

# Commercial Vessel Insurance Policy



Trident Insurance Group Pty Ltd  
PO Box 191  
MT HAWTHORN WA 6915  
ABN: 94 247 973307  
AFS Licence No: 237360

# COMMERCIAL VESSEL INSURANCE CERTIFICATE

## Insurer

The Certificate is underwritten by Certain Underwriters at Lloyd's of London.

Trident Insurance Group Pty Ltd ABN 94 247 973 307, AFS Licence No. 237360 is acting under a binding authority given to it by the insurer. In arranging and effecting this Certificate, Trident Insurance Group Pty Ltd will be acting under authority given to them by the Insurer. They will be acting as agent of the Insurer, not as your agent.

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## About Trident

Trident Insurance Group Pty Ltd ABN 94 247 973 307, AFS Licence No. 237360 was formed in 1994 as an insurance services provider based in Western Australia. Since then its activities have expanded to include an Underwriting Agency service Australia wide.

Trident has entered into an arrangement with Lloyd's of London enabling Trident to develop financial products and services that are distributed to Trident's customers.

This arrangement enables Trident to assess risks to be insured and issue insurance policies and handle claims on behalf of the insured.

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## COMMERCIAL VESSEL INSURANCE CERTIFICATE

### Section 1: Definitions

When used in this Certificate, the following words have a special meaning assigned to them, as follows:

Word or term	Meaning
Accident/accidental	an unexpected and unintended event causing loss or damage and includes one accident or series of accidents arising out of the one insured event.
Commercial vessel	the vessel as specified in the Policy Certificate together with its equipment and accessories while being used as specified in the Policy Certificate for payment or reward.
Crew	any person (including the skipper/master) working on board the commercial vessel as an employee.
Damage	any form of physical harm to the commercial vessel.
Equipment and accessories	safety equipment installed or carried in accordance with statutory requirements and any other equipment carried on board and used in conjunction with the operation of the commercial vessel including: <ul style="list-style-type: none"> <li>• detachable canopies</li> <li>• commercial vessel and power unit covers</li> <li>• lifesaving equipment</li> <li>• auto pilot</li> <li>• electronic navigation equipment</li> <li>• global positioning system</li> <li>• two-way radios</li> </ul> as specified in the Policy Certificate.
Hull	the hull of the commercial vessel, deck, cabin, superstructure, fixtures and fittings that are not normally removable and normally sold with the commercial vessel.
Latent defect	any flaw in the material used in the construction of the hull and superstructure, motors/machinery, sails, masts, spars, standing and running rigging of the commercial vessel that is not known by to you and is not discoverable by a competent tradesperson carrying out a normal inspection.

Word or term	Meaning
Legal liability	your legal liability (responsibility in law) arising out of the use of the commercial vessel to pay compensation for death or injury or damage to the property of other people, excluding any property owned by or in the physical or legal control of you.
Motors/machinery	inboard motors, outboard motors, stern drive units, jet units, gear boxes, propellers, shafts, skegs, fuel tanks including fuel lines, wiring harness and instruments, fixed generators and refrigeration machinery including ancillaries necessary for the operation of the machinery.
Omission	a failure to act and includes a failure to do or say something.
Period of insurance	the period for which the cover under your Certificate is in force. You will find this period of insurance in the Policy Certificate.
Salvage	either the action of saving your commercial vessel in a time of peril or what is left of your commercial vessel after it has suffered loss or damage.
Seaworthy	that the commercial vessel must be reasonably fit in all respects, including the hull, motors/machinery and equipment and accessories during operation or mooring to encounter the ordinary perils of: <ul style="list-style-type: none"> <li>• protected waters, inland waters, rivers or lakes;</li> <li>• the sea and ports.</li> </ul>
Total sum insured	the amount we have agreed to insure your commercial vessel for and is the total of the values for the hull, motors/machinery, sails, masts, spars, standing and running rigging, equipment and accessories and trailer. This will be specified in the Policy Certificate.
We/us/our	Certain Underwriters at Lloyd's of London through its agent Trident Insurance Group Pty Ltd ABN 94 247 973 307, AFS Licence No. 237360.
You/your	any of the person or persons/company named as the insured in the Policy Certificate including any person allowed by you to control your commercial vessel. If more than one person is named as the insured in the Policy Certificate, we will treat an act, omission, statement or a claim by any one of those persons as an act, omission, statement or a claim by all of them.

