to that part of the property on which the **insured** is working and which arises out of such **work away**

## 5.9 Statutory defence costs including Health and Safety At Work

5.9.1 The **insurer** will, with its prior consent which consent will not be unreasonably withheld, indemnify the **insured** and at the request of the **insured** any **other insured party**, in respect of legal **costs and expenses** incurred in defending:

- a) any alleged breach of statutory duty (including any Health and Safety at Work or similar legislation) or criminal proceedings brought; and / or
- b) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against the **insured** or any **other insured party**;

provided that the prosecution or proceedings relate to:

- i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**;
- ii) **bodily injury** to, potential **bodily injury** to persons other than **employees**;

and, the **insurer** will also pay to the **insured**:

iii) **costs and expenses** of appeal including appeal against improvement and prohibition notices incurred with its written consent which consent will not be unreasonably withheld;

iv) prosecution costs awarded against the **insured**;

5.9.2 The indemnity by this clause excludes and does not cover:

- a) circumstances where the **insured** or any **other insured party** is entitled to indemnity by any other legal expenses, motor or employment protection policy;
- b) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide, any amount in excess of a **limit of indemnity** of AUD2,000,000 any one claim or series of claims arising out of the same prosecution or proceedings

## 6 Exclusions to insured sections A, B C and D

**Insured sections A, B C and D** exclude and do not cover:

### 6.1 Advertising injury

any loss, liability or **costs and expenses** arising out of or from advertising injury including but not limited to:

- 6.1.1 breach of contract including liability for unauthorised misappropriation of advertising ideas based upon breach or alleged breach of an implied contract;
- 6.1.2 infringement of registered trademarks, patents, registered designs, service marks or trade name including infringement of titles or slogans;
- 6.1.3 the failure of goods, products or services to conform with advertised quality or performance;
- 6.1.4 incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
- 6.1.5 arising out of or from libel, slander or the disparagement of goods, products or services of others;
- 6.1.6 advertising activities undertaken on behalf of another party by any **insured** engaged in the business of advertising or undertaken for a fee;
- 6.1.7 the oral, broadcast, telecast or written publication of material whose first publication took place before the inception of the **period of insurance**;
- 6.1.8 an offence committed by the **insured** whose business is advertising, broadcasting, publishing or telecasting

### 6.2 Advice, design or plans provided for a fee

any loss, liability or **costs and expenses** arising out of or from advice, design, plans, specifications, formulae, surveys, or directions prepared or given by the **insured** for a fee but this shall not exclude such advice arising in conjunction with **products** supplied

### 6.3 AIDS and illness

**bodily injury** arising out of Acquired Immune Deficiency Syndrome (AIDS), Hepatitis C or cancer in any form, howsoever these illnesses may have been acquired or may be named

### 6.4 Aircraft and watercraft

any loss, liability or **costs and expenses** arising out of or from the ownership, possession or use of any aircraft or other aerial device or satellite, or any watercraft

### 6.5 Assault and battery and abuse

any liability of any **insured** directly or indirectly arising out of:

- a) assault, battery or any intentional or deliberate violence committed or alleged to have been committed by any **insured**;
- b) sexual assault, molestation, abuse, sexual harassment or rape

### 6.6 Asbestos

any loss, liability or **costs and expenses** arising out of or from or caused by any work involving the manufacture, mining, processing, use, installation, storage, removal,

stripping out, demolition, disposal, distribution, inspection or testing of or exposure to asbestos, asbestos fibres, asbestos dust, or asbestos containing materials

#### **6.7 Claims Jurisdiction**

any loss, liability or **costs and expenses** arising out of or from any **claims** brought in the **North America** or that falls under the jurisdiction of **North America**

#### **6.8 Commercial diving**

any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by **commercial diving**

#### **6.9 Construction, repair or installation work on vessels**

any liability arising out of the construction, repair or installation work on vessels.

