



▶ **PRE-DELIVERY LIABILITY
POLICY 2022**



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Who we are

We are Yachtowners, a dedicated team within The Shipowners' Mutual Protection and Indemnity Association (Luxembourg), a marine liability insurer, protecting the interests of *yacht* owners and operators on a mutual basis. We operate as a non-profit making Club.

Your policy documentation

When we insure you, you become a Member of the Shipowners' Club and you will receive a Certificate of Insurance setting out the scope of cover and risks insured.

The protection we provide

You can expect us to respond to all marine liability *claims* made against you that fall within 'Your Cover' subject to 'What is not covered (exclusions)' and those *claims* which are unrelated to the construction of your *yacht*. Within Your policy limits, the reasonable costs of investigating and defending insured *claims*, are paid too.

Cover period

This cover operates during the Period of Insurance stated in your Certificate of Insurance or up to delivery of the *yacht* to you as evidenced by signature of a protocol of delivery and acceptance ('Delivery'), whichever is the earlier.

For the purpose of liabilities that would not have arisen but for contracts related to the construction of your *yacht*, *claims* are deemed to have arisen at the date of the relevant incident.

Yacht situation

Cover is in place whether the *yacht* is ashore or afloat and during launching and, in the absence of other insurance, periods of sea trials taking place prior to Delivery. Cover for your tender operates within the limits specified in your Certificate of Insurance.

Your cover

1) Your liability to your employees

We insure your liability for *claims* made against you by your *employees* and/or seafarers for personal injury, illness or death or property damage. Within the policy limit for this section, related medical costs and other expenses are covered too.

2) Your liability to your contractors and others

We insure your liability for *claims* made against you by your *contractors* or others for bodily injury or loss of or damage to their property. Within the policy limit for this section, related medical costs and other expenses are covered too. This cover includes liability to project managers, designers and other *contractors*. You are required to send us copies of your contracts with project managers, designers and other *contractors* for our prior approval. We agree to waive our rights of subrogation if this is required by the contract(s) approved by us.

3) The Liability of your employees to others

We insure you for *claims* made against your *employees* for personal injury, illness or death or damage to the property of others including their vessels, when such *claims* arise from carrying out duties connected with the construction of the *yacht* insured under this policy.

4) Contractual liability

i) Arising under contracts with employees

If you have entered into a contract of employment with *employees* or seafarers under which you are liable to pay *claims* for *compensation* and *sickness benefits* we will pay these too, provided that the benefits agreed to by you are no greater than the sick or injured *employee's* annual gross salary. It is not necessary to submit contracts with your *employees* to us for approval.

ii) Arising from the actions or omissions of your contractors

If you have agreed to indemnify a *contractor* for their liability to your *employees* or to others, we will insure you up to the limit of that *contractual liability* or the limit stated in your Certificate of Insurance whichever is lower. We must have seen and approved the contract in advance.

iii) Arising under contracts with others

If you have agreed to indemnify others for their liabilities, we will insure you up to the limit of that *contractual liability* or the limit stated in your Certificate of Insurance whichever is lower. We must have seen and approved the contract in advance.

5) Tenders

We insure your liabilities arising from your ownership and/or the operation of a tender which is intended to be used in conjunction with your *yacht*, provided that we have been advised and agreed in advance to cover that tender under this policy.

Limit of cover

The *combined single limit* which applies to all and any *claims* payable under all sections of this insurance policy is US\$ 500 million any one accident or *incident*. The individual section limits which apply to this insurance are as follows:

Sections 1, 2 and 5: US\$ 500 million any one accident or *incident* for your liability towards your *employees*, *contractors* and others and arising from your ownership and/or the operation of a tender.

Section 3: US\$ 10 million any one accident or *incident* for your liability arising from the actions of your *employees*.

Section 4 *Contractual liability claims*:

i) Arising under contracts with employees:

US\$ 5 million any one accident or *incident* for a *claim* which arises solely because of a contract you have entered into with your *employees*;

ii) Arising from the actions or omissions of your contractors:

US\$ 10 million any one accident or *incident* for your liability arising from the actions or omissions of your *contractors*;

iii) Arising under contracts with others:

US\$ 10 million any one accident or *incident* for your liability arising solely under contracts with others.

