

Policy Document

Channel Island Commercial | Version 2



1. INFORMATION

The **Policyholder** is requested to read the Policy and Certificates. These are important documents. If any information is not clear please contact the **Scheme Administrator**.

This Policy consists of:

INFORMATION on the Policy;

DEFINITIONS detailing all Definitions applicable to the Policy;

INSURING AGREEMENT giving precise details of the cover subject to variation by Endorsement;

ADDITIONAL EXTENSIONS detailing extensions in cover to the Policy;

EXCLUSIONS detailing exclusions that apply to the whole Policy;

CONDITIONS defining the terms that apply to the whole Policy;

CLAIMS CONDITIONS detailing the terms that apply in the event of a claim under the Policy;

This Policy sets out the insurance cover provided by the **Premier Guarantee for Commercial Buildings in the Channel Islands**.

This insurance cover is subject to a number of definitions, conditions and exclusions as detailed in the Policy.

It is a Policy of indemnity and does not provide any cover for any legal liabilities that the **Policyholder** may have to third parties arising out of the use or ownership of the **Property Insured**.

Unless otherwise stated on the **Initial** and **Final Certificate** the Policy provides **Policyholders** with protection in the following ways:

- The **Property Insured** is insured for a period of 10 years from the date specified in the **Final Certificate** against the risk of **Major Damage**.
- The **Property Insured** is insured for a period of 9 years from the first anniversary of the date specified in the **Final Certificate** for the ingress of water through the **Waterproof Envelope**.

Law applicable to this Policy

The parties to a contract covering a risk in the United Kingdom are free to choose the law applicable to that contract. In the absence of any written agreement to the contrary the law applicable to this contract shall be the law of England and Wales.

Interpretation

Where any word or expression is given a specific meaning then such word or expression shall, unless the context otherwise requires, have the same meaning wherever it appears.

The **Policyholder** is requested to read this Policy and if it is incorrect return it immediately for alteration.

NOTE:

1. After a satisfactory final inspection has been carried out by the **Site Audit Surveyor** a **Final Certificate** will be issued confirming cover under the Policy. The **Final Certificate** should be filed with the Policy.
2. Extensions in cover at the time of issue of the Policy and subsequent alterations will be confirmed by separate Endorsements, which should be filed with the Policy. The **Policyholder** should refer to these Endorsements and the Policy to ascertain the precise cover in force at any time.
3. This Policy is transferable to future owners of the **Property Insured** provided that such owners contact the **Scheme Administrator** to notify their details.

NOTICE TO THE POLICYHOLDER

As a **Policyholder** you have a number of options for making complaints about your **Premier Guarantee for Commercial Buildings in the Channel Islands** policy. These are listed below. Before making any enquiry or complaint please consider carefully the most suitable option to address your concern.

- 1) You may have received advice on the cover provided by the **Premier Guarantee for Commercial Buildings in the Channel Islands** policy prior to taking out the policy. This advice will have been received from Hepburns Insurance Limited.

If you wish to make a complaint please contact:

Hepburns Insurance Limited
P.O. Box 732
6/7 Mulcaster Street,
St Helier, Jersey JE4 0QJ
Channel Islands

Email: mail@hepburnsinsurance.com
Tel 01534 515151

- 2) M.D. Insurance Services Ltd acts as the **Scheme Administrator** for the **Premier Guarantee for Commercial Buildings in the Channel Islands**. If you have any complaint about the way in which M.D. Insurance Services Ltd has performed the duties as the **Scheme Administrator** please contact:

The Complaints Officer
MD Insurance Services Ltd, 2 Shore Lines Building
Shore Road, Birkenhead, Wirral, CH41 1AU

Email: complaints@premierguarantee.co.uk
Tel 0151 650 4343

A copy of the MD Insurance Services Ltd Complaints Procedure will be provided on request.