#### **6.10 Contractual liability**

any loss, liability or **costs and expenses** arising out of or from any contract or agreement which the **insured** has entered into unless it is proven that, and then only to the extent that, liability would have attached in the absence of such contract

#### **6.11 Costs of recall or guarantee**

expenditure, whether incurred by the **insured** or others, for the withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement, reinstatement of any **product** or part thereof and/or from financial loss consequent upon the necessity for such withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement

#### **6.12 Electronic data**

any loss, liability or **costs and expenses**;

- a) arising from loss, alteration or impairment of, or damage to, information and/or data in electronic form,
- b) arising from malicious acts of any person carried out by electronic means,
- c) for defamation or harassment carried out by electronic means,

but this exclusion shall not apply in respect of liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded

#### **6.13 Directors' and officers' liability**

any loss, liability or **costs and expenses** arising out of or from any **insured** in their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee

#### **6.14 Employee accidents**

any loss, liability or **costs and expenses** arising out of or from any claim in respect of which compensation is available or would normally be available under any Employers Liability legislation or similar legislation or any obligation for which the **insured** or any company as its insurer may be held liable under any workman's compensation, unemployment compensation, or disability benefits law

#### **6.15 Employment disputes**

any loss, liability or **costs and expenses** arising out of or from any employee, former employee or prospective employee in respect of employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any

employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct

#### **6.16 Excess**

the amount of the **excess** as applicable and stated in the **schedule**

#### **6.17 Excluded conduct**

any loss, liability or **costs and expenses** arising out of or from:

- a) any deliberate act in violation of any law or ordinance; or
- b) any deliberate or wilful misconduct of the insured; or
- c) any dishonest, fraudulent, or criminal act of the **insured**; or
- d) any conduct of the **insured** or **employee** while under the influence of intoxicants or narcotics

#### **6.18 Financial loss**

liability for pure financial loss not consequent upon **bodily injury** or **damage**

#### **6.19 Fines, penalties, punitive damages, multiple damages or exemplary damages**

any fines, penalties, punitive damages, exemplary damages, aggravated damages, multiple or treble damages, or any other increase in damages resulting from the multiplication of compensatory damages

#### **6.20 Fungus, mould, spores**

**Damage** arising out of or from:

- a) any **fungus, mould**, mildew or yeast; or
- b) any **spore** or toxins created or produced by or emanating from such **fungus, mould**, mildew or yeast; or
- c) any substance vapour gas or other emission or organic or inorganic body substance produced by or arising out of any **fungus, mould**, mildew or yeast; or
- d) any material product building component building 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, mould**, mildew, yeast or **spore** 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 loss, liability or **costs and expenses**

#### **6.21 Government prohibition**

any loss, liability or **costs and expenses** where:

- a) non-admitted insurance is not permitted by local legislation in any country or territory;  
or
- b) any government embargo or sanction prohibits the **insured** from trading

## 6.22 **Insolvency of the insured**

any loss, liability or **costs and expenses** arising out of or from or relating directly or indirectly to the insolvency or bankruptcy of the **insured**

## 6.23 **Landing Areas**

Liability arising out of the ownership, maintenance, operation, preparation or use by or on behalf of the **insured** of any **landing area** for aircraft provided such liability arises out of such use as a **landing area**

## 6.24 **Legionella**

any loss, liability or **costs and expenses** arising out of or from or alleging or attributable to the existence of **legionella**

## 6.25 **Libel and slander**

liability arising from or caused by the publication or utterance by or on behalf of the **insured** of a libel or slander

## 6.26 **Limit of indemnity**

liability in excess of the **limit of indemnity** stated in the **schedule**

## 6.27 **Medical Services**

6.27.1 Any liability arising out of the rendering or failure to render medical services including the provision of treatment or management of illness or injury by any doctor, medically trained personnel or hyperbaric technicians other than:

- a) the rendering of first aid by any medically unqualified person; or
- b) emergency first response by a diver medic or certified first aid attendant who are **employees** of the **insured**;

provided that the **insurer** will not be liable where indemnity is provided by other insurance

6.27.2 This policy excludes any operation or provision of medical treatment facilities including hyperbaric chambers and the like other than basic medical first aid equipment for the administration of first aid or emergency first response by a diver medic or certified first aid attendant

## 6.28 **North American jurisdiction**

liability in respect of any judgment, award, payment, **costs and expenses** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **costs and expenses** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**

## 6.29 **North American operations**

**bodily injury or damage** including any loss or expense whatsoever resulting or arising therefore or any consequential loss in connection therewith, occurring within **North America**

## 6.30 **Nuclear risks**

6.30.1 loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;

6.30.2 any legal liability of whatsoever nature;

6.30.3 any sum which the **insured** becomes legally liable to pay or any loss or expense; directly or indirectly caused by or contributed to by or arising from or, in the case of 6 30 3 above, attributable to **nuclear hazards**

### **6.31 Overseas domiciled operations**

any loss, liability or **costs and expenses** arising from the **insured's** subsidiary companies, branch offices or representatives with power of attorney, that are domiciled outside of the **territorial limits** as stated in the **schedule**

