

**THOMAS
MILLER**
SPECIALTY

Yacht Liability Terms and Conditions

1st January 2019



Coverage available for owners/operators/managers and bareboat charterers of yachts in excess of 24 metres

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Part I: Terms and Conditions

1. Risks covered

We insure liability claims made against you as the owner or operator of the yacht named on your Certificate of Insurance. The liabilities insured include:

2. Collision and property of others

Liabilities arising from collision damage or loss of or damage to piers, wharves, jetties, pontoons or any property belonging to others. We will also cover your claims from other parties for personal injury or death which arise out of a collision.

3. Contractual indemnities

Contractual indemnities for third party illness, personal injury, death or property damage when these relate to your yacht and concern its operation and management. This includes indemnities given to yacht clubs, marinas, port or harbour authorities, boatyards and suppliers of goods and services to your yacht. We will also agree to waive our rights of subrogation, if this is required by the contract. We also approve the use of the MYBA Charter Agreement (Charter Agreement Revised 2009) provided it has not been amended to increase your exposure to liabilities or expenses.

Cover under this section is sub-limited to USD 5,000,000 any one accident or occurrence.

4. Crew

Claims from your crew for personal injury, illness or death including claims for crew compensation arising from personal injury, illness or death and sickness benefits. Related medical costs and other expenses are covered, too. We also cover claims made against your crew as a result of carrying out their professional duties.

Cover includes liabilities in accordance with Regulation 4.2, Standard A4.2 and Guideline B4.2, Regulation 2.5, Standard A2.5 and Guideline B2.5 of Maritime Labour Convention.

5. Guests and others

Claims from your guests or others for personal injury, illness or death including related medical costs and other expenses.

6. Fines

Fines for breach of pollution, smuggling or immigration laws, providing these were accidental or caused by your crew's independent actions or omissions.

This insurance will also cover fines due to an inadvertent breach of statutory health and safety regulations which apply to your yacht.

7. Helicopters and other Airborne Craft

Liabilities to third parties arising as a result of the presence of a helicopter or other airborne craft owned or chartered by the Assured whilst on board the Yacht commencing from the moment when all its rotors have ceased to turn until the moment when any of its rotors have begun to turn. This insurance does not cover any liability for loss of or damage to any helicopter or airborne craft of any nature whatsoever.

Part I: Terms and Conditions (continued)

8. Handguns and Shotguns

Liabilities to a third party arising from the use of weapons on board for sporting purposes providing such weapons are carried, stored and used in compliance with all applicable local and international laws and regulations.

9. Inquiries and criminal proceedings costs

The reasonable costs and expenses of attending formal inquiries into a casualty and the reasonable costs of defending criminal proceedings which, in relation to a covered matter, are brought against those who may be involved. This will include crew and agents, if you have a responsibility for them.

10. Legal Costs

Costs and expenses reasonably incurred on or after the occurrence of a casualty event or matter liable to give rise to a recovery from Thomas Miller Specialty, providing that they are incurred solely for the purpose of avoiding or minimising any liability or expenditure against which the Assured is covered by Thomas Miller Specialty and are incurred with the prior approval of Thomas Miller Specialty.

11. Piracy

You remain covered for any of the claims listed here under 'Risks Covered' which arise following acts of piracy against your yacht, although please note our exclusion in respect of kidnap and ransom demands shown below.

12. Pollution and environmental liabilities

Pollution from your yacht, including the cost of clean up and reasonable measures taken to prevent an imminent risk of pollution.

Damage to coral reefs and other sensitive marine environments providing these occur as a result of an identifiable accident or occurrence. We also cover resulting governmental fines and penalties.

13. Pre-delivery Crew Cover

Liabilities, costs and expenses where you have concluded a contract of purchase for a yacht to be insured under this policy and where such liabilities, costs and expenses have arisen in respect of a Person who has been stationed:

- i) on a new yacht or in the yard or port for the purpose of supervision of work, familiarisation and hand-over; or
- ii) on board a second-hand yacht for the purpose of inspection, familiarisation prior to hand-over; or
- iii) on board the Insured Yacht, which is undergoing repair, refit or dry-docking for the purpose of supervision of the repairs, refitting or dry-docking.

14. Quarantine costs

The extra costs and expenses you incur as a direct result of an outbreak of an infectious disease.

Part I: Terms and Conditions (continued)

15. Racing cover

Sailing yachts participating in casual racing events or those organised by yacht clubs, sailing associations or racing events governed by an internationally recognised sailing federation.

If your yacht's principal purpose is competitive racing or you intend to undertake any form of professional ocean racing, you need to talk to us in advance so that we can determine whether we can offer cover. We do not provide racing cover for motor yachts, unless we have been advised of the racing in advance and you have obtained our written agreement to insure it.