If we have agreed a higher limit for *contractual liability*, this will be shown in your Certificate of Insurance.

Legal expenses are included within the limits stated for each section and always fall within the overall *combined single limit*.

Continuity of cover bonus

A continuity of cover credit will be made available to *you* when *you* effect a 12 month navigating policy with *us* after *you* have taken Delivery of the *yacht*, provided that there are no known or reported *claims* at the inception of the 12 month navigating policy.

What is not covered (exclusions) applying to ALL sections of this policy:

For any *claim* to be recoverable under this policy it must arise from an *incident* which occurs during the Period of Insurance stated on *your* Certificate of Insurance or Delivery of the *yacht*, whichever is the earlier. In addition, we do not pay *claims* for or arising from the following:

1. **Builders Risk Insurance policies** unless the Certificate of Insurance states otherwise.
2. **Chemical & Cyber risks.**
3. **Contractual liability** other than as is expressly recoverable under section 4 of this policy.
4. **Country of Residence or Domicile.** We do not pay *claims* arising in an *employee's* country of residence or domicile, when they are entitled to a recovery under a national social insurance scheme or similar scheme.
5. **Cyber Risks.** There is no right of recovery from the Club for *claims* arising in respect of loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
6. **Deductibles, excesses, franchises or other amount(s)** which *you* are required to bear under other policies.
7. **Defence costs** incurred or paid before *our* written consent has been given.
8. **Disputes** relating to the terms and condition of a contract *you* have entered into with *your employees, contractors* or others.
9. **Disputes between named parties.** We do not support Members or Joint Members in dispute with each other, or *Co-Assureds* in dispute with Members or Joint Members under the same policy.

10. Employees claim exclusions:

We do not pay employment annuities, retirement accounts or pension contributions.

If injured parties are entitled to receive compensation for personal injury or sickness benefits under a mandatory scheme, we are not obliged to pay such *claims*. This exclusion applies even if *you* or the injured parties have failed to take the steps necessary to receive such entitlements.

We do not pay *claims* for or arising out of disputes with *employees* over *contractual liabilities* or obligations.

We do not pay *Employment Practices liability claims*.

11. **Illegal payments** of any kind such as extortion, blackmail or bribery or any associated costs or expenses.

12. Communicable Disease

Cover is excluded for any and all *claims* for or arising from:

1) loss, damage, liability, cost, or expense directly arising from the transmission or alleged transmission of:

- a) Coronavirus disease (COVID-19);
- b) Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or

c) any mutation or variation of SARS-CoV-2;

or from any fear or threat of a), b) or c) above;

2) liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for a), b) or c) above;

3) liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of a), b) or c) above or the fear or the threat thereof.

All other terms, conditions and limitations of the insurance remain the same.

13. **Kidnap and ransom** demands or payments.
14. **Motor Vehicles.** *Claims* arising from the use of mechanically powered vehicles whilst ashore, which would be recoverable under a fully comprehensive motor vehicle policy.
15. **Nuclear risks** or *claims* arising from radioactivity.
16. **Other insurances:** If you are insured under an insurance policy from which a claim can be recovered for any of the sections of cover detailed above, this policy will not pay such claims, regardless of whether the other policy includes a provision similar to this. Examples of other insurance claims we would not pay include those which fall under policies for Aviation risks, Builders Risks, General Liabilities, Motor Vehicles, Public or Products liability, Professional Indemnity and/or P&I insurance for sea trials.
17. **Own property:** Loss of or damage to owned or leased property of *yours*, including the *yacht*.
18. **Professional Indemnity.** We will not cover liability arising from advice, instruction, consultancy, design, formula, specification, inspection, certification or testing undertaken or given by *you, your employees* or *contractors* or anyone for whom *you* may be responsible.
19. **Property of employees** or others consisting of cash, precious metals or stones or other objects of a rare or precious nature.
20. **Punitive damages** or exemplary damages however described, imposed by a court or in the United States of America.
21. **Sanctions:** We do not pay *claims* which would expose the Shipowners' Club or its Managers to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the United Kingdom or the United States of America, nor do We provide cover to or for the benefit of, or pay *claims* to or for the benefit of, any person or entity *designated* nor in relation to any vessel *designated* by any State where the Association or its Managers have their registered offices or permanent places of business or by any State being a Major Power or by the United Nations or the European Union. Furthermore, We are not liable to pay any *claim* to *You*, in full or in part, if We are unable to make a recovery from *Our* reinsurers in respect of that *claim*, due to sanction restrictions placed on one or all of *Our* reinsurers.
22. **Time Bar.** We do not pay a *claim* if *You* have not told *Us* of any event or matter which could give rise to that *claim* within one year of *Your* first knowing about it (or in *Our* view when *You* should have known of it); or if *You* do not submit to *Us* for reimbursement a *claim* within a year of having yourself settled it. We do not in any event pay a *claim* if *You* have not told *Us* in writing of that *claim*, within three years of the event or matter that gave rise to it.
23. **Unlawful, Unsafe, Imprudent, or Unduly Hazardous Activities,** Including carrying contraband, blockade running, Illegal fishing, or being employed in an unlawful or prohibited activity or trade, infringement of any law, rule or regulation, or permitting any activity on board or in connection with *Your Yacht* which is unsafe, imprudent or unduly hazardous.