### **6.32 Ownership or use of mechanically propelled vehicles**

any loss, liability or **costs and expenses** arising out of or from the ownership, maintenance, operation or use of any mechanically propelled vehicle by or on behalf of the **insured** other than diver propulsion vehicles

### **6.33 Personal injury and denial of access**

any loss, liability or **costs and expenses** arising out of **personal injury** or **denial of access**

### **6.34 Property in the insured's care, custody and control**

**damage** to property owned, leased, hired or held in trust by the **insured** or under hire purchase or on loan to the **insured** or held otherwise in the **insured's** care, custody or control

### **6.35 Reasonable precautions**

any loss, liability or **costs and expenses** arising out of or from the **insured's** deliberate, conscious, or intentional disregard of the need to take all reasonable precautions to prevent an insured event or loss arising or continuing

### **6.36 Territorial limit**

any loss, liability or **costs and expenses** arising from an occurrence outside the **territorial limits** including any contract, or arising from the **business** carried out from the **insured's** own offices situated outside the **territorial limits**

### **6.37 The product itself**

liability for **damage** to the **insured's product** or any part thereof arising from a defect or unsuitability thereof and pure financial loss arising therefrom

### **6.38 Use of heat**

any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by use of heat

### **6.39 Use of Spearguns**

liability arising out of the use of spearguns when used in conjunction with an aqualung

### **6.40 War or terrorism**

any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by or contributed to by **war** or any act of **terrorism**

## 7 Duties in the event of a claim or potential claim

As regards **insured sections A - D**, the due observance and fulfilment of the provisions of clause 7 is a condition precedent to the **insurer's** liability for any claim under this **policy**. Clause 8.13 sets out consequences of a failure to comply with conditions precedent or **policy** provisions such as clause 7.

### 7.1 Claim notification

7.1.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurer**:

- a) immediately from receipt of notice of any impending inquest, fatal accident inquiry, prosecution or other legal proceedings that includes alleged **bodily injury**;
- b) as soon as practical from coming in possession of actual knowledge that notice of an Industrial Tribunal hearing includes alleged **bodily injury**;
- c) immediately from the **insured's** actual knowledge of any death or **bodily injury** to any **employee** involving a stay in hospital in excess of three (3) days;
- d) as soon as practical after any other accident, event or the coming in possession of actual knowledge of **bodily injury** or **damage** with full particulars thereof;

which may be the subject of indemnity under this **policy**

7.1.2 Notice to the **insurer** must be given to the claims notification addresses specified in the **schedule**, but if this is not possible or practical to the **insurer** at the registered address in the **schedule**

### 7.2 Insured's duties

7.2.1 For each and every claim, the **insured** and any person acting on behalf of the **insured** must:

- a) not admit responsibility, liability, make an offer or promise, nor offer payment or indemnity without the written consent of the **insurer**;
- b) not incur any expense without the consent of the **insurer** except at the **insured's** own cost;
- c) always act honestly, there being no rights to any form of payment or indemnity under the **policy** in the event that any claim is made fraudulently;
- d) give all such information, assistance and forward all documents to enable the **insurer** to investigate, settle or resist any claim as the **insurer** may require;
- e) provide such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith;
- f) not destroy evidence or supporting information or documentation without the **insurer's** prior consent; nor destroy any plant or other property relating to an occurrence, loss or **suit** that may give rise to a claim under this **policy**;

### 7.3 Claim Procedure

Unless stated otherwise all claims will be handled and overseen by the **insurer**. For each and every claim the **insured** and any person acting on behalf of the **insured** must:

- 7.3.1 immediately send the **insurer** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an insured event as soon as received by the **insured**. In addition the **insured** must co-operate with the **insurer** or their appointed agents to allow them to comply with such relevant practice directions and pre-action protocols as may be issued and approved from time to time by the head of civil justice;
- 7.3.2 authorise the **insurer** to obtain medical records or other pertinent information upon request but only where legally permitted to do so in the event of an insured event involving **bodily injury**;
- 7.3.1 prove, if it is alleged that an event is not covered or that the indemnity is otherwise limited being **war** or an act of **terrorism** that the said exclusion or **limit of indemnity** does not apply, it being understood and agreed that any portion of an exclusion or **limit of indemnity** being found invalid, inapplicable or unenforceable will not in any way render the remainder of the exclusion or limit invalid, inapplicable or unenforceable