16. Stowaways refugees and life salvage

Costs and expenses arising from stowaways, refugees and the saving of life at sea.

17. Submarines, mini subs, remotely operated vehicles (ROVs)

Marine liability claims arising out of your submarines, mini subs and remotely operated vehicles (ROVs) when the submarine, mini-sub or ROV is under the control of you or your crew. The submarine, mini-sub or ROV must at all times be operated and maintained in accordance with the manufacturer's safety guidelines and any requirements of your yacht's Flag State or Classification Society. There is no cover for claims arising when a Guest, Charterer or a Charterer's Guest is operating the submarine, mini-sub or ROV without the supervision of you or your crew or without having been trained in accordance with the manufacturer's safety guidelines.

You must advise us that you will require this cover in advance and an additional premium may apply.

The limit of cover under this section is USD 5,000,000 per claim and the deductible is USD 20,000 per claim.

18. Tenders

Claims arising from the use of tenders and water sports equipment are covered, providing these arise from activities connected with your yacht.

To obtain cover for boats which are used as tenders but which are registered separately from your yacht, you must declare them to us and if we agree to insure them they will be covered under their own policy.

19. Uninsured or underinsured boaters

In the event of any accident caused by any uninsured or underinsured third party (and/or third party vessel owner/operator), you, your crew or your guests sustaining personal injury whilst on board your yacht or its tenders, we agree to meet any medical costs or expenses which are not recoverable from them.

The limit of cover under this section is USD 5,000,000 per claim.

Part I: Terms and Conditions (continued)

20. War risks

Marine liability claims arising from war risks unless you have separate cover under a war risks policy which includes marine liability, in which case we pay claims only in excess of the USD equivalent of the insured value of your yacht (which is deemed not to exceed USD 100 million) or the amount recoverable from your war risk underwriters, whichever is the greater. The war risks cover we provide is subject to special conditions:

1. We may cancel your cover for war risks by giving you 7 days' notice of cancellation at any time.
2. Your cover for war risks will terminate automatically should war break out between any of the following countries: the United Kingdom, the United States of America, France, the Russian Federation and the People's Republic of China.

21. Water sports

Claims arising from the use of water sports equipment belonging to and carried by your insured yacht.

22. Wreck Removal

Wreck removal, marking or lighting costs which are compulsory by law, following the loss of your yacht. We also cover voluntary yacht wreck removal from somewhere you own, lease or occupy when no wreck removal order has been given. The residual value of any property recovered may be deducted or offset against your claim.

Part II: Risks Excluded

Notwithstanding anything to the contrary contained in this Policy it is hereby understood and agreed that this Policy is subject to the following exclusions and that this cover shall not apply to:

23. Bare-boat chartering

Claims arising from bare-boat chartering your yacht. We do however continue to cover you for any strict liabilities which attach to you as the owner of the yacht, such as pollution liabilities arising under Bunker Blue Cards.

24. Chemical, biological, bio-chemical or electromagnetic weapons.

25. Commercial diving or diving bells

26. Contractual indemnities other than those relating to illness, personal injury, death or property damage.

27. Crew annuities, retirement accounts or pension contributions

28. Cyber risks.

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.

29. Deductibles which you are required to bear under other policies in your name

30. Disputes with crew or others over contractual liabilities or obligations; or disputes or proceedings over obstruction or interference with your yacht's operations

31. Disputes between Joint assureds and/or Co-assureds

32. Employment practices

We do not pay claims arising from or relating to employment practices including, but not limited to, wrongful or unfair termination, sexual harassment, discrimination or any other employment-related conduct.

Part II: Risks Excluded (continued)

33. Environmental damage arising from your continuing use of or presence at a coral reef or other sensitive marine environment

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

35. Kidnap and ransom demands or payments

36. Motor vehicles

Claims arising from the use of mechanically powered vehicles whilst ashore, which would ordinarily be insured under a motor vehicle policy.

37. Nuclear risks or claims arising from radioactivity

38. Other insurances

Amounts which could be recovered under insurance policies you have taken out, including but not limited to hull and machinery, war risks and war risk liabilities, motor vehicle or aviation risks.

39. Own property

Loss of or damage to owned or leased property of yours including your yacht. This exclusion also applies to such loss of or damage when caused by the actions of your charterer and /or guests.

40. Property of crew, guests or others consisting of cash, precious metals or stones or other objects of a rare or precious nature

41. Punitive damages or exemplary damages however described, imposed by a court in the United States of America

42. Salvage services to your yacht or demands for general average payments and any related disputes

43. Sanctions

We do not pay claims which would expose us 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.

