

# Hull Standard Wordings (01/04)

## (Excluding Fishing Vessels)



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## SPECIAL MEANINGS OF WORDS

**"Deductible"** means the amount of any loss You suffer which You will bear and which is shown in the Policy Schedule, unless otherwise stated under any applicable section of the Policy, and which We will deduct from any settlement of a claim under the Policy. The manner in which the Deductible applies is set out in the applicable wording.

The Deductible is GST inclusive.

**"Insurer"** means Wesfarmers General Insurance Limited ABN 24 000 036 279, trading as Lumley Insurance.

**"Passenger"** means a person carried on board the insured vessel(s) with the knowledge or consent of the owner, charterer, agent or master of the insured vessel(s), not being:

- (a) a person employed or engaged in any capacity on board the insured vessel(s) on the business of the insured vessel(s);
- (b) a person on board the insured vessel(s) in pursuance of an obligation imposed on the master by any law (including a law of a country other than Australia) to assist shipwrecked, distressed or other persons or by reason of circumstances that could have been prevented or forestalled by the owner, charterer, agent or master of the insured vessel(s).

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

**"You" "Your"** means You, the Insured named in the Policy Schedule.

## EXCLUSIONS/EXTENSIONS/CONDITIONS

Subject to the exclusions, terms and conditions of the Policy, including the Value and Limit of Liability (for Protection & Indemnity if any) stated in the Policy Schedule, cover is further amended or altered as follows:

### 1. Additional Exclusions/Restrictions

- 1.1 This Policy does not insure death, injury, loss, damage or liability of any nature, arising from Passengers, Passengers' baggage and/or Passengers' personal effects unless the Passenger Liability Extension and the Limit of Liability are shown in the Policy Schedule.
- 1.2 This Policy does not insure injury, loss, damage or liability of any nature, which is directly or indirectly connected in any way with:
  - 1.2.1 Asbestos;
  - 1.2.2 Use (or carriage) of explosives;
  - 1.2.3 Cargo of any sort carried on board the vessel;
  - 1.2.4 Crew of the vessel (paid or voluntary);

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**EXCLUSIONS/EXTENSIONS/CONDITIONS** (continued)

1.2.5 Towage risks outside port or harbour limits (Coastal or Ocean Tows), unless specially noted in writing and any Survey Provisions and additional Rates, Terms and Conditions are agreed;

1.2.6 Pollution or contamination of any real or personal property or thing whatsoever except amounts which may be recoverable under provisions afforded liability by the current Lloyd's Standard Form of Salvage Agreement.

**1.3 Terrorism Exclusion Clause - Marine**

This Policy excludes any loss, damage, liability or expense arising from:

1.3.1 Terrorism; and/or

1.3.2 steps taken to prevent, suppress, control or reduce the consequence of any actual, attempted, anticipated, threatened, suspected or perceived terrorism.

For the purpose of this clause, "Terrorism" means any act(s) of any person(s) or organisation(s) involving:

(i) the causing, occasioning or threatening of harm of whatever nature and by whatever means;

(ii) putting the public or any section of the public in fear;

in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of a political, religious, ideological or similar nature.

However, this exclusion will not apply to any loss, damage, liability or expense arising from the operation, ownerships, management or chartering of:

(a) vessels, crafts and units whilst afloat, under construction or repair or in dock;

(b) seawalls, wharves, piers, jetties, docks, berths, pontoons, associated equipment all whilst within the confines of the port, terminal, shipyard, harbour or marina;

(c) any platform or similar energy risk;

(d) cargo in the ordinary course of transit as described in the Cargo Termination of Transit Clause (Terrorism); or

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**EXCLUSIONS/EXTENSIONS/CONDITIONS** (continued)

- (e) whilst the subject matter insured is either “waterborne” or “airborne” as defined in the War Risk Waterborne and War Risk Airborne Agreement issued by Lloyd’s Underwriters’ Association and the Institute of London Underwriters dated 19 December 1997.