## 7.4 Insurer's rights

- 7.4.1 The **insurer** will be under no obligation to investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims and will be at liberty in all cases to leave the conduct of such proceedings wholly to the **insured** upon such conditions as regards the payment of opponent's costs and with such liberty to bind the **insurer** by compromise as the **insurer** may in its absolute discretion determine
- 7.4.2 The **insurer** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability

## 7.5 Disputed defence or appeal

If any dispute arises between the **insured** and **insurer** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a Senior Counsel or Queen's Counsel to be mutually agreed between the parties (or in default of agreement to be nominated by the President of the Law Council of Australia) whose decision will be final. In the event of conflict between any person falling within the definition of **insured** separate representation will be arranged for each party

## 7.6 Excess

- 7.6.1 If the insured event forms the subject of indemnity under more than one of **insured sections A to D**, the **insured's** maximum liability for the **excess** will be the highest applicable **excess**
- 7.6.1 If settlement of an insured event investigated or defended by the **insurer** under **insured sections A to D** does not exceed the amount of the applicable **excess** the **insured** will pay, or reimburse the **insurer** for, as applicable, any **costs and expenses** and paid damages including claimant costs recoverable from the **insured** and incurred in connection with such insured event

## 7.7 Subrogation

- 7.7.1 For each and every claim the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or **suit** that may give rise to a claim under this insurance
- 7.7.2 The **insured** will at the request and expense of the **insurer** do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **insurer** for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the **insurer** will be or would become entitled or subrogated upon its paying an indemnity under this **policy**, whether such acts and

things will be or become necessary or required before or after their indemnification by the **insurer**

- 7.7.3 In the event of any payment under this insurance, the **insurer** will act in concert with all other interested persons (including the **insured**) concerned in the exercise of any rights of recovery
- 7.7.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) that will have paid an amount over and above any payment hereunder, will first be reimbursed up to the amount paid by them; the **insurer** is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including the **insured**) to whom this coverage is in excess shall be entitled to claim the residue, if any
- 7.7.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned, in the ratio of their respective recoveries as finally settled

## 8 General terms and conditions

### 8.1 Adjustment of premium

Where the premium in whole or part is provisionally based on estimates provided by the **insured**, the **insured** will keep accurate records and declare such information as the **insurer** requires within one (1) month of the expiry of the **period of insurance**. The premium will then be adjusted and any difference paid by or allowed to the **insured** as the case may be but subject to any minimum premium that may apply. The **insurer** reserves the right to request that the **insured** supplies an auditor's certificate with such calculations as are subject to adjustment attesting the accuracy thereof.

It is a condition precedent that that all adjustable premiums due to the **insurer** are paid within ninety (90) days of expiry of each **period of insurance**.

### 8.2 Applicable law

The **insurer** hereon agrees that:

a) In the event of a dispute arising under this **policy**, the **insurer** at the request of the **insured** 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.

b) Any summons notice or process to be served upon the **insurer** may be served upon

Lloyd's General Representative in Australia

Lloyd's Australia Limited

123 Pitt Street

Sydney

NSW 2000

Australia

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

c) If a suit is instituted against any one **insurer** all **insurer's** hereon will abide by the final decision of such Court or any competent Appellate Court.

### 8.3 Assignment

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** prior written consent is endorsed hereon.

### 8.4 Cancellation, variation and premium refunds

The **insurer** may at any time during the **period of insurance** serve written notice on the **insured** at the address shown on the **schedule** cancelling the **policy** with effect from the thirtieth (30<sup>th</sup>) day after service of the notice if in breach of any of the conditions of this policy or for any other reason available to the **insurer** under the *Insurance Contracts Act 1984* (Cwlth). Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon demand the **insurer** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy**. In the event the **insurer** has paid any claim or loss under this **policy**, the pro-rata return of premium to the **insured** shall be limited to the

amount (if any) of the premium received by the **insurer**, with the prior deduction of any paid claim or loss made by the **insurer**

Without prejudice to any other forms of service, the notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed

## 8.5 Contribution

If at the time of any claim under **insured sections A to C** there is any other valid and collectible insurance available to the **insured** other than insurance that is specifically stated to be in excess of this **policy**, and names the **insured** for the insurance, then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance

## 8.6 Document management

The **insurer** may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original

## 8.7 Data Protection

8.7.1 The **insurer** records and holds data in accordance with the data protection legislation and follows strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. The **insurer** may find it necessary to pass data to other firms or businesses that supply products and services associated with this **policy**