## Section 2: This insurance contract

Your Commercial Vessel Insurance Certificate is a contract between us and you. It is a contract of Marine Insurance as defined by the Marine Insurance Act 1909 (Commonwealth).

We will cover your commercial vessel up to the total sum insured specified in the Policy Certificate during the period of insurance, subject to the terms and conditions set out in this Certificate wording.

We will also cover your legal liability for death or bodily injury to other people or accidental damage to other people's property your commercial vessel may cause during the period of insurance, subject to the Terms and Conditions set out in this Certificate wording.

The Certificate wording and the Policy Certificate together make up our contract with you. The Policy Certificate shows the Terms and Conditions that are specific to your Certificate and should be read together with this Certificate wording.

If there is any conflict between this Certificate wording and your Policy Certificate, the Policy Certificate prevails. It states:

- the names of the people who are insured under this Certificate,
- the amount for which we have agreed to cover your commercial vessel, and
- other Terms and Conditions specific to your Certificate.

We will give you a new Policy Certificate with each renewal or change to the Certificate and the most recent Policy Certificate is the only one which applies to your Certificate.

If the Certificate does not meet your requirements or if you would like us to explain anything about the Certificate wording, please contact us or your insurance broker or our agent.

### your duty of disclosure

Before you enter into a contract of General insurance, you have a duty under the Marine Insurance Act 1909, to disclose to us every matter that you know or could reasonably be expected to know, is relevant to our decision on whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of marine insurance.

Your duty however does not require disclosure of matters:

- that diminish the risk to be undertaken by us,
- that are of common knowledge,
- that we know or, in the ordinary course of our business, ought to know,
- where we waive your disclosure and we agree you do not need to tell us.

### non-disclosure

If you fail to comply with your duty of disclosure, we may avoid the contract of insurance from its beginning.

### Underinsurance

We require you to insure for the full value or maximum potential risk. If you do not do so, and you are underinsured, we may pay you less in the event of a claim, calculated in accordance with either the Certificate wording or the Marine Insurance Act

1909 where applicable, which takes into account the degree of underinsurance.

### Privacy

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth.), when collecting and handling your personal information. Trident has developed a Privacy Policy which explains what sort of personal information we hold about you and what we do with it.

We will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance Certificate, including any claims you make. We will only use and disclose your personal information for a purpose you would reasonably expect.

We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of litigation. We may disclose personal information to people listed as co-insured on your Certificate and to family members or agents authorised by you. We may also disclose information to organisations which conduct customer service surveys on our behalf. We will request your consent to any other purpose.

By providing your personal information to us, you consent to us making these disclosures. Without your personal information we may not be able to issue insurance cover to you or process your claim.

You also have the opportunity to find out what personal information we hold about you and, when necessary, correct any errors in this information. Generally we will do this without restriction or charge. For further information about our Privacy Policy or to access or correct your personal information, please contact The Compliance Manager at Trident Insurance Group Pty Ltd.

### The General insurance Code of Practice

We are a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry.

It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and
- outlines good standards of practice and service to be met by insurers to enhance their regulation for responding efficiently to their customers' needs.

### Dispute resolution

We will do everything possible to provide a quality service to You. However, We recognize that occasionally there may be some aspect of Our service or a decision We have made that You wish to query or draw to Our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within fifteen (15) working days.

If you would like to make a complaint or access our internal dispute resolution service please contact Our nearest QBE office and ask to speak to a dispute resolution specialist.

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466

If your dispute remains unresolved you may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

The Underwriters accepting this Insurance agree that:

- i. If a dispute arises under this Insurance, this insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- ii. Any Summons notice or process to be served upon the Underwriters may be served upon:  
Lloyd's Underwriters' General Representatives in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
SYDNEY NSW 2000  
who has authority to accept service and to appear on the Underwriters' behalf;
- iii. If a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to Trident.