24. **War Risks.** Liabilities incurred as a result of war, civil war, revolution, rebellion, insurrection or resultant civil strife or any hostile act by or against a belligerent power or by any act of terrorism; capture, seizure, arrest, restraint or detention; mines, torpedoes, bombs, rockets, shells, explosives or similar weapons of war.
25. **Wilful misconduct,** being an intentional act or deliberate omission done by *You* with knowledge that it will probably result in loss, or done with a reckless disregard for the probable consequences.

If we have agreed to insure any of the risks which we state above we do not cover, such agreement will be shown on *your* Certificate of Insurance or an endorsement thereto.

General conditions Assignment and Subrogation

You cannot assign *your* policy to any other person other than with *our* prior written approval.

If *We* make a payment to *You* or any Joint Member or Co-Assured under this policy, or under any Security *We* have given, and *You*, the Joint Member and Co-Assured have any rights to *claim* against a third party that are connected to the payment *We* make, then *We* will be subrogated to all of those rights to the extent of *Our* payment, including any interest and costs. *You* and the Joint Member and Co-Assured agree to take any steps that *We* reasonably require to this end.

Claims

If a *claim* is made against *you*, *you* must follow the *claims* handling procedure set out at the end of this document. If *you* fail to do so, *your* ability to *claim* under this policy may be affected.

Complaints

We take all complaints seriously. If *you* are dissatisfied with *our* handling of *your claim* or any other aspect of *your* insurance or the service *we* provide, please contact *us*. *Our* complaints handling policy is detailed on *our* website at:

www.shipownersclub.com/other/complaints-handling-policy

Deductibles

Your entitlement to make a *claim* is subject to the deductible that appears on *Your* Certificate of Insurance. If a single incident gives rise to a number of *claims* with different deductibles then the total of all *claims* will be subject to the highest deductible that applies to any one of the *claims*.

Discretionary Claims

The Board of the Shipowners' Club has discretion to pay a *claim* in whole or in part for any liabilities or expenses which are not covered under this policy or any contract that *we* have with *you*, so long as they are related to owning and operating *your* yacht.

Joint Members and Co-Assureds

If *We* issue a Certificate of Insurance in the name of more than one person or company, those additional parties will be known as Joint Members. Joint Members are bound by all the terms and conditions of *Your* policy and Certificate of Insurance and each of them are individually responsible for paying all premium and any other sums due to *Us* under *Your* policy and are bound by all of the terms and conditions of *Your* policy and *Your* Certificate of Insurance. If *We* make payment to, or on behalf of, any Joint Members for any amount due under *Your* policy, *We* will make no further payment to any person, including *You*, in relation to the amount that was due.

If *We* issue a Certificate of Insurance naming a Co-Assured then *We* agree to extend cover to that named Co-Assured, but only if: the named Co-Assured is held responsible for a *claim* which is properly *Your* responsibility and for which *You* would have been able to recover from *Us* under this policy, had that *claim* been made and enforced against *You*. If *You* have a contract with a named Co-Assured, *Your* responsibility means *Your* responsibility as agreed in that contract.