8.7.2 Further, by accessing and updating various databases the **insurer** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the databases. Details of databases accessed or contributed to are available on request

## 8.8 Fraud

If the claim is in any respect fraudulent or if any fraudulent means or devices are used by the **insured** or anyone acting on their behalf to obtain any benefit under this **policy** or if any liability, loss, destruction or **damage** is occasioned by wilful act or with the connivance of the **insured** there will be no rights to any form of payment or indemnity under this **policy**

Further any claim paid to the **insured** in respect of any fraudulent means or device must be repaid to the **insurer**

## 8.9 Inspection and audit

The **insurer**, or such representative as the **insurer** may designate, will be permitted but not obligated to inspect the **insured's** property and operations at any time given reasonable notice. Neither the **insurer's** right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of the **insured** or others, to determine or warrant that such property or operations are safe

## 8.10 Legal action against the insurer

8.10.1 In respect of liabilities covered by this insurance, no one may bring a legal action against the **insurer** until the amount of the **insured's** liability has finally been determined or agreed

- 8.10.2 No one has the right under this **policy** to bring the **insurer** into an action to determine the **insured's** liability

### **8.11 Material alteration**

- 8.11.1 If after the commencement of this insurance the risk of any loss, liability or **costs and expenses** is increased by any act or omission of the **insured** unless such change of circumstances has been expressly acknowledged and accepted in writing or by electronic medium for and on behalf of the **insurer**, then the **insurer** may reject or reduce claims connected with the material alteration, and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**

- 8.11.2 Any material alteration or change shall not be binding on the **insurer** or the terms of this **policy** until accepted as such by written confirmation from the **insurer** endorsed to this **policy**

### **8.12 Minimisation of risk**

- 8.12.1 The **insured** will take all reasonable steps at its own expense to prevent an insured event arising or continuing

- 8.12.2 Upon the happening of an insured event and at all times thereafter, the **insured** shall act as a prudent uninsured and take all reasonable measures as are appropriate to avoid or minimise any claims which arise or may arise from that insured event Any failure by the **insured** to take such steps shall mean the **insurer** may reject or reduce claims and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**

### **8.13 Observance**

- 8.13.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not already conditions precedent, will be a condition of this **policy** Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future

- 8.13.2 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach or may elect to cancel the **policy**, providing the **insurer** can demonstrate some prejudice

- 8.13.3 In the event of a breach of any condition precedent in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach, and either cancel the **policy** or continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**

### **8.14 Representation**

Any person falling within the definition of the **insured** agrees that the first named **insured** is their agent for the purpose of giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation The payment to the first named **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium

### **8.15 Rights of recourse**

It is a condition precedent to the **insurers** liability under this **policy** that the **insured** maintains full rights of recourse against any manufacturer or supplier with whom the

**insured** has entered into a legal contract for the provision of **products** as defined by the **policy**

## **8.16 Rights of third parties**

This insurance does not confer or create any right enforceable (including under legislation) by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party.

## **8.17 Sanctions and embargo**

Notwithstanding anything to the contrary in the **policy** the following condition shall apply:

- 8.17.1 If, by virtue of any law or regulation which is applicable at the inception of this **policy** or which becomes applicable at any time thereafter, providing coverage to the **insured** and/or paying a claim and/or providing a benefit under the **policy** directly or indirectly breaches an embargo or sanction, the **insurer** shall not indemnify nor make any payment or provide any economic benefit to the **insured** or to any other party under this **policy** to the extent that it would be in breach of such law or regulation.
- 8.17.2 In circumstances where the payment or provision of a valid and otherwise collectable claim or benefit may directly or indirectly breach an embargo or sanction, then the **insurer** will take all reasonable measures to obtain the necessary authorisation to make such payment or provision.

## **8.18 Subscribing insurer**

The **insurers'** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reason does not satisfy all or part of its obligations.