### Keeping us informed

You must tell us as soon as possible:

- if there is any significant change in the condition or use of your commercial vessel which may affect our decision to insure it,
- if there is any change in the management or ownership of your commercial vessel,
- if any event happens that could mean you will make a claim and/or a claim may be made against you by another person, you must tell us within 30 days of the event happening.

If you do not keep us informed we may do the following:

- refuse to pay your claim, or
- reduce the amount we pay you for your claim under your Certificate, or
- cancel your insurance Certificate.

### If more than one person is insured by this Certificate

Please remember, if more than one person is insured by this Certificate, an act, omission, statement or claim by any one of the insured people has the same effect as an act, omission, statement or claim by all of those people.

### Your duty to co-operate

In the event of a claim, any benefits that this Certificate gives you depend on you giving us full details of your loss and the help that we require, including further written statements and documents we consider relevant. We may also require you to attend court to give evidence.

You must help us even after we have paid your claim. We may attempt to recover the amount of our payment from the person who caused you to suffer loss or damage, or we may want to defend you if it is alleged that you caused loss or damage to someone else.

You must send to us immediately any letters, demands, notices or court documents you receive relating to an accident that resulted or could result in a claim.

## Section 3: What is Covered

We will cover your commercial vessel specified in the Certificate Schedule which includes:

- the hull,
- motors/machinery,
- equipment and accessories (excluding sporting equipment),
- sails, masts, spars, booms and fittings, spinnaker poles, standing and running rigging,
- trailer, and
- dinghy or tender used with your commercial vessel which is capable of a speed of 20 knots or less

while navigating or in transit within the navigational limits specified in the Policy Certificate including while the commercial vessel is at any marina, slipway or location when laid-up ashore.

What is not covered

- Any commercial vessel capable of a speed exceeding 50 knots,
- moorings,
- personal effects of any paying passenger unless you have requested and we have agreed to provide the optional Passenger Liability - Commercial Use extension (see Section 8).

What can be covered additionally (on application)

We may specially agree to cover you for the following items and specify them in the Policy Certificate:

- any dinghy or tender used with your commercial vessel capable of a speed exceeding 20 knots,
- fishing and diving equipment, and
- consumable stores.

Note: These items are not covered unless agreed in writing by us.

## Section 4: Loss or damage to your vessel

### What you are covered for

We will cover you for loss or damage to your commercial vessel caused by any of the following insured events:

#### An accident

- if your commercial vessel is damaged accidentally
- if your commercial vessel sinks accidentally, provided it was in seaworthy condition at the time of sinking.

#### Other damage

Loss or damage caused by:

- a latent defect within the hull or motors/machinery (excluding the cost and expense of replacing or repairing the defective part) causing loss or damage to your commercial vessel, or
- negligence of employed skipper master and/or crew, or
- negligence of the repairers (excluding you) or charterers, provided the loss or damage has not resulted from lack of due diligence by you.

#### Theft

- of the entire commercial vessel including trailer, equipment and accessories
- of part of the commercial vessel including trailer, motors/machinery, equipment and accessories from:
  - the commercial vessel, or
  - the place of storage of the commercial vessel, trailer or the equipment and accessories,

provided there is visible evidence of forcible and violent removal/entry into the commercial vessel or place of storage.

#### Malicious damage

If your commercial vessel is damaged maliciously.

#### Transit damage

If your commercial vessel is accidentally damaged during transit on its own trailer by road, rail or ship provided your commercial vessel is designed to be normally trailered and you are complying with all statutory requirements.

#### Recovery or removal of wreck costs

If your commercial vessel is damaged or sinks accidentally and we decide to recover it or the law requires that it must be removed, we will pay the reasonable costs of the removal/recovery of the wreck provided it was in seaworthy condition at the time of sinking. These costs are recoverable in addition to the total sum insured of your commercial vessel and are subject to a limit of \$1,000,000 each and every loss or series of losses caused by the one insured event.

Other expenses incurred to avoid or minimise loss (salvage costs)

If your commercial vessel gets into difficulties or is damaged accidentally, the insurers will pay the reasonable costs of action to:

- minimise loss or damage, or
- remove the commercial vessel to safety, or
- dry all the electrical equipment in the power unit(s), or
- clean and oil the power unit(s).

