

## **Introduction**

All sections of the printed Policy wording and the Schedule must be read as if they are one and the same document. Marginal notes and headings are only used to help you read this Policy and do not form part of this Policy.

## **Section 1 Definitions**

Any word or expression that this Policy defines as having a particular meaning will have that meaning everywhere it appears.

### **1.1 Aircraft**

"Aircraft" means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

### **1.2 Costs and Expenses**

"Costs and Expenses" means any legal costs, disbursements, witnesses' costs, assessors' or adjusters' costs or experts' costs that relate directly to the investigation, defence, compromise or handling of any claim, incurred by Lumley, or by the Insured with Lumley's prior written consent, and also includes expenses incurred by the Insured for first aid to others at the time of any Personal Injury for which the Insured is entitled to compensation. "Costs and Expenses" does not include the Insured's time assisting Lumley or appointed solicitors with the conduct of any claim.

### **1.3 Excess**

"Excess" means the amount the Insured bears in relation to each Occurrence.

### **1.4 Insured**

"Insured" means:

- (a) The named Insured in the Schedule, all subsidiary companies (including subsidiaries thereof) of the named Insured and any other organisation as at the commencement of the Period of Insurance that was under the control of the named Insured and over which it is exercising active management and whose places of incorporation are within New Zealand;
- (b) Any director, executive officer, employee or partner of the named Insured or of a company designated in (a) but only whilst acting within the scope of their duties in such capacity;
- (c) Any principal in respect of the vicarious liability of such principal arising out of the performance by the named Insured or by a company designated in (a) of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement, but limited to the coverage provided by this Policy;
- (d) Any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the Insured (other than an Insured designated in (c)) in respect of claims arising from duties connected with activities of any such club or organisation.

### **1.5 Insured's Business**

"Insured's Business" means the business and undertakings of the Insured, as defined in the Schedule, including any change in the activities undertaken by the Insured provided that the Insured has given prior written notice of such activities and has received confirmation of coverage from Lumley.

### **1.6 Insured's Products**

"Insured's Products" means anything (after it has ceased to be in the possession of or under the control of the Insured) manufactured, constructed, erected, assembled, installed, repaired, serviced, grown, treated, sold, supplied or distributed by the Insured (including any container other than a vehicle).

### **1.7 Lumley**

"Lumley" means Lumley General Insurance (N.Z.) Limited.

### **1.8 Medical Persons**

"Medical Persons" means qualified medical practitioners, dentists, nurses and first aid attendants.

### **1.9 Non-Territorial Country**

Any country other than the Territorial Limits specified in the Schedule.

### **1.10 Occurrence**

"Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, that result in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.

### **1.11 Personal Injury**

"Personal Injury" means bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury, including such injury arising from the following by the Insured:

- (a) false arrest, false imprisonment, wrongful eviction and wrongful detention;

- (b) invasion of rights of privacy; and
- (c) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

#### **1.12 Pollutants**

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

#### **1.13 Property Damage**

"Property Damage" means:

- (a) physical damage to, or destruction, or loss of, tangible property including the loss of use thereof at any time resulting therefrom; or
- (b) loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use is caused by an Occurrence.

#### **1.14 Schedule**

"Schedule" means the most recent Policy Schedule, revised Policy Schedule or Insurance Certificate issued by Lumley.

#### **1.15 Vehicle**

"Vehicle" means any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine and includes its accessories, tools, specialised equipment and spare parts.

#### **1.16 Watercraft**

"Watercraft" means any vessel, hovercraft, craft or thing made or intended to float on or in or travel on or through the water.

## **Section 2 Coverage**

In consideration of payment of the premium and subject to the Policy terms, Lumley will indemnify the Insured for all amounts the Insured shall become legally liable to pay for compensation in respect of Personal Injury or Property Damage that occurs within the Territorial Limits and that:

- (a) happens during the Period of Insurance; and
- (b) is caused by an Occurrence in connection with the Insured's Business.

### **2.1 Limits of Indemnity**

- (a) Lumley's maximum liability in respect of any one Occurrence, irrespective of the number of claims arising therefrom, shall not exceed the Limit of Indemnity stated in the Schedule. All Personal Injury or Property Damage in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.
- (b) the total aggregate liability of Lumley during any one Period of Insurance for all claims arising out of the Insured's Products shall not exceed the Limit of Indemnity.