## 9 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 9.1 Australia

Australia means Australia, and the island state of Tasmania

### 9.2 Bodily injury

Bodily injury means death, disease, illness, physical and mental injury of or to an individual

### 9.3 Business

The Business includes but is not limited to

- a) the ownership or occupation of premises by the **insured** including incidental repair and maintenance;
- b) the provision of canteen social sports and welfare organisations for the benefit of **employees**;
- c) fire, first aid and ambulance services;
- d) The provision of **recreational watersports services** and any first aid required as a result;
- e) the **insured's** activities declared on the certificate of insurance attached to and forming part of this **policy** and as otherwise agreed by the **insurer**

### 9.4 Claim jurisdiction

Claim jurisdiction shall mean the jurisdiction under which a claim by a third party must be brought for indemnity to be granted the **insurer**

### 9.5 Combined single limit

Combined single limit means the maximum the **insurer** will pay by this **policy** in the event that two or more **insured sections**, to which the combined single limit applies, provide coverage for an insured event

### 9.6 Commercial diving

Commercial Diving means professional offshore diving carried out in accordance with AS/NZS 2299. For the purposes of this definition the Approved Codes of Practice for; Recreational Scuba Training, Underwater Scientific Diving and Underwater Film and Media Work are not considered to be Commercial Diving

### 9.7 Costs and expenses

Costs and expenses means

- 9.7.1 costs and expenses (other than claimant costs recoverable from the **insured** incurred in the investigation, adjustment, appraisal, defence or settlement of an insured event, including expert, legal, appeal and defence costs;

- 9.7.2 pre-judgment interest awarded against the **insured** on that part of any judgment covered under this **policy** but where the **insurer** offers to pay the **limit of indemnity** in settlement of a claim or suit, the **insurer** will not pay any pre-judgment interest imposed or earned after the date of such offer;
- 9.7.3 all interest earned on that part of any judgment within the **limit of indemnity** after entry of the judgment and before **insurer** has paid, offered to pay, or deposited in court that part of any judgment that is within the applicable **limit of indemnity**;
- 9.7.4 the cost of attendance in court as a witness at the **insurer's** request, payable at the following rates per day on which attendance is required:
- a) any principal director or partner of the **insured** - AUD500;
  - b) any **other insured party** - AUD250;
- 9.7.5 costs and expenses of legal representation at any coroner's inquest or inquiry in respect of any death which may be the subject of indemnity under this **policy**

## 9.8 Damage

Damage means:

- 9.8.1 loss of, destruction of or damage to tangible property; and/or
- 9.8.2 for **insured sections A-D** loss of use of tangible property that has been lost, destroyed or damaged

## 9.9 Denial of access

Denial of access means nuisance, trespass, or interference with any easement, right of air, light, water or way

## 9.10 Employee

Employee means:

- a) any person who has entered into or works under a contract of service or apprenticeship with the **insured**;
- b) any directors and/or officers of the **insured**;
- c) any labour-master and/or person supplied by such person;
- d) any person employed by a labour-only contractor;
- e) any self-employed person;
- f) any volunteer;
- g) any person who is hired to or borrowed by the **insured**;
- h) any driver or operator of plant hired to the **insured**;
- i) any person who is engaged under a work experience or youth training scheme while working for the **insured** in connection with the **business**

## 9.11 Excess

The excess will form part of and be included within the **limit of indemnity** and means the first amount payable by the **insured** in respect of each and every claim, series of claims or circumstance as ascertained after the application of all other terms and conditions of this insurance but only where the award is made by a court of law. The excess will be applied to **costs and expenses**

## 9.12 Fungus

Fungus(i) includes but is not limited to any plants or organisms belonging to the major group fungi lacking chlorophyll and including **moulds** rusts mildews and mushrooms

### 9.13 Insured

Insured means the Dive School/ Dive Centre / Dive Store and/or where agreed by the **insurer** those engaged in Underwater Scientific/Archaeological diving or Underwater Film and media diving projects named on the Certificate of Insurance (attaching to this **policy**)

### 9.14 Insured section

Insured section means all or any individually lettered sections of this **policy** that forms part of the insurance contract but only if stated as 'insured' in the **schedule**

### 9.15 Insurer

Insurer means the party specified as insurer in the **schedule** and any other subscribing insurers

### 9.16 Landing area

Landing area means any part of earth's surface including water or any structure or property used for embarkation or disembarkation of people or loading or unloading of goods or where aircraft are kept, housed maintained or operated and where aircraft may take off and land

### 9.17 Legionella

Legionella means any discharge release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like

### 9.18 Limit of indemnity

Limit of indemnity means:

- 9.18.1 the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability for any one (1) occurrence regardless of the number of:
- a) persons or organisations bringing claims or **suits**; or
  - b) claims against the **insured** or series of claims against the **insured**, or claims or series of claims made by the **insured**;
- 9.18.2 where two (2) or more **insured sections** are subject to a **combined single limit**, then the **combined single limit** is the maximum the **insurer** will pay for any insured event to which such **insured sections** apply in combination, and;
- 9.18.3 where a limit of indemnity is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**
- 9.18.4 Any sub-limit of indemnity applies as if it was the limit of indemnity for the **claims** for that sub-limit and is deemed to be part of and not in addition to the **limit of indemnity**