- 3) If you have any enquiry or complaint about the insurance provided by the **Premier Guarantee for Commercial Buildings in the Channel Islands** policy this should in the first instance be addressed to:

MD Insurance Services Ltd
2 Shore Lines Building
Shore Road, Birkenhead
Wirral, CH41 1AU

Tel 0151 650 4343

or

The Complaints Department
AmTrust Europe Limited
Market Square House
St James's Street
Nottingham
NG1 6FG

AmTrust Europe Limited is authorised and regulated by the UK Financial Conduct Authority.

- 4) It is a requirement of the **Premier Guarantee for Commercial Buildings in the Channel Islands** that a **Site Audit Surveyor** carries out inspections to satisfy the **Underwriter** that the **Property Insured** represents a normal risk for insurance. It should not be inferred that the inspections are for any other purpose.

If you wish to make a complaint against the **Site Audit Surveyor** regarding the way in which they have performed their role you should contact them directly.

Details of the **Site Audit Surveyor** and their Complaints Procedure will be provided by the **Scheme Administrator** on request.

In all cases the Policy/Certificate number appearing in the **Final Certificate** should be quoted.

Note:

- A. If after following the procedures set out in 1 to 3 on pages 1 to 2 of this Policy, your complaint has not been resolved to your satisfaction, and you are an eligible complainant you have the right to refer the matter to the Financial Ombudsman, at the following address:-

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR.

Email: enquiries@financial-ombudsman.org.uk

The Financial Conduct Authority definition of an eligible complainant is:

- A consumer;
- A micro-enterprise which has a group turnover of less than £1 million;
- A charity with an annual income of less than £1 million;
- A trustee of a trust with a net asset value of less than £1 million.

- B. The **Underwriter** and the **Scheme Administrator** are covered by the Financial Services Compensation Scheme. As a **Policyholder** you may be entitled

to compensation from the Financial Services Compensation Scheme if the **Underwriter** and/ or **Scheme Administrator** are unable to meet their obligations.

Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme. Their address is:

Financial Services Compensation Scheme
7th Floor Lloyds Chambers
Portsoken Street, London E1 8BN

2. DEFINITIONS

Wherever any of the following words appear in bold in the Policy wording they will have the undermentioned meaning

A. BUILDING CONTRACT

The Contract or Contracts for the construction of the **Property Insured**.

B. BUILDING WORKS

The works to be carried out under the **Building Contract**.

C. CERTIFICATE OF APPROVAL

The Certificate issued by the **Site Audit Surveyor** to the **Underwriter** and accepted by them prior to the date of inception of this Policy.

D. CERTIFICATE(S) OF PRACTICAL COMPLETION

The Certificate(s) confirming substantial completion of the **Property Insured** to be issued by the **Policyholders** architect or engineer under the **Building Contract**.

E. EXCESS

As noted on the **Initial** and **Final Certificates** the **Underwriter** shall not be liable for the first part of any payment made in respect of a valid claim under the Policy for the **Property Insured**.

A separate **Excess** shall apply to each separately identifiable cause of loss or damage for which a payment is made under the Policy by the **Underwriter**, regardless of whether more than one cause of loss is notified at the same time.

F. FINAL CERTIFICATE

The Certificate issued by the Underwriter to signify acceptance of the **Property Insured** for insurance hereunder following issue of the Certificate of Approval by the Site Audit Surveyor

G. INITIAL CERTIFICATE

The Certificate issued by the **Underwriter** signifying their agreement to the provision of the insurance cover set out in this Policy subject to receipt of a **Certificate of Approval** for the **Property Insured**.

I. MAJOR DAMAGE

- a) Destruction of or physical damage to any portion of the **Property Insured** for which a **Certificate of Approval** has been received by the **Underwriter**;
- b) a condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of the **Property Insured** for which a **Certificate of Approval** has been received by the **Underwriter**;

in either case caused by a defect in the design, workmanship materials or components of the **Structure** which is first discovered during the **Period of Insurance**.