44. Towing

Claims arising as a result of towing other vessels unless it is your own tender or a vessel in distress and you are providing emergency assistance.

Part II: Risks Excluded (continued)

45. Unlawful purposes

Including carrying contraband, blockade running, illegal fishing, or being employed in an unlawful or prohibited activity or trade. This would include any activity or trade where granting you cover or paying you a claim would risk exposing us to any sanctions, prohibitions or restrictions under United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

46. Unseaworthiness

If you fail to ensure that your yacht is maintained in a seaworthy condition or to keep or operate it in accordance with the requirements of her Flag State, certifying authority or classification society, claims which arise as a result, including wreck removal, will not be payable.

47. Wilful misconduct

including your infringement of any law, rule or regulation, or permitting any activity on board or in connection with your yacht which is unsafe or unduly hazardous.

48. Workers compensation schemes

If injured parties are entitled to receive compensation for personal injury under a mandatory state or national insurance 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.

If we have agreed to insure any of the risks which we say we do not cover, it will be shown on your Certificate of Insurance.

Part III: General Conditions

49. Joint Assureds and Co-Assureds

We may agree to insure your yacht in the name of more than one person or company and to note them on your Certificate of Insurance as Joint Assureds. In these circumstances, the terms and conditions of the policy (including premium payment obligations) apply equally to all. An act, omission, statement or claim of any Joint Assured similarly affects all of them. We direct all correspondence to the first named assured, who receives it on behalf of the others.

Whenever you have a liability which is recoverable from us but the claim for that liability is made against another person or company who appears on your Certificate of Insurance as a Co-Assured, rather than a Joint Assured, we will reimburse claim payments made by that Co-Assured, up to the limit of your liability for those payments. We will not subrogate against Co-Assureds for claims which we pay due to your liability.

When we pay a claim to any one of the Joint Assureds or Co-Assureds, we have discharged our liability to all of them.

50. Assured

When your yacht is chartered out on a fully crewed basis and you notify us that you would like us to do so, we will extend cover to treat your Charterers and their guests as Joint Assureds and shall respond to liability claims made against them as a result of an incident occurring during their use of your yacht. You may notify us before or after a claim occurs. This extension protects charterers or their guests against those claims which, had they been made against you, would have been claims falling within the scope of this insurance. Under no circumstances will we be liable for a larger sum than we would have been obliged to pay on your behalf.

51. Assignment

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

52. Cancellation

You may cancel cover on the renewal date of any year by giving us not less than 30 days' prior written notice of cancellation. We may, at any time, cancel this policy by giving you not less than 30 days' notice in writing.

53. Claims

If a claim is made against you, you must follow the claims handling procedure set out in the Notice of Claims section of this document. If you fail to do so your ability to claim may be affected.

Part III: General Conditions (continued)

54. Crew nationalities

If your cruising area includes United States (US) waters or you own a US flagged yacht or there is a US entity named as an assured on your policy, you need to tell us the number of US crew employed on your yacht. In all other circumstances you do not need to inform us of crew nationalities.

55. Dispute resolution

In the unlikely event that we cannot resolve your complaint satisfactorily, the matter will be referred to The London Maritime Arbitrators Association (LMAA) arbitration in London, and will be determined in accordance with their rules and subject to the provisions of the Arbitration Act 1996.

56. Fair Representation

You must tell us all facts that may influence whether or not we wish to insure you and upon what terms. This is a continuing obligation that applies both before and during the period that you are insured with us. Failure to do so may result in our refusal to pay your claim.

57. Law and jurisdiction

Notwithstanding anything else to the contrary, this insurance is subject to English law and practice and any dispute under or in connection with this insurance is to be referred to Arbitration in London, one Arbitrator to be nominated by the Assured and the other by Thomas Miller Specialty on behalf of Underwriters. The Arbitration shall be conducted pursuant to exclusive supervision of the English High Court of Justice. In case the Arbitrators shall not agree, then the dispute shall be submitted to an Umpire to be appointed by them. The award of the Arbitrators or the Umpire shall be final and binding upon both parties. In the event of a conflict between this clause and any other provision of this insurance, this clause shall prevail and the right of either party to commence proceedings before any Court or Tribunal in any other jurisdiction shall be limited to the process of enforcement of any award hereunder.

58. Lay up

We do not return premium for periods of lay up notified in arrears.

59. Mitigation costs

When an incident arises which will or is likely to lead to a claim under this policy, you are required to take reasonable steps to mitigate the loss and minimize the amount which would be paid as a claim under this insurance. We will reimburse the reasonable costs and expenses you incur for this purpose.