### 9.19 Mould(s)

Mould(s) means, but is not limited to any superficial growth produced on damp or decaying organic matter or on living organisms and fungi that produced moulds

### 9.20 North America

North America means the United States of America or its territories or possessions or Canada

## 9.21 Nuclear hazards

Nuclear hazards means:

- 9.21.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 9.21.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

## 9.22 Operator

Operator shall mean any third party provider, operator, manufacturer or hirer of watercraft not exceeding fifteen (15) meters in length or breathing gas compressor equipment

## 9.23 Other insured party

Other insured party means any of the following parties:

- 9.23.1 any director, partner, **employee** or a former **employee** of the **insured**;
- 9.23.2 any officers, members' committee and/or **employee** paid and voluntary helpers of the **insured's** canteen and welfare organisations, nursery, crèche or child care facilities, sports and social organisations, in their respective capacities as such;
- 9.23.3 any officers and members of the **insured's** security, rescue, first aid, fire and ambulance services, medical organisation other than any doctor, surgeon or dentist while working in a professional capacity in their respective capacities as such;
- 9.23.4 any director or partner or executive of the **insured** in respect of private work undertaken by any **employee** for a director, partner or executive of the **insured**;
- 9.23.5 any officers or trustees of the **insured's** pension scheme(s)
- 9.23.6 any land or venue owner, firm or authority including local, County or Government authority, Minister or Ministry where permission is necessary for the holding of the **insured's** activities

## 9.24 Participant

Participant means any person engaged in the **insured's** activities, social and/or promotional events or whilst under the active supervision or instruction of the **insured** during **recreational watersports services**

## 9.25 Period of insurance

Period of insurance means the period shown as such on the **schedule**, which time is taken as Greenwich Mean Time unless otherwise stated

## 9.26 Personal injury

Personal injury means harm other than **bodily injury** arising out of one or more of the following offences committed in the course of the **business**:

- 9.26.1 false arrest;
- 9.26.2 detention or imprisonment;
- 9.26.3 wrongful entry into, or eviction of a person from a room, dwelling or premises that the person occupies;
- 9.26.4 libel and slander

### 9.27 Policy

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions

### 9.28 Pollutant

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste Waste is deemed to include materials to be recycled, reconditioned or reclaimed

### 9.29 Pollution

Pollution means the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time

### 9.30 Premises

Premises means the buildings or land that are owned, leased, hired or tenanted by or on loan to the **insured** for the purpose of the **business**

### 9.31 Principal

Principal means an individual, company, corporate body sports/leisure centre and/or other government, civic or educational authority providing services venues or clients to the **insured**

### 9.32 Product

Product means any property (including packaging, containers, labels and instructions for use) after it has left the custody or control of the **insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **insured**

### 9.33 Proposal

Proposal means any information supplied by or on behalf of the **insured**, deemed to be a completed proposal form and medical questionnaire and other relevant information that the **insurer** may require

### 9.34 Recreational Watersports Services

Recreational watersports services means the organisation of, supervision of and or the provision of advice or instruction in recreational snorkel and/or sports diving, and free diving, and in ancillary social, recreational and promotional activities or special interest diving agreed by the **insurer** or as more specifically described in the certificate of insurance attached to and forming part of this **policy** and agreed by the **insurer**

### 9.35 Schedule

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this standard **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the **insured** Schedules may be re-issued from time to time where each successor overrides the earlier document

### 9.36 Spore(s)

Spore(s) means any dormant or reproductive body produced by or arising or emanating out of any **fungus**(i) **mould**(s) mildew plants organisms or micro organisms

### **9.37 Suit**

Suit means a civil proceeding in which damages to which this insurance applies are alleged, including;

- 9.37.1 an arbitration proceeding in which such damages are claimed; or
- 9.37.2 any other alternative dispute resolution proceeding in which such damages are claimed

### **9.38 Territorial limits**

Territorial limits means such countries as stated in the **schedule**

### **9.39 Terrorism**

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and appears to be intended to

- 9.39.1 intimidate or coerce a civilian population, or
- 9.39.2 disrupt any segment of the economy of a government de jure or de facto, state, or country, or
- 9.39.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or
- 9.39.4 affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking

### **9.40 War**

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**

### **9.41 Watercraft**

Watercraft means any vessel, craft, vehicle or appliance made or intended to float on or in or travel on or through or under water

### **9.42 Work away**

Work away means work, operations, installation or services performed by or on behalf of the **insured** but not on **premises**

## 10 Complaints

### 10.1 About Lloyd's

Since the late seventeenth century, the name Lloyd's has been synonymous with insurance. Many of the world's leading underwriters are based at Lloyd's. The market is internationally renowned and has an impeccable claims record.