J. LIMIT OF INDEMNITY

The liability of the **Underwriter** shall not exceed during the **Period of Insurance** the amount shown as the Sum Insured shown on the **Final Certificate**, subject to indexation in accordance with Condition 6.

K. PERIOD OF INSURANCE

The period specified in the **Final Certificate** for the **Property Insured**.

L. POLICYHOLDER

The person(s) named in the **Final Certificate** and their successors in title and assignees and such other persons as are described in the **Final Certificate** to the extent of their respective rights and interests in the **Property Insured**.

M. PROPERTY INSURED

The whole and any and every part of the building and **Building Works** carried out thereto at the address stated in the Schedule comprising:

- i) structural works - all internal and external load bearing structures.
- ii) other works:
- a) all other non load bearing parts of the building;
 - b) landlord's fixtures and fittings including all permanent electrical and mechanical apparatus;
 - c) all external non-structural works owned by the **Policyholder** located within the perimeter fencing of the building.

N. SCHEME ADMINISTRATOR

MD Insurance Services Limited
2 Shore Lines Building
Shore Road, Birkenhead
Wirral, CH41 1AU

O. SITE AUDIT SURVEYOR

The surveyor appointed by the **Underwriter** who carries out checks and inspections solely on behalf of the **Underwriter** and who prior to the issue of the **Final Certificate** issues a **Certificate of Approval**.

P. STRUCTURE

The following elements shall comprise the **Structure** of the **Property Insured**:

- foundations;
- floors, ceilings and staircases and associated guard rails, walls and roofs, together with load-bearing retaining walls necessary for stability;
- internal walls and fixed partitions;
- any external walls, external doors, external windows, cladding and glazed curtain walling and other similar non load bearing facings and their fixings or other finishing surface (including rendering) necessary for the water-tightness of the **Waterproof Envelope**;
- roof covering;
- All other external and internal load bearing elements essential to the stability and strength of the **Property Insured**.

Q. UNDERWRITER

AmTrust Europe Limited

R. WATERPROOF ENVELOPE

Waterproof Envelope shall mean the ground floors, external walls, cladding, roofs, skylights, windows and doors of a the **Property Insured** but excluding those parts below ground floor slab level.

3. INSURING AGREEMENT

The **Underwriter** will indemnify the **Policyholder** against all claims discovered and notified to the **Underwriter** during the **Period of Insurance** in respect of:

- 1) The cost of complete or partial rebuilding or rectifying work to the **Property Insured** which has been affected by **Major Damage** provided always that the liability of the **Underwriter** does not exceed the reasonable cost of rebuilding each **Property Insured** to its original specification;
- 2) The reasonable costs incurred in repairing, replacing or rectifying any part of the **Waterproof Envelope** within the **Property Insured** as a result of ingress of water caused by a defect in the design, workmanship, materials or components of the waterproofing elements of the **Waterproof Envelope** of the **Property Insured**.

The **Excess** shall be as specified in the **Initial/Final Certificate**.

A Time Deductible of 12 months commencing from the date specified in the **Final Certificate** as the commencement of the **Period of Insurance** shall apply in respect of all claims made under Section 3.2 above.

In the event of a claim under this **Policy** the **Underwriter** has the option either of paying the cost of repairing, replacing or rectifying any damage resulting from items 1 and 2 above or itself arranging to have such damage corrected.

4. ADDITIONAL EXTENSIONS

In addition, in the event of a claim, the **Underwriter** will, with its written consent, pay within the **Limit of Indemnity**:

A. ADDITIONAL COSTS

Such additional costs and expenses as are necessarily incurred by the **Policyholder** solely in order to comply with Building Regulations or Local Authority or other Statutory Provisions, provided that the **Underwriter** shall not be liable for those costs that would have been payable by the **Policyholder** in the absence of the discovery of a valid claim under the Policy.