You do not need our authority to take such action if it is an emergency and you are unable to contact us to obtain authority except where the Loss of hire/income extension applies where we must be notified before any repairs are carried out. You must advise us as soon as possible after the action has been taken.

### What you are not covered for

We will not cover you for:

1. theft by persons to whom you have loaned or hired your commercial vessel;
2. loss or damage or sinking intentionally caused by you or a person acting with your express or implied consent unless required by law;
3. any loss or damage or sinking caused by or arising from the unseaworthiness or lack of repair of the commercial vessel including wear and tear, deterioration, wet or dry rot, rusting or other forms of corrosion, vermin or marine growth;
4. mechanical, structural, electrical or electronic failures unless caused by an accident covered by this Certificate;
5. damage to sails and protective covers caused by the force of wind while set unless there has also been damage caused to the masts and spars or the commercial vessel has been stranded or in collision or contact with any external substance other than water;
6. the cost of repairing or replacing any part of the commercial vessel defective by reason of fault or error in design or construction;
7. unrepaired damage to your commercial vessel;
8. financial loss which occurs because you cannot use your commercial vessel unless you have requested and we have agreed to provide the optional Loss of hire/income extension (see Section 6);
9. loss, damage or expense caused directly or indirectly by radiation, radioactive material, nuclear process or from nuclear weapons or material.

## Section 5: Additional benefits

This Certificate includes the following Additional benefits subject to the Exclusions and General conditions listed in Sections 4, 6, 7, 8, ,10 and 11.

### Crew Accident Cover

If a person acting in their capacity as a paid permanent skipper or paid crew member of the vessel suffers a bodily injury as a result of an accident during the period of insurance and caused directly out of the use of the commercial vessel that results within six (6) calendar months in either:

- death,
- temporary total disablement,
- permanent total disablement,

the insurers will pay:

- death - the sum of \$25,000,
- temporary total disablement - the sum of \$250 per week, limited to 100 weeks,
- permanent total disablement - the sum of \$25,000.

To qualify for payment, the injured person must obtain and follow advice of a qualified medical practitioner (other than his or her spouse) as soon as possible after the accident.

### Definitions:

Word or term	Meaning
Temporary total disablement	being unable solely and directly as a result of the injury to carry out all the normal duties of the injured person's occupation.
Permanent total disablement	being unable solely and directly as a result of the injury to carry out any occupation for which the injured person is fitted by reason of education, training or experience for a period of at least 12 consecutive months and remains unable to do so for a continuous indefinite period.

## Section 6: Optional extensions

Only when it is specified in the Policy Certificate that the Certificate includes the following Optional extensions, cover is extended as follows - subject to the Exclusions and General conditions listed in Sections 4, 6, 7, 9, 10 and 11.

### Loss of hire/income

(included only when specified in the Policy Certificate)

For an additional premium, this cover is extended to indemnify you for your loss of net income in consequence of the commercial vessel being partially or totally prevented from earning net income as a result of loss or damage to the commercial vessel covered by Section 3 or 4 occurring during the period of insurance.

### Limits

Maximum period of indemnity is 30 consecutive calendar days (unless otherwise specified in the Policy Certificate) after the application of the Deductible (see below).

- The maximum daily indemnity is limited to \$500 per day unless otherwise specified in the Policy Certificate.
- Maximum amount payable by us shall not exceed \$15,000 in the aggregate any one loss or series of losses caused by the one insured event unless otherwise specified in the Policy Certificate.
- If there is a total or constructive total loss of the commercial vessel, the maximum amount payable by us is \$15,000 unless otherwise specified in the Policy Certificate.

### Deductible

The first 30 days (unless otherwise specified in the Policy Certificate) that the vessel is prevented from earning net income as a result of the insured event forming part of the claim. This deductible shall not apply in the event of a total or constructive total loss of the commercial vessel.

### Definitions

Word or term	Meaning
Net income	your total earnings, reflecting revenues adjusted for running costs, depreciation, interest, taxes and other expenses compared to the corresponding period of the previous year.
Running costs	direct costs related to keeping the business operational compared to the corresponding period of the previous year.



