

Wesfarmers General Insurance Limited, trading as Lumley Insurance

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OUR AGREEMENT

Your Ship Repairers Liability insurance policy is a contract between You and Us. Your Policy is made up of:

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

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

Please:

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

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

2. WHAT WE COVER YOU FOR

You are covered for:

(a) General Liability

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

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

which:

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

provided that:

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

(b) Costs and Expenses

In addition to the amounts payable for General Liability, We will pay in relation to a claim covered under this policy, all:

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

provided that:

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

3. WHAT IS NOT COVERED

You are not covered for:

1. Vehicles

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

This Exclusion shall not apply to:

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

2. Aircraft and Vessels

- (a) Liability caused by or arising out of the ownership, construction, maintenance, servicing, operation or use by You of any Aircraft;
- (b) Liability caused by or arising out of the shifting, movement or operation of Vessels owned, chartered, used or leased by You or Your sub-contractors;

- (c) Liability caused by or arising out of the use, movement or delivery of Vessels in Your care, custody or control other than for trial trips and movement incidental to the Business within 100 kilometers of Your premises or place of work;
- (d) Liability caused by or arising out of Products installed in or on any Aircraft or Vessel owned, chartered or leased by You; or
- (e) Liability caused by or arising out of the use by You as a landing area for Aircraft of any property or structure owned occupied or controlled by You. The term "landing area" includes any area on which Aircraft taxi, land, take-off, are housed, maintained or operated.

3. Employment Liability

- (a) Personal Injury to any employee arising out of or in the course of their employment in Your Business. This exclusion does not apply in respect of Your liability for injuries which are not compensated under the workers' compensation legislation in Queensland in respect of Occurrences where employment is not the major factor causing the injury;
- (b) liability caused by or arising out of any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- (c) liability for which You are or would have been entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmen's compensation including any legislation of any State or Territory (whether insurance is effected or not).

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

4. Professional Service

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

This exclusion shall not apply to:

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

5. Exceeding Capacity

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

6. Libel and Slander

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

- (a) made prior to the commencement date of this Policy;
- (b) made by You or at Your direction knowing it to be false; or
- (c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

7. Product Recall

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

8. Faulty Design

Liability caused by or arising from the condemnation or rejection of any part by reason of faulty design, any loss or expense arising from such condemnation or rejection and/or the cost or expense of repairing, modifying or replacing any part (or for any loss or expense arising from such repair, modification or replacement) by reason of faulty design.

9. Loss of Use

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

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

10. Property in Your Physical or Legal Control

- (a) Damage to property used by You for rental or chartering purposes whilst rented or chartered to other parties and not under Your direct control;
- (b) Damage to property in Your care, custody or control, other than Vessels; or
- (c) Damage to Vessels stored by You for any reason other than to be worked upon.

11. Contractual Liability

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

This exclusion shall not apply to:

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

12. Asbestos

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

13. Pollution

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

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

Loss, Damage, Liability or Expense directly or indirectly caused by or contributed to by or arising from:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- (e) any chemical, biological, bio-chemical, or electromagnetic weapon.

15. War

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

16. Fines and Penalties

Punitive, aggravated or exemplary damages, fines or penalties imposed by law.

17. Legal Jurisdiction

Liability for a claim:

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

18. Assault and Battery

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

19. Under-ground/water Pipes and Cables

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

20. Hot Work

Liability caused by or arising from or in connection with Hot Work performed on or in Vessels previously engaged in carrying explosives or inflammable liquids or gases or arising in connection with work on or near any fuel tank or pipeline or fuel bunker space unless otherwise specified in Your Policy.

21. New Vessels

Liability caused by or arising from or in connection with any new Vessel being built by You as principal builder prior to delivery to the new owner.

22. Terrorism

Liability directly or indirectly caused by, arising out of or in consequence of any act of Terrorism.

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

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

23. Strikes

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

24. Infidelity

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

4 CONDITIONS

1. Reconstruction or Conversion

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

2. Claims Procedure

You will:

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

We will:

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

3. Discharge of Liabilities

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

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

4. Goods and Services Tax (GST)

All of the amounts insured by this Policy exclude GST.

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

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

5. Prevention of Accidents

You must:

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

6. Cross Liability

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

7. Joint Insureds

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

8. Cancellation

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

9. Subrogation

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

10. Increase in Risk

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

11. Premium Adjustment

Where premium has been calculated on estimates furnished by You, You shall, within 30 days after the expiry of each Period of Insurance, furnish to Us such information as We may require to adjust the premium for the Period of Insurance. Any difference in premium shall be paid by or allowed to You. You shall allow Us to inspect Your records to ascertain or verify such information if required. We will always retain a minimum of 80% of the deposit premium for each Period of Insurance.

12. Headings

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

13. Other insurance

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

5 DEFINITIONS

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

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

"Business" means all activities involved in Your business as a ship repairer or otherwise specified in the Schedule, including repair, installation and maintenance work carried out on Vessels and the ownership, tenancy and use of premises or car parks.

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

"GST" means Goods and Services Tax.

"Hot Work" means any work that involves tank cleaning or the use of equipment to weld, cut or solder.

"Incidental Contract" means:

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

"Limit of Liability" means the Limit of Liability specified in the Schedule.

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

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

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

"Personal Injury" means:

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

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

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

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

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

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

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

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

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

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

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

"We" "Us" "Our" means Wesfarmers General Insurance Limited, trading as Lumley Insurance, ABN 24 000 036 279.

"You" "Your" means:

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

OPTIONAL COVER EXTENSIONS

Not Effective Unless Specifically Arranged and Noted in the Policy Schedule

Hotwork Extension

You are covered for Your General Liability arising from Hot Work performed on or in Vessels previously engaged in carrying explosives or inflammable liquids or gases or arising in connections with work on or near any fuel tank or pipeline of any oil burning Vessel or on or near any bunker space of any coal burning Vessel.

It is a condition of cover that You comply with the rules regulations and requirements of the port or governmental authorities at the place where the work is being carried out. Should a gas free certificate not be required by the port or governmental authorities then such a certificate must be obtained from a chemist approved by Us or the nearest Lloyd's Agent prior to commencement of work. Exclusion Clause 20 in Section 3 is hereby deleted.

Other Repair Operations Endorsement

1. You are covered for Your General Liability in respect of other repair operations that do not come within the scope of Your ship repairing operations. You shall declare to Us the gross charges in respect of such operations to be adjusted at a rate to be agreed.
2. So far only as concerns such other repair operations, the expressions "ship repairers" , "ship repairing" and "Business" wherever used in this insurance, shall be deemed to include other repair operations of the Insured

Pollution Inclusion Endorsement

Notwithstanding Exclusion Clause 13 in Section 3, You are covered for Your General Liability as a result of sudden accidental discharge, emission, spillage or leakage upon or into the seas, waters, land or air of oil, petroleum products, chemical or other substances of any kind or nature whatsoever, excluding Your legal liability in consequence of, with respect to, or arising out of

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

Provided further that such discharge, emission, spillage or leakage does not arise from Your willful negligence or willful misconduct by or within Your privity and knowledge.

We also cover the costs of pollution clean up and/or mitigation limited to \$250,000 any one accident or occurrence less any deductible in the Schedule.

Storage Inclusion Endorsement

Notwithstanding Exclusion Clause 10 within Section 3, You are covered for Your General Liability in respect of any Vessel accepted by You solely for the purpose of storage.