B. FEES

Such Architects', Surveyors', Legal, Consulting Engineers' and other fees as are necessarily and reasonably incurred, by the **Policyholder** in relation to the complete or partial rebuilding or rectifying work to the **Property Insured** but shall not include costs or fees incurred by the **Policyholder** in preparing a claim.

C. REMOVAL OF DEBRIS

For each **Property Insured** the costs and expenses incurred by the **Policyholder** in respect of:

- a) removal of debris;
- b) dismantling or demolishing;
- c) shoring up;

the **Property Insured**.

5. EXCLUSIONS

The **Underwriter** shall not be liable to the **Policyholder** for any:

1. ALTERATIONS

Loss or damage due to or arising from any alteration, modification or addition to the **Property Insured** after the issue of the **Final Certificate** unless the **Underwriter** has been informed, the **Final Certificate** endorsed, and any applicable additional premium paid to the **Underwriter**.

2. CHANGE IN COLOUR

Any change in colour, texture, opacity or staining or other ageing process to any element of the **Property Insured**.

3. CONSEQUENTIAL LOSS

Consequential loss of any description except as expressly provided for in this Policy.

4. DEFECTS IN EXISTING WORKS

Loss or damage due to or arising out of any defect in the design, workmanship, materials or components of the **Property Insured** that was installed or constructed prior to the conversion, refurbishment or renovation works that are the subject of this insurance.

5. HUMIDITY

Loss or damage caused by or consequent upon humidity in the **Property Insured** that is not the direct result of the ingress of water caused by a defect in the design, workmanship, materials or components of the waterproofing elements of the **Waterproof Envelope** of the **Property Insured**.

6. MAINTENANCE AND USE

Inadequate maintenance of or abnormal use of the **Property Insured** or the imposition of any load greater than that for which the **Property Insured** was designed or the use of the **Property Insured** for any purpose other than that for which it was designed unless the **Underwriter** has been informed, the **Final Certificate** endorsed and any applicable additional premium paid to the **Underwriter**.

7. PERSONAL INJURY

Any costs, losses, expenses or damages for death, bodily injury, disease illness or injury to mental health.

8. PRIOR KNOWLEDGE

Anything which would constitute a valid claim under the Policy and about which the **Policyholder** was aware prior to purchasing the **Property Insured** and as a consequence agreed a reduction in the purchase price for the **Property Insured** or other contractual remedy.

9. PROPERTY NOT INSURED

Loss or damage to any swimming pool, conservatory, temporary structure, free-standing household appliance, fence, retaining or boundary wall not forming part of or providing support to the **Structure**, any path or roadway not providing access for the disabled.

10. QUALIFIED CERTIFICATE OF APPROVAL

Loss or damage caused by or consequent upon sub-standard and/or unsatisfactory design, workmanship, materials or components notified to the **Underwriter** by the **Site Audit Surveyor** and referred to within the endorsement attached to the **Final Certificate**.

11. RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS

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;

iv) 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;

v) any chemical, biological, bio-chemical, or electromagnetic weapon.

12. REASONABLENESS

In the event of a valid claim under the Policy the **Underwriter** shall only be responsible for costs and expenses that a reasonable person would incur if spending their own money. Whenever possible if items can be found to match existing items at a reasonable cost the **Underwriter** will endeavour to facilitate this. However the **Underwriter** will have no liability and will not be responsible for any additional costs if a similar match is not possible at a reasonable cost.

13. SEEPAGE

Loss or damage caused by seepage of water into the **Property Insured** below ground floor slab level.

14. SETTLEMENT

Loss or damage caused by or consequent upon normal settlement or bedding down of the **Property Insured**.

15. SONIC BANGS

Loss or damage directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

16. SPECIAL PERILS

Loss or damage caused by or consequent upon fire, lightning, explosion, typhoon, hurricane, cyclone, volcanic eruption, earthquake, storm, tempest, flood, subterranean fire or other convulsion of nature, aircraft or other aerial devices or articles therefrom, escapes of water from tanks, apparatus or pipes, malicious persons, theft, attempted theft, impact or any accidental cause.