## Exclusions

This cover excludes loss of net income arising from:

1. loss, damage or occurrence excluded by Section 3 or 4 of this Certificate;
2. any delay caused by the insolvency or inability to pay of you or your clients;
3. loss, damage or expense caused by your wilful misconduct;
4. loss, damage or expense caused by delay;
5. loss, damage or expense caused by war, governmental acts, requisition or seizure by legal process;
6. loss, damage or expense caused by civil commotions, riots, strikes, lockouts, sabotage, industrial action or other similar causes;
7. loss, damage or expense caused directly or indirectly by radiation, radioactive material, nuclear process or from nuclear weapons or material;
8. any fine or penalty.

## Claims Provisions

**Basis of Valuation** - The actual revenue for a claim under this Certificate shall be evidenced by booking Schedules for the corresponding period for the previous year. If no evidence can be provided to demonstrate that the commercial vessel would have earned any income during the period of indemnity, the daily indemnity shall be limited to the running costs of the commercial vessel for that period.

**Recoveries** - Where a recovery for loss of net income is obtained from a third party, we are entitled to this recovery to the extent of the amount paid by them.

**Separate Repair Periods** - Where, due to a single insured event, the commercial vessel is prevented from earning net income on separate occasions (not exceeding 3) by reason of repairs, these separate occasions may be added together to arrive at the total claim, provided that repairs are completed within 12 months of the expiry of this Certificate. The period the commercial vessel is prevented from earning net income will be counted irrespective of the expiry date of this Certificate provided that repairs are completed within 12 months of the expiry of this Certificate.

**Organisation of Repairs** - All repairs shall be arranged with due diligence and promptness. We have the right to request you to incur any expense that would reduce their liability under this Certificate provided we shall pay for these expenses.

**Common Time/Simultaneous Repairs** - Where damage repairs are carried out at the same time as other repairs for your account which are immediately necessary for safety purposes or to allow the commercial vessel to earn net income and which are not claimable under this Certificate, the net income lost during as much time as is common to both classes of work in excess of the deductible shall be divided equally between us and you. If the time necessary to effect damage repairs is extended by any other repairs for your account, the period of indemnity is limited to the time that would have been taken to effect damage repairs caused by the insured event had they been effected alone.

**Notification** - All possible claims are to be reported to us as soon as possible and we are to be notified before any repairs are carried out.

## Other Provisions

**Sale of Vessel** - Should the commercial vessel be sold, this extension is automatically cancelled. In this event, we agree to return a pro-rata net monthly premium, provided there are no claims on this Certificate prior to cancellation.

**Automatic Reinstatement Clause** - The indemnity granted by this extension is limited to the amount specified in the Policy Certificate and shall be reduced by any claims paid. Reinstatement of the indemnity specified in the Policy Certificate shall be automatic excluding claims for total and/or constructive total loss, subject to payment of the appropriate additional premium plus government charges (where applicable).

## Fishing and/or diving equipment

(included only when specified in the Policy Certificate)

We agree to provide additional cover to you for:

- (a) accidental damage to your fishing equipment and diving equipment while on your commercial vessel (excluding while in use);
- (b) theft of your fishing equipment and diving equipment provided there is visible evidence of forcible and violent entry:
  - into the securely locked commercial vessel or securely locked compartment within the commercial vessel; or
  - into the normal securely locked place of storage of the commercial vessel or equipment.

The maximum amount we will pay is \$20,000 in total with a limit of \$2,000 on any one item.

## Definitions

Word or term	meaning
Diving equipment	tanks, regulators, buoyancy compensation device, fins, wet and dry suits, pumps and other similar equipment used for the purpose of recreational/sport diving owned by you.
Fishing equipment	rods, reels, tackle and other similar equipment used for the purpose of recreational/sport fishing owned by you.

## Section 7: Legal liability cover

### What you are covered for

Legal liability - operating your own commercial vessel:

We cover you and any person allowed by you to control your commercial vessel against legal liability for:

- accidental death or bodily injury or illness to a person other than:
  - you;
  - your crew;
  - paying passengers unless you have requested and we have agreed to provide the optional Passenger liability - commercial use extension (see Section 8),
- accidental damage to other people's property (excluding paying passengers and crew unless you have requested and we have agreed to provide the optional Passenger liability - commercial use extension (see Section 8),

caused by the use of your commercial vessel.