Part III: General Conditions (continued)

60. Notice of Claims

- a) In the event of an occurrence likely to lead to a claim on this insurance notice must be given of that occurrence to Thomas Miller Specialty as soon as the Assured, its agents or the crew is or ought reasonably to be, aware of that occurrence. Such notice shall include:
- (i) the name of Yacht;
 - (ii) the date of the incident;
 - (iii) the location of the incident;
 - (iv) the nature of the incident;
 - (v) the names of any other parties involved, including governmental authorities investigating or to whom the incident has been reported.
- b) Without prejudice to the Assured's obligation under part a) of this clause, Thomas Miller Specialty shall be under no liability whatsoever where a claim, liability or expense is notified later than 12 months after the Assured becomes or ought reasonably to have become aware of its existence.
- c) After an incident occurs you must not admit liability nor must you settle a claim without Thomas Miller Specialty prior approval. You must also preserve any rights you may have to limit your liability and any rights you may against any third party. If you admit liability, settle or fail to preserve your limitation rights, your claim may not be recoverable under this policy.

61. 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 Additional Assureds to settle any unpaid premiums.

62. Security

Where we consider it appropriate and necessary we may provide letters of undertaking, bonds or bank guarantees on your behalf, as security for covered claims.

63. 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.

Part III: General Conditions (continued)

64. Termination

The insurance which we provide to you will terminate upon the date shown on your Certificate of Insurance or upon an earlier date should any of the following events occur: the sale or transfer of your yacht to new owners or your bankruptcy or insolvency.

Should you use any of your insured yachts or vessels for a prohibited or unlawful activity or trade, we may, by notice, terminate the insurance for all of them. We may also terminate cover by notice where we believe that continuing cover with you may expose us 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 Additional Assureds and Co-insureds.

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.

Part IV: Definitions

Joint Assured

means a person or company eligible to be a policy holder and who is insured under the same policy with other eligible persons. The policy provides cover to Joint Assureds on the same terms and conditions as apply to you. They have joint and several liability for premiums payable.

Bare-boat chartering

means making your yacht available for hire or reward to other parties, without your crew on board. Inter-company arrangements in which your yacht is chartered from one related company to another within a company group or otherwise, is not considered to be bare-boat chartering for the purposes of this policy.

Casualty

means an incident affecting the physical condition of your yacht so as to render it incapable of safe navigation to its intended destination, or which creates a threat to the life, health or safety of your crew or guests. Engine breakdown is not a casualty for the purposes of this policy.

Claims

means liability claims made against you as a result of owning or operating the yacht named on your Certificate of Insurance.

Co-Assured

means persons or companies other than you who are entitled to the protection of the policy when held responsible for liabilities which properly belong to you. Unlike Assureds and Joint Assureds, Co-Assureds have no independent right of recovery under the policy for their own liabilities. They have no obligation to meet any unpaid premiums due under the policy.

Crew

means any person engaged or employed in any capacity in connection with your yacht, whether on board or proceeding to or from your yacht or on yacht's business. This includes day workers, but the total number of day workers engaged on or around your yacht at any one time must not exceed 50% of your yacht's normal crew complement unless we have been advised and agreed in writing, in advance. Crew does not mean yacht brokers or yacht agents or those supplying services to your yacht.

Crew compensation and sickness benefits

are those payable under your Seafarers' Employment Agreements (SEAs) or crew 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 Seafarers' Employment Agreements (SEAs) or crew contracts should be reasonable and appropriate for the duties and position held by the crew member when viewed against the prevailing compensation regime.

Deductible

means the initial amount you have to pay yourself before the insurance policy will respond to a loss under a policy. Some 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.

Extra costs and expenses

means costs and expenses over and above those which would ordinarily be incurred had the incident not taken place.

Part IV: Definitions (continued)

Fines

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

Fully crewed chartering

means making your yacht available for hire or reward to other parties (charterers), with your crew on board. Also known as time chartering.

Incident

means an accident relating to the operation 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 settlements one claim excess will apply.

Nuclear risks

means 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.

Pollution

means the accidental discharge or escape of oil or other substances from your yacht.

Tender

means the boat or boats which are registered to your yacht.

Underinsured third party vessel

means a third party vessel whose owner or operator has insufficient insurance to cover medical costs and expenses of your crew or guests.

Uninsured third party vessel

means a third party vessel which collides with your yacht and which fails to stop and identify itself afterwards or a vessel whose owner or operator has no vessel liability insurance or whose liability insurer denies cover or becomes insolvent.

War risks

means 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 detainment; mines, torpedoes, bombs, rockets, shells, explosives or similar weapons of war; any chemical, biological, bio-chemical or electromagnetic weapon; the use or operation, as a means of inflicting harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system.

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