17. SUBSIDENCE

Loss or damage caused by or consequent upon subsidence, heave or landslip unless such loss or damage is as a result of a defect in the design, workmanship, materials or components of the **Structure** of the **Property Insured**.

18. TOXIC MOULD

Loss, damage or bodily injury arising out of any pathogenic organisms regardless of any other cause or event that contributed concurrently or in any sequence to that liability.

Pathogenic organisms means any bacteria, yeasts, mildew, viruses, fungi, mould or their spores, mycotoxins or other metabolic products.

19. VERMIN

Loss or damage caused by or consequent upon the actions of rodents, vermin or insect infestation.

20. WAR RISKS

Notwithstanding anything to the contrary contained herein this Policy does not cover loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

21. WATER TABLE

Loss or damage resulting solely from a change in the water table level. This exclusion shall not however apply to any seasonal change in the water table level.

22. WEAR AND TEAR

- a) wear and tear;
- b) normal dampness, condensation or shrinkage;
- c) normal deterioration whether caused by neglect or otherwise.

23. WILFUL ACTS

Any wilful neglect or criminal act of the **Policyholder** or any other party.

6. CONDITIONS

1. ARBITRATION

If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions then in force.

2. ASSIGNMENT:

The **Policyholder** shall not assign this Policy without giving thirty days' prior notice to the **Scheme Administrator**. At the same time as any assignments, the **Policyholder** shall assign to the assignee of the Policy all their rights, title, interest in and to contracts in respect of the design and construction of the **Building Works**.

3. AVERAGE:

The proportional reduction for under-insurance will only apply if the full replacement cost of the **Property Insured** exceeds the original Sum Insured increased by the percentage indexation factor specified in the **Final Certificate** over the period expired since inception of the Policy, to the date of notification of the claim.

Should the proportional reduction for the under-insurance apply, the **Policyholder** shall only be entitled to recover such proportion of the said adjusted loss as the adjusted Sum Insured herein bears to the full replacement cost. Notwithstanding the foregoing, the Limit of Indemnity stated in the Schedule shall not be increased unless amended by the terms of Condition 8 of this Policy.

4. CONTRIBUTION

If at any time of any occurrence giving rise to a claim under this Policy:

- i) there is, or would but for the existence of this insurance, be any other insurance applicable, or;
- ii) the **Policyholder** has entitlement to any statutory damages or compensation;

this Policy shall be limited to any amount in excess of such insurance, damages or compensation and shall not be called into contribution.

5. FRAUD

If any claim under this Policy shall be in any respect fraudulent, or if any fraudulent means or devices are used by the **Policyholder**, or anyone acting on its behalf, to obtain benefit under this insurance, all benefit hereunder shall be forfeited.

6. INDEXATION

The **Limit of Indemnity** and **Excess** referred to within the **Final Certificate** will be increased by 5% per annum compound, on each anniversary of the commencement of the **Period of Insurance** for this Policy. For the purpose of settlement of any claim hereunder the **Limit of Indemnity**, as adjusted in accordance with the foregoing provisions shall be regarded as the **Limit of Indemnity** at the time of discovery by the **Policyholder** of such claim.

7. UNDERWRITER'S RIGHTS

In the event of any occurrence which may give rise to a claim under this Policy, the **Underwriter** and its agents shall, with the permission of the **Policyholder**, be entitled to enter the **Property Insured** in order to carry out rectification works or the complete or partial rebuilding of the property. If such permission is unreasonably withheld the **Policyholder** shall be responsible for any additional costs caused by the delay in carrying out such works.

8. MID-TERM ALTERATION

The **Policyholder** may, from time to time, request an increase in the Sum Insured stated in the **Final Certificate** by written application to the **Underwriter** and if the increase is accepted, cover will commence upon payment of such additional premium as the **Underwriter** may require.