### What you are not covered for

Legal liability - operating your own commercial vessel:

We will not pay the costs of liability for:

1. death or bodily injury to you or your crew;
2. loss of or damage to any property owned by you or your crew or in your custody or control or the property of any other person covered by this Certificate;
3. death or bodily injury caused by the use of the trailer while it is attached to a motor vehicle;
4. death or bodily injury or property damage intentionally caused by a person covered by this Certificate;
5. bodily injury to, or the illness or death of, a person who is covered (or should have been covered) by any compulsory compensation insurance, including any compulsory third party insurance and workers compensation insurance;
6. death or bodily injury to paying passengers unless you pay an additional premium and we agree to provide the optional Passenger liability - commercial use extension (see Section 8);
7. death or bodily injury caused by the activity of:
  - scuba diving, diving or diving operations, or in connection with the supplying, usage and/or instructions in the use of diving equipment, diving accessories and similar equipment,
  - boom netting, water skiing or aquaplaning,
  - towing of persons or objects in the air including parasailing,
  - snorkelling, tunnel diving or any other similar activity involving swimming by persons carried by your commercial vessel;
8. the liability of any tradesperson or company engaged in repair, service or maintenance of your commercial vessel;

9. the use of any fishing or diving equipment;
10. any claim arising directly or indirectly from pollution or contamination by any substance unless you pay an additional premium and we agree to provide the optional Pollution liability - commercial use extension (see Section 8);
11. towing vessels unless the vessel(s) is/are in distress and in response to a distress call from another vessel;
12. loss, damage or expense caused directly or indirectly by radiation, radioactive material, nuclear process or from nuclear weapons or material;
13. actions that are brought against you in a court or tribunal outside Australia or a court or tribunal that applies laws other than the law of a State or Territory of Australia;
14. any fine or penalty;
15. aggravated, exemplary or punitive damages.

## Section 8: Additional cover available

### Passenger liability - commercial use

(included only when specified in the Policy Certificate)

What you are additionally covered for

If we have agreed to cover you and provided you have paid the additional premium, we will cover you or any person allowed by you to control your commercial vessel (within the requirements of any law) against legal liability for:

- accidental death or bodily injury or illness to a passenger while
  - being carried by the commercial vessel;
  - entering or leaving the commercial vessel including a jetty, pontoon or wharf operated or maintained by you;
- accidental death or bodily injury or illness to a passenger caused by food and drink prepared and served by you;
- accidental damage to personal effects of a passenger while on your commercial vessel, subject to a limit of \$200 any one item to a maximum of \$2,000 in total for any one passenger for any loss or series of losses caused by the one insured event, unless otherwise specified in the Policy Certificate.

### Definitions

Word or term	meaning
Personal effects	clothing, waterproof gear, shoes, wallets or purses, toilet articles, hats or caps, keys or pens, watches, jewellery, cameras and portable radios, radio cassette and compact disc players, but excluding money, credit cards, spectacles, sunglasses, mobile phones, pagers, consumable stores, compact discs, audio or video tapes.

## Pollution liability - commercial use

(included only when specified in the Policy Certificate)

What you are additionally covered for

If we have agreed to cover you and provided you have paid the additional premium, we will cover you or any person allowed by you to control your commercial vessel (within the requirements of any law) against legal liability for:

- actual physical damage to property caused by accidental discharge, emission, spillage or leakage upon or into waters or land of oil, petroleum products, effluent or sewage from your commercial vessel provided the discharge, emission, spillage or leakage does not arise from wilful negligence or wilful misconduct with your knowledge.

This extension of cover excludes:

- death, bodily injury or illness;
- contractual or assumed liability;
- any loss of use or consequential loss;
- breach of any Federal, State or Local legislation regulating or controlling the discharge, spillage, emission or leakage of oil or any other substance into navigable waters or elsewhere or removal of or liability for discharge, spillage emission or leakage.

The Sections of this Certificate wording called

- 'What you are not covered for - legal liability - operating your own commercial vessel' (see Section 7), and
- 'General exclusions - applicable to all sections' (Section 9)

also apply to both of these additional cover extensions.