**1.4 Depreciation Clause**

(Only to apply where the Institute Additional Perils Clauses – Hulls 1/10/83 or 20/7/87 form part of the coverage);

Clause 14 of the Institute Time Clauses Hulls 1/10/83 and Institute Time Clauses Hulls Port Risks 20/7/87; or

Clause 15 of the Institute Time Clauses Hulls Port Risks including Limited Navigation 20/7/87; or

Whichever applies, is amended to read:

**New for Old**

Claims payable without deduction new for old with the exception of claims for machinery and electronic equipment (equipment) which are payable as follows:

**1.4.1 New Machinery/Equipment**

Up to 1 year from the date of commissioning nil. In excess of 1 year at a rate of 1.25% per month up to a maximum deduction of 75%.

**1.4.2 Reconditioned Machinery/Equipment**

Up to 3 months from date of re-commissioning nil. In excess of 3 months at a rate of 1.5% per month up to a maximum deduction of 80%.

Depreciation deductions not to apply in the event of total and/or constructive total loss of the vessel.

**1.5 Sails and Covers Clause**

This Policy does not insure loss, damage or liability to sails and protective covers caused by the force of the wind unless there has also been damage caused to the mast(s) or spars or rigging of the vessel.

**1.6 Spoil Clause**

This Policy does not insure death, injury, loss, damage or liability of any nature arising from underwater excavation or construction including the lifting, cutting, drilling, crushing or depositing of spoiling, or pile driving.

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**EXCLUSIONS/EXTENSIONS/CONDITIONS** (continued)

**1.7 Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause 10/11/03**  
**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

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

- (i) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (iii) 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 chemical, biological, bio-chemical, or electromagnetic weapon.

**1.8 U.S.A. & Canada Endorsement for the Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause 10/11/03 (USCAN B)**

This policy is subject to the Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical And Electromagnetic Weapons Exclusion Clause 10/11/03 (RACCBE). The inclusion of RACCBE in this policy is material to underwriters' willingness to provide coverage at the quoted terms, conditions and rates.

It is the intent of the parties to give maximum effect to RACCBE as permitted by law.

In the event that any portion of RACCBE may be found to be unenforceable in whole or in part under the law of any state, territory, district, commonwealth or possession of the U.S.A., or any province or territory of Canada, the remainder shall remain in full force and effect under the laws of that state, territory, district, commonwealth or possession, province or territory. Further, any such finding shall not alter the enforceability of RACCBE under the laws of any other state, territory, district, Commonwealth or possession of the U.S.A., or any province or territory of Canada, to the fullest extent permitted by applicable law.

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**EXCLUSIONS/EXTENSIONS/CONDITIONS** (continued)

**2. Extensions**

**2.1 Leased Equipment Clause (excluding fishing, diving and recreational equipment)**

This insurance is extended to cover equipment, machinery and apparatus not owned by You but installed for use on the insured vessel and for which You have assumed liability whether such equipment, machinery or apparatus be in the nature of aids to navigation or communication or otherwise.

Subject always to the terms and conditions of this policy, in no event shall Our liability exceed the Contractual Liability You have for such equipment, machinery or apparatus.

All equipment, machinery or apparatus installed on the vessel and not owned by You shall be included in the agreed valuation of the vessel(s).

**2.2 Acquired Companies Clause**

The Policy is extended to include any company, subsidiary company or firm formed or purchased by You (the Insured) during the Period of Insurance provided that:

2.2.1 the Insured holds a controlling interest.

2.2.2 the Insured advised Us of the existence of the company or firm not later than twenty one (21) days from the date of signing the purchase contract or date of formation.

This clause does not extend to cover any new or additional vessel that the Insured may hold a controlling interest in or have agreed to accept responsibility for insurance.

**2.3 Passenger Liability Extension**

The Passenger Liability Extension only applies if it is listed in the Policy Schedule.

(a) We agree to indemnify You up to the Limit Specified for any sum or sums which you shall become legally liable to pay to Passengers pursuant to the following Institute Clauses (if listed in the Policy Schedule):

\* Clause 9.1.4 of the Institute Time Clauses Hulls Port Risks 20/7/87; or

\* Clause 10.1.4 of the Institute Time Clauses Hulls Port Risks including Limited Navigation 20/7/87; or

\* Clause 11.1.2 of the Institute Yacht Clauses 1/11/85; or

\* Clause 1.1.4 of the Institute Protection and Indemnity Clauses Hulls – Time 20/7/87.