Before agreement to such increase, the **Underwriter** has the right to request the **Policyholder** to arrange an examination of the **Property Insured** by the **Site Audit Surveyor** at the **Policyholder's** own expense.

9. MISREPRESENTATION

This Policy will be voidable ab initio in the event of misrepresentation, misdescription, error, omission or non-disclosure by the **Policyholder** with intention to defraud.

10. RECOVERIES FROM THIRD PARTIES

The **Underwriter** is entitled and the **Policyholder** gives consent to the **Underwriter** to control and settle any claim and to take proceedings at its own expense but in the name of the **Policyholder** to secure compensation from any third party in respect of any loss or damage covered by this Policy.

11. THIRD PARTY RIGHTS

A person who is not a party to this Policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

7. CLAIMS CONDITIONS

1. BASIS OF LOSS SETTLEMENT

On the discovery of **Major Damage** causing:

- i) physical damage to the **Property Insured**, the basis of settlement of the claim shall be the cost of repairing, replacing, renewing and/or strengthening of the **Property Insured** to a condition substantially the same as but not better than nor more extensive than its condition when new;
- ii) a condition requiring immediate remedial action to prevent destruction of or physical damage to the **Property Insured**, the basis of settlement of the claim shall be such costs incurred to prevent the destruction of or damage to the **Property Insured** within the **Period of Insurance**.

However, only to the extent the costs claimed had to be borne by the **Underwriter** and to the extent they are included in the Sum Insured and provided always that the Provisions and Conditions of this Policy have been complied with.

The cost of any provisional repairs will be borne by the **Underwriter** if such constitute part of the final repairs and do not increase the total repair expenses.

The cost of any alterations, additions and/or improvements shall not be recoverable under this Policy except as provided for within the provisions of Clause A of Additional Extensions.

2. CLAIMS PROCEDURES AND REQUIREMENTS

On discovery of **Major Damage** that may give rise to a claim hereunder or the happening of any damage not insured hereunder but which may threaten the stability of the **Property Insured**, the **Policyholder** will at their own expense:

- i) give written notice to the **Scheme Administrator** or **Underwriter** as soon as possible;

- ii) take all reasonable precautions to prevent further damage;
- iii) within sixty days of such discovery submit in writing full details then available to the **Underwriter**;
- iv) supply or to the extent this is possible, assist in procuring all reports, certificates, plans, specifications, bills of quantities, information and assistance as may be reasonably be required by the **Underwriter**.

The **Policyholder** will allow the **Underwriter** and/or their agents access to the **Property Insured** at all reasonable times.

3. FRAUDULENT CLAIMS:

If any claim is fraudulent or if any fraudulent means or devices be used by the **Policyholder** or any person acting on behalf of the **Policyholder** and that person is entitled to receive any part of the proceeds of insurance hereunder in order to obtain any benefit under this Policy or if any damage be occasioned by the wilful act of or with the connivance of the **Policyholder**, all benefit under this Policy will be forfeited.

4. REINSTATEMENT OF THE LIMIT OF INDEMNITY

In consideration of the **Limit of Indemnity** not being reduced by the amount of any loss, the **Policyholder** agrees if required by the **Underwriter** to pay:

- i) the pro-rata additional premium on the amount of such loss from the date of notification of claim to the date of expiry of the **Period of Insurance** relative to the **Property Insured**.
- ii) any **Site Audit Surveyor** fee for the checking of the design and the inspection of any work for the repair or rebuilding of the **Property Insured** which has been the subject of a claim under this Policy. The **Limit of Indemnity** shall not be reinstated unless a **Certificate of Approval** in respect of such repair or rebuilding work has been issued by the **Site Audit Surveyor**.

5. ARBITRATION

If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions then in force. Any making of an award shall be a condition precedent to any right of action against the **Underwriter**.



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MD Insurance Services Ltd is the Scheme Administrator for the Premier Guarantee range of structural warranties.
MD Insurance Services Ltd is authorised and regulated by the Financial Conduct Authority.