In Australia, Lloyd's is proud to be a member of the Insurance Council of Australia, and strives to comply with the agreement we have made under the General Insurance Code of Practice.

The **insurer's** aim is to provide the highest service to our Australian policyholders and, to this end; **the insurer** has developed the following procedures for the fair handling of complaints from Lloyd's policyholders.

### 10.2 How can we help you?

There are established procedures for dealing with complaints and disputes regarding **insured's** policies or claims. All policyholders can take advantage of the complaints service.

#### **Step 1**

Any enquiry or complaint relating to a Lloyd's policy or claim should be addressed to either the **insured's** Lloyd's insurance intermediary ("the coverholder") or to the administrator handling the **insured's** claim in the first instance – in most cases this will resolve the **insured's** grievance.

They will respond to a complaint within 15 business days provided they have all necessary information and have completed any investigation required. Where further information, assessment or investigation is required, they will agree to reasonable alternative timeframes with the **insured**. The **insured** will also be kept informed of the progress of the **insured's** complaint.

#### **Step 2**

In the unlikely event that this does not resolve the matter or the **insured** is not satisfied with the way the complaint has been dealt with, the **insured** should contact Peter Fryer at:

Lloyd's Australia Limited  
Suite 2, Level 21 Angel Place  
123 Pitt Street  
Sydney NSW 2000

Telephone: (02) 9223 1433  
Facsimile: (02) 9223 1466  
Email: [peter@lloydsaustralia.com.au](mailto:peter@lloydsaustralia.com.au)

When the **insured** lodges a dispute with the **insurer**, the **insurer** will usually require the following information:

- Name, address and telephone number of the policyholder
- The type of insurance policy involved
- Details of the policy concerned (policy and/or claim reference numbers, etc)
- Name and address of the insurance intermediary through whom the policy was obtained
- Details of the reasons for lodging the dispute

- Copies of any supporting documentation you believe may assist the insurer in addressing the **insured's** dispute appropriately

Following receipt of the **insured's** dispute, the **insured** will be advised whether the dispute will be handled by either Lloyd's Australia or the Policyholder & Market Assistance Department at Lloyd's in London:

- Where the **insured** is a retail client and the dispute is eligible for referral to the Financial Ombudsman Service (FOS), the **insured's** dispute will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with the **insured's** dispute
- Where the **insured** is a retail client and the dispute is not eligible for referral to the FOS, or where the **insured** is a wholesale client, Lloyd's Australia will refer the dispute to the Policyholder

### 10.3 How long will step two take?

The **insured's** dispute will be acknowledged in writing within 5 business days of receipt, and the **insured** will be kept informed of the progress of the **insurer's** review of the dispute at least every 10 business days. The length of time required to resolve a particular dispute will depend on the individual issues raised, however in most cases the **insured** will receive a full written response to the dispute within 15 business days of receipt, provided the insurer has received all necessary information and has completed any investigation required.

### 10.4 Step 3

If the **insured's** dispute is not resolved in a manner satisfactory to the **insured**, the **insurer** will then provide retail clients eligible for referral to the FOS with details of that body. FOS is an independent body that operates nationally in Australia and aims to resolve disputes between the **insured** and their insurer. The **insured's** dispute must be referred to the FOS within 3 months of the date of the **insurer's** final decision.

Retail clients not eligible for referral to the FOS, and wholesale clients, may be eligible for referral to the Financial Ombudsman Service (UK). Such referral must occur within 6 months of the final decision by the Policyholder & Market Assistance Department at Lloyd's. Further details will be provided by the Policyholder & Market Assistance Department with their final decision to the **insured**.

### 10.5 How much will this procedure cost you?

This service is free of charge to policyholders.

## **QBE European Operations**

Plantation Place  
30 Fenchurch Street  
London  
EC3M 3BD

tel +44 (0)20 7105 4000

fax +44 (0)20 7105 4019

[enquiries@uk.qbe.com](mailto:enquiries@uk.qbe.com)

[www.QBEurope.com](http://www.QBEurope.com)