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**EXCLUSIONS/EXTENSIONS/CONDITIONS** (continued)

The Passenger Liability Extension cover includes Passengers' baggage and Passengers' personal effects but does not cover any liability, costs or expense arising in respect of:

- (i) Passengers engaged in diving, swimming, snorkelling, water-skiing, boom netting, para-sailing or any other aqua sport or land activity unless caused by such Passenger(s) being run down by the insured vessel(s);
- (ii) instruction, advice or recommendation of any kind whatsoever given to or caused by the use of equipment or accessories whilst the Passenger(s) is/are participating in diving, swimming, snorkelling, water-skiing, boom netting, para-sailing or any other aqua sport or land activity;
- (iii) instruction, advice or recommendation of any kind whatsoever given to or tasks undertaken by Passenger(s) undergoing training for any activity, including but not limited to sailing and seamanship.

**3. Extensions which are further limited as to amount**

Subject to the exclusions, terms and conditions of the Policy, including the Value and Limit of Liability (for Protection & Indemnity, if any) stated in the Policy Schedule, We insure You for the following extensions which are subject to a further Sum Insured or Limit of Liability.

**3.1 Fixed Fire Appliance Discharge Clause**

The Policy is extended to cover cleanup costs arising from and/or loss or damage caused by sudden, spontaneous and complete discharge of any permanently fixed fire suppression appliance fitted onboard the insured vessel(s) in the absence of any fire, explosion or other event deemed to be a fire appliance system trigger.

In no case shall this extension apply where the fire suppression appliance is being tested, fitted, maintained, recharged or otherwise in use or being worked upon.

Limit: \$2,000 each claim any one accident or occurrence and in all during the currency of the Policy.  
Deductible: \$500.00 each claim any one accident or occurrence

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**EXCLUSIONS/EXTENSIONS/CONDITIONS** (continued)

**3.2 Shore Clause**

Subject to the Period of Insurance set out in the Policy Schedule, this insurance is extended to cover ships equipment, machinery or apparatus up to the limit specified and in the terms of Institute Cargo Clauses (A) 1/1/82 whilst any such equipment, machinery or apparatus is in transit to or from the vessel or whilst ashore for the purpose of repair, refit or overhaul.

This clause shall not operate to affect the Insured values herein.

Limit: \$10,000 any one conveyance or location.

Deductible: \$500.00 each claim any one accident or occurrence.

**3.3 Fishing and Diving Equipment Clause**

Cover for fishing, diving and other recreational gear and equipment is only covered for loss or damage caused by:

- (a) fire, lightning or violent theft by persons from outside the vessel;
- (b) total loss of the gear or equipment as a result of the total loss of the vessel covered by the Policy.

Limit: \$5,000 each claim any one accident or occurrence or as otherwise specified in the Policy Schedule.

Deductible: \$500.00 each claim any one accident or occurrence.

**4. General Policy Terms and Conditions**

4.1 We agree to provide insurance as described in this Policy subject to the terms, limitations, exclusions and conditions contained in or endorsed on, or otherwise expressed in the Policy.

4.2 This insurance is in exchange for You:

4.2.1 having paid or agreed to pay the premium to Us;

4.2.2 providing to Us a written proposal.

4.3 The Policy wording(s), Policy Schedule (which expression includes any Policy Schedule substituted for the original Policy Schedule) and endorsements (if any) are to be read together.

4.4 We will pay You for loss of or damage to the vessel(s) and/or (where applicable) Legal Liability as Owner of the vessel(s) subject to:

4.4.1 the terms of the Policy;

4.4.2 the Exclusions and General conditions listed herein;

4.4.3 the Insured Event occurring within the geographical limit (trading warranties) specified in the Policy Schedule;

4.4.4 the Insured Event occurring during the Period of Insurance specified in the Policy Schedule.

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**GENERAL POLICY TERMS AND CONDITIONS** (continued)

4.5 This Insurance is subject to Australian Law and practice.

4.6 **Alteration of Risk**

If there is any change in the circumstances or nature of the risks covered by this insurance, You must give Us immediate written notice but only for matters You have not told Us about before. If You do not We may be entitled to decline to pay a claim arising after the change.

4.7 **Authorisation**

You authorise Us to give to and obtain from any other Insurers, Insurance Reference Bureaus and Credit Reporting Agencies any information relating to Your credit or insurance history as well as insurance claims information.