If *We* make a payment to, or on behalf of, a named Co-Assured for a *claim* then, in relation to that *claim*, *We* will not make payment to any other person, including *You*, and *We* agree to waive *Our* rights of subrogation, if any, against the named Co-Assured.

If there is a failure by any Joint Member to comply with the 'Fair presentation/ Duty to provide information' section of *Your* policy or if the conduct of any Joint Member or Co-Assured would entitle *Us* to decline a *claim*, then *We* will treat such failure and/or conduct as extending to all insureds.

If more than one person is named on the Certificate of Insurance *We* will treat an act, omission, statement or a *claim* by any one of those persons as an act, omission, statement or *claim* by all of them.

We direct all correspondence to *You* and *You* receive it on behalf of all insureds.

Governing Law

You and *we* agree that *your* policy and *your* Certificate of Insurance are governed by and will be construed in accordance with English law. In particular, it is subject to and incorporates the provisions of the Marine Insurance Act 1906 and, upon its entry into force, the Insurance Act 2015 and all amendments thereto except to the extent that such Act or modification may have been excluded by this policy or any contract of insurance between *us* and any insured party. It is not intended that rights should be acquired by any third party by reason of the Contracts (Rights of Third Parties) Act 1999 or any similar legislation in any jurisdiction.

Dispute resolution

If any dispute arises out of or in connection with *Your* Policy or any contract with *Us*, then such dispute will in the first instance be referred to the Board of the Shipowners' Club for adjudication. If the Board of the Shipowners' Club decides to waive its right to adjudicate, or if it finds against *You*, then the dispute will be referred to arbitration in London, one arbitrator to be appointed by *Us*, one by *You*, and a third to be appointed by the arbitrators.

Fair Presentation/Duty to provide information

If *You* are not a Consumer, *You* have a duty to make a fair presentation of the risk, by disclosing all material matters which *You* know or ought to know or, failing that, by giving *Us* sufficient information to put as a prudent insurer, on notice that *We* need to make further enquiries in order to reveal material circumstances. If *You* fail to do so *Your* ability to recover a from *Us* may be prejudiced. If *You* are a Consumer, when *You* provide information in connection with *Your* proposed insurance or a proposed change to *Your* insurance, *You* must take reasonable care not to make any misrepresentation. Any misrepresentation that *You* make deliberately, recklessly, or carelessly could adversely affect *Your* cover and *claims*.

Premium

Your insurance premium will be fixed annually and no further premium will be payable, unless *you* ask *us* to extend *your* insurance cover or the material facts upon which *we* base the cover change. *You* must pay *your* premium in such instalments and on such dates as *we* have specified, otherwise *we* will not pay *claims* and *we* may cancel *your* insurance policy. *We* are entitled to call upon Joint Assureds to settle any unpaid premiums.

Severability clause

In the event that a court or tribunal finds any part of this policy to be unenforceable, invalid or to be in conflict with any mandatorily applicable statute or law, or public policy, such part shall be severed and such a finding shall not affect the enforceability, validity or legality of the remainder of the policy, which shall remain in full force and effect.

Termination

The insurance which *we* provide to *you* will terminate at the end of the Period of Insurance stated in *your* Certificate of Insurance or Delivery of the *yacht* to *you* (whichever is the sooner) or upon an earlier date should *you* become bankrupt or insolvent.

We may also terminate cover by notice where we believe that continuing cover with you may expose the Club or any of its Members to sanction, prohibition or adverse action from the United Nations or the European Union, United Kingdom or United States of America.

Your insurance will terminate immediately if we are prohibited from insuring you under United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America. Termination of cover shall, upon our discretion, also apply to any Joint Assureds and Co-Assureds.

When cover is terminated you will be entitled to a daily pro rata return of premium providing that no claims have been made under the current policy. If your policy is cancelled for non-payment of premium and part of the premium due has been paid by instalments, no return of premium is payable.

Claims handling procedure

If you are involved in an incident which could give rise to a claim, please refer to our website www.shipownersclub.com for the claims handler for your region.