## Section 9: General exclusions - applicable to all sections

We will not cover you or any person allowed by you to control your commercial vessel when:

1. your commercial vessel is outside the navigational limits specified in the Policy Certificate;
2. your commercial vessel was being operated:
  - (i) at a speed greater than its maximum designed speed,
  - (ii) with a motor more powerful than recommended by the manufacturer,
  - (iii) with more than the maximum number of passengers or load recommended by the manufacturer,
  - (iv) outside the limits imposed by any Certificate of Construction and Performance, Licence or similar document;
3. your commercial vessel was in the control of you or any person with your express or implied consent while under the influence of alcohol or of any drug or had a percentage of alcohol or drugs in your/their breath or blood in excess of the percentage permitted by law in the place where the loss, damage or liability occurred unless you were not on board the commercial vessel at the time and can clearly demonstrate that you had no reason to suspect that the person in control would be under the influence of alcohol or any drug or had a percentage of alcohol or drugs in excess of legal limits;

4. your commercial vessel was under the control of a person not licensed under the applicable law, unless you were not in the commercial vessel at the time and can clearly demonstrate that you had no reason to suspect that the person was unlicensed;
5. your commercial vessel was being used in racing, speed tests or trials;
6. your commercial vessel was being used for an unlawful purpose;
7. your commercial vessel was being used without commercial licensing, registration, classification or survey requirements being complied with;
8. your commercial vessel was being towed on a trailer and the driver with your express or implied consent was not licensed to drive a vehicle in accordance with the law, unless you were not in the vehicle at the time and can clearly demonstrate that you had no reason to suspect that the driver was unlicensed;
9. your commercial vessel is being loaded, unloaded or transported by a commercial carrier unless you tell us beforehand in writing, and we agree in writing to cover you;
10. you do not keep the commercial vessel in good order and repair, or in a proper state of seaworthiness and in compliance with any statutory requirements (e.g. Waterways Authority Regulations (NSW) or the equivalent legislation in the State or Territory the commercial vessel is registered;
11. your commercial vessel is undergoing major hull repair or undergoing alteration unless you tell us beforehand in writing, and we agree in writing to cover you.

In addition, this Certificate excludes loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:

- ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 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;

- any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos;
- any chemical, biological, bio-chemical, or electromagnetic weapon.

This Certificate also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above exclusions.

## Section 10: General conditions - applicable to all sections

The cover provided by this Certificate is subject to the following additional conditions.

### Alteration of risk

You must give us immediate notice if there is any material change in the circumstances or nature of the risks covered by this Certificate, or no claim arising after the change shall be payable unless we have agreed to the change in writing.

### Authorisation

We may give to and obtain from any other insurers, any insurance reference bureaux and any credit reporting agencies any information relating to your credit or insurance history as well as insurance claims information obtained during the course of this Certificate.

### Due care

At all times, you must take appropriate care in the operation of the commercial vessel in your care, custody or control.

### Preventing our right of recovery

Where another person is liable to compensate you for loss, damage or liability which is to be covered by your Certificate but you have agreed not to seek recovery of any monies from that person, we will not cover you under this Certificate for that loss, damage or liability.

### Survey/manning warranty

Warranted that at inception and throughout the period of insurance the commercial vessel must at all times be:

- registered and in current survey with the appropriate governmental authorities according to the type and class of operation and that its type and class are maintained;
- operated within the specified limits as permitted by the appropriate governmental authorities;
- in compliance with all regulations as required by the appropriate governmental authorities;

- operated by a master or any other person in charge of the commercial vessel who is the holder of a certificate of competency issued by the appropriate governmental authorities;
- any conditions attaching to or imposed by the registration of the commercial vessel are complied with by the dates stipulated in those conditions.

### Third party interests

You must inform us of the interests of all third parties (e.g. financiers or lessors) to be covered by this Certificate. We protect the interest of third parties only if you have informed them and such interest(s) are noted in the Policy Certificate.

The interest of the third party is not to exceed 50% of the total sum insured unless agreed in writing by us.