4.8 **Goods and Services Tax (GST)**

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

4.9 **Third Party Interests**

You must inform Us of the interest of all third parties (eg. Financiers, Managers or Charterers) to be covered by this Policy. We protect the interest of third parties only if You have informed Us of them and their interest(s) is agreed and noted in the Policy Schedule.

4.10 **Payment of Premium and Cancellation Clause**

Subject always to the full payment of annual premium if the vessel(s) is lost (total or constructive total loss) a concession on the time allowable for payment of premium may be offered from Us to You, as follows:

Premium payment due must be received by Us within ninety (90) days of attachment date or thirty (30) days of any deferred premium instalment date.

We may cancel the Policy at any time where there is non-payment of premium, when due.

We will effect cancellation of the policy by giving seven (7) days written notice of cancellation to You or Your Insurance Intermediary (where applicable). Cancellation will become effective at 4.00pm on the seventh day from the date the notice of cancellation was given.

All other cancellations as mutually agreed but, subject to a short-term minimum of 30 days premium.

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## OTHER IMPORTANT DETAILS

### 5. Other Important Details

#### 5.1 Fraudulent Claims

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

We may also be entitled to cancel this Policy as if it never existed and You did not have insurance.

#### 5.2 Cooling Off

If You are not completely satisfied with Your Policy You may cancel it by notifying Us in writing within 21 days of cover having commenced. You will receive a refund of the amount You have paid unless something has occurred for which a claim may become payable under the Policy.

#### 5.3 Confirming Transactions

You may contact Us or Your adviser, in writing (which is always required if You are advising cancellation) or by phone, to confirm any transaction under Your Policy. Any transaction will be documented by Us as quickly as possible.

#### 5.4 Code of Practice

A self-regulatory Code of Practice exists for the general insurance industry, designed to raise overall standards. Lumley Insurance has adopted the Code, details of which can be obtained from Your insurance Agent or Broker or any of Our Offices.

#### 5.5 Complaints - Internal and External Complaints Procedure

If You do not agree with any decision We make in relation to Your insurance, please write to Us stating what You disagree with and why.

We will then either resolve or attempt to resolve Your complaint immediately or refer the matter to Our Internal Dispute Resolution Committee (IDRC).

If You are not satisfied with a claim decision by the IDRC, the matter may be referred to an independent alternate dispute resolution body, Financial Ombudsman Service provided it falls within their jurisdiction.

#### 5.6 Privacy

Privacy laws protect Your personal information. Please refer to the Privacy Statement that was issued to You with Your proposal or quotation for insurance. If You require another Privacy Statement, the Lumley Insurance Privacy Policy or for further information please contact Your nearest Lumley Insurance office and ask for the Compliance Manager.

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**OTHER IMPORTANT DETAILS** (continued)

**5.7 Duty of Disclosure**

This contract of insurance will be governed by either the Marine Insurance Act 1909 ("MIA") or the Insurance Contracts Act 1984 ("ICA"). As the test of materiality is stricter under the MIA and Our remedies for breach of that duty can be more far-reaching under the MIA, We set out below Your duties of disclosure and the consequences of non-disclosure under both Acts:

**Your Duty of Disclosure under the Marine Insurance Act 1909**

Your attention is drawn to Sections 23 to 27 of the MIA and, in particular, that any contract of marine insurance is based on utmost good faith and in the absence of such good faith, may be avoided. Further, You have an obligation to disclose to Us every material circumstance which is known to You and/or which in the ordinary course of business ought to be known to You. Every circumstance is material if it would influence the judgement of a prudent insurer in fixing the premium or determining whether he will take the risk. If there is a failure to make such disclosure, We may avoid the contract.

**Your Duty of Disclosure under the Insurance Contracts Act 1984**

Before You enter into a contract of general insurance with an insurer, You have a duty at law to disclose to the insurer anything that You could reasonably be expected to know is relevant to the insurer's decision whether to accept the risk of insurance and if so, on what terms.

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

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that Your insurer knows or, in the ordinary course of business, ought to know;
- as to which compliance with Your duty is waived by the insurer.

If You fail to comply with Your duty if disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If Your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.