Immediate advice and local assistance is also available from our Correspondents who are listed at:

www.shipownersclub.com/correspondents

It is important that you contact us or our local Correspondent promptly, so that we can assist you. The earlier we are involved, the better. We recommend that you act prudently and as if you are uninsured until such time as we have taken over the handling and management of the incident. When reporting a claim it will help us if you include your yacht's name, the incident date, the nature of the incident, the location of your yacht and location of the incident (if different). If an injury or collision is involved you may be required to notify the appropriate authorities.

We have the right to handle, settle or compromise claims or proceedings as we see fit. We may appoint lawyers, surveyors or other persons when we consider these are necessary. They may report to us and provide documents or information to us, without prior referral of these matters to you. When it is possible for you to limit your liability at law, that sum becomes the maximum amount recoverable under this policy. You must not admit liability for any claim and you must not settle a claim without our prior approval. You must also preserve any rights you may have to limit your liability and any rights you may have against any third party. If you admit liability, settle or fail to preserve your limitation rights, your claim may be rejected or reduced. If we pay the claimant, you or your nominated broker, manager, agent or some other person whom you nominate, our liability shall be fully discharged.

Definitions

Please note that the use of italic text in this policy indicates that the word or phrase is defined in the clauses. Words in the singular shall include the plural and vice versa.

Builders Risk insurance policy means a policy based on the Institute Builders Risk Clauses 1/6/88 or equivalent terms and conditions, with or without the P&I section in place.

Chemical and Cyber risks means claims arising from chemical, biological, bio-chemical or electromagnetic weapons or the use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

Claims means liability claims made against you as a result of your entering into the contract for the construction of the yacht and/or liability claims arising from your status as an owner or buyer of the yacht and/or employer in law.

Compensation and sickness benefits are those payable under your employee's contracts, collective bargaining agreements or where the state requires employers to pay compensation or sickness benefits for personal injuries in the absence of a mandatory state scheme. Death, disability or benefit payments you provide under individually negotiated

and agreed employee contracts should be reasonable and appropriate for the duties and position held by the employee when viewed against the prevailing compensation regime and no greater than the sick or injured employee's annual gross salary.

Combined single limit means the amount we will pay as a total amount for any one claim regardless of how many sections of the cover are triggered (e.g. contractual, tort, defence or investigation costs).

Contractor means a company which enters into a contract with you to provide goods or services. This includes sole traders who have established themselves as a Corporate Entity. Independent contractors are not employees.

Contractual liability means that liability which attaches to you solely by virtue of a contract you have entered into and which liability would not exist otherwise. Unless it is a contract with an employee, contractual liability claims must have arisen under a contract you have submitted to us and we have approved.

Communicable Disease means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:

- A. the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and
- B. the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and
- C. the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

Employee means any individual employed under a contract of employment with you by which you agree to provide work and that person agrees to do that work in return for an agreed salary or wage, and on terms and conditions laid down by you. You determine when, where and how the work is to be done or the manner in which it is to be done. Employees must be carrying out work directly connected to the construction of the yacht.

Deductible means the initial amount you have to pay yourself before the insurance policy will respond to a loss under an insurance policy. Some insurance policies refer to this as an excess. For the purposes of this policy, the words deductible and excess in this context have the same meaning.

Employment Practices liability claims means claims for wrongful or unfair termination, sexual harassment, discrimination or any other employment-related conduct.

Fines include civil penalties, penal damages and other impositions similar in nature to fines, but not punitive damages.

Incident means an accident or occurrence relating to your ownership and/or the operation and/or use of your yacht. A series of incidents which have the same cause will be treated as one incident and for the purpose of claims settlement(s) one claim deductible will apply.

Nuclear risks mean any loss, damage or expense due to or arising out of, directly or indirectly, nuclear reaction, radiation or radioactive contamination regardless of how it was caused.

Wilful misconduct means an intentional act or deliberate omission done either with knowledge that the act or omission is likely to result in loss, or in such a way as to allow an inference of reckless disregard for the probable consequences.

We or **our** or **us** means The Shipowners' Mutual Protection and Indemnity Association (Luxembourg), the insurer.

Yacht means the *yacht* under construction named in the policy which *you* are purchasing and which *you* intend to insure with *us* once the *yacht* is delivered to you and begins navigating.

You or **your** means the person or company named as the assured in the Certificate of Insurance.

For help and assistance with all yacht related matters, please contact:

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