## Section 11: Claims

### 1. notification of claims - what you must do

For us to consider your claim, you must:

- promptly take all responsible precautions to prevent any further loss or damage to your commercial vessel including electrical equipment and components which have been submerged and in the case of a motor, the flushing out and oiling of the motor and the drying out of it and all other electrical equipment and components;
- make a report to the Police if there is injury, malicious damage, theft or attempted theft of your commercial vessel;
- contact us and tell us details of what has happened;
- complete our claim form and any other form we ask you to complete, and take it or mail it to our claims department at any of our offices.

You must not authorise repairs to your commercial vessel without our consent.

Only we have the right to settle or defend a claim against you by another party.

If we agree you have a claim, you should not without our consent:

- make or accept any offer or payment, or in any other way admit you are liable, or
- settle or attempt to settle any claim, or
- defend any claim.

### 2. How much we pay - market value

How much we pay - loss of or damage to your commercial vessel

Where the Policy Certificate states total sum insured (market value) - this is a market value Certificate cover.

We may decide either to repair or replace an item, or to pay the cost of replacing an item.

This amount that we will pay is determined by:

- comparing the value of the item with an item of equal age and condition, or
- the new replacement value less reasonable depreciation based upon the age and condition of the item, or
- the actual cost of an item of equal age and condition, whichever is the lesser.

When we take the option of repairing an item, the amount that we pay is limited by the actual value of the item being repaired or the new replacement value less reasonable depreciation based upon the age and condition of the item.

In the event of a total loss we will pay you the sum insured (market value) of the item involved and take ownership of any salvage.

Remember that the maximum amount payable in respect of each item is as listed in the Policy Certificate.

### 3. How much we pay - agreed value

How much we pay - loss of or damage to your commercial vessel

If the Policy Certificate states total sum insured (agreed value) - this is an agreed value Certificate cover. There are separate sums insured for:

- the hull and motors/machinery,
- equipment and accessories including sails, masts, spars, standing and running rigging, tender and trailer.

Your Policy Certificate lists the sum insured for each of these items separately. In the event of a claim, the maximum we will pay you for each item is the agreed sum insured for that item.

We may decide to:

- repair or replace an item, or
- pay you the reasonable cost of repairing or replacing the item involved, or
- pay you the agreed sum insured of the item involved and take ownership of any salvage.

Remember that the maximum amount payable in respect of each item is as listed in the Policy Certificate.

### 4. Limit on what we pay - loss or damage

to your Commercial Vessel (Agreed or Market Value)

Our liability is limited to the amount specified in the Policy Certificate any one loss or series of losses caused by the one insured event (excluding Additional benefits and applicable Optional extensions specified in Sections 5, 6 and 7).

### 5. How much we pay - legal liability

We will pay the costs of:

- compensation, and
- legal fees and expenses

that you are liable for.

We will only pay the costs of legal fees and expenses you incur if we consent to them in writing before you incur them.

### 6. Limit on what we pay - legal liability

The maximum we will pay is the amount specified in the Policy Certificate in total for all claims that arise from any one loss or series of losses caused by the one insured event and legal fees and expenses incurred by you with our consent or recoverable from you in connection with an insured event.

### 7. excess

The amount specified in the Policy Certificate as the excess will be deducted from each and every loss except for claims for:

- total and/or constructive total loss, and
- death or personal injury under the liability cover specified in Section 7.

### 8. miscellaneous claims conditions

#### (a) Automatic reinstatement

When an amount is paid under this Certificate, the limit of liability is automatically reinstated to the amount specified in the Policy Certificate, subject to payment of an additional premium and government charges (where applicable).

#### (b) Fraudulent claims

If any claim is fraudulent or false in any respect, to the extent permitted by law, we may refuse to pay the whole or part of the claim.

We are also entitled to cancel this Certificate.

### 9. How Goods and Services Tax affects any payments we make

The amount of premium payable by you for this Certificate includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are:

- (a) not registered for GST, the amount we pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST;
- (b) registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Certificate) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/ limit of indemnity or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

## Section 12: Cancellation

At any time, you may cancel this Certificate by giving us notice in writing.

We may cancel this Certificate only when permitted by the Marine Insurance Act 1909 to do so.

Upon cancellation, we will refund a pro rata proportion of the premium received by us relating to the unexpired period of insurance but subject to a minimum premium of \$250.