### **2.2 Costs and Expenses**

In addition to the applicable Limit of Indemnity Lumley will pay Costs and Expenses necessarily and reasonably incurred in relation to any claim against the Insured for which there is cover under this Policy. Lumley may investigate, negotiate and settle any claim or suit as it deems expedient; but Lumley shall not be obligated to pay any claim or judgment or to defend any suit after the Limit of Indemnity has been exhausted by payment of judgments or settlements.

Provided that:

- (a) Lumley's maximum liability in the aggregate in respect of all Costs and Expenses shall not exceed the amount of the Limit of Indemnity stated in the Schedule.
- (b) Immediately that Lumley has paid the Limit of Indemnity in respect of any judgment or settlement, Lumley's liability in respect of Costs and Expenses shall cease.
- (c) if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, the liability of Lumley to pay Costs and Expenses in connection therewith shall be limited to such proportion of the Costs and Expenses as the Limit of Indemnity bears to the amount paid to dispose of the claim.

### **2.3 Excess**

Where an Excess is specified in the Schedule, or in any applicable Automatic Extension, the Insured shall bear this amount of each and every claim arising out of an Occurrence.

## **Section 3 Automatic Extensions**

The following Extensions to the Policy are included automatically, provided always that each Extension is to be read in conjunction with the Coverage clauses above, and is subject to the Policy terms, unless otherwise stated. Some Extensions have specified sub-limits and Excesses and these will apply unless specifically stated otherwise in the Schedule. All sub-limits are included in and are not in addition to the Limit of Indemnity specified in the Schedule.

### **3.1 Business Advice or Service**

Notwithstanding Exclusion 4.17 (Professional Advice), Lumley will indemnify the Insured in respect of Personal Injury or Property Damage arising out of:

- (a) The rendering of or failure to render professional medical advice by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's premises; or
- (b) The rendering of advice or service by the Insured, or error or omission connected therewith, provided that such advice or service is not given for a fee.

### 3.2 Care, Custody or Control

Notwithstanding Exclusion 4.18(b) (Property in Your Care, Custody or Control), but subject to Exclusions 4.19 (Property Being Worked on) and 4.11 (Faulty Workmanship), Lumley will indemnify the Insured in respect of Property Damage to property, including employees' property, where the liability arises while the property is in the care, custody or control of the Insured.

Provided that a sub-limit of \$250,000 any one Period of Insurance shall apply and an Excess of \$1,000 shall apply.

### 3.3 Forest and Rural Fires Act

Lumley will indemnify the Insured in respect of liability under the Forest and Rural Fires Act 1977 for:

- (a) costs and losses incurred during the Period of Insurance recoverable under section 43;
- (b) levies imposed by a Fire Authority and apportioned to the Insured during the Period of Insurance under section 46 and 46A.

Provided that a sub-limit of \$250,000 any one Period of Insurance shall apply, and an Excess of \$1,000 shall apply.

This Extension will apply regardless of whether or not Property Damage has occurred.

### 3.4 Landlord's Liability

Lumley will indemnify the Insured in respect of Personal Injury or Property Damage arising from the Insured's legal ownership, but not physical occupation, of any premises.

### 3.5 Mechanical Plant Liability/Vehicles

Notwithstanding Exclusion 4.23 (Vehicles) Lumley will indemnify the Insured in respect of Personal Injury or Property Damage:

- (a) arising from loading or unloading any Vehicle used by or on behalf of the Insured but not in the Insured's care, custody or control;
- (b) arising from any Vehicle while it is being operated or used by the Insured as plant or a tool of trade, and not as a Vehicle;
- (c) to vehicles (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by the Insured, provided that the Insured as part of its Business does not own or operate a car park for reward;
- (d) relating to any bridge, viaduct, weigh bridge, road or anything beneath the Vehicle caused by vibration or by the weight of any Vehicle and/or its load, provided that any designated weight restrictions were not exceeded. An Excess of \$2,500 shall apply to each and every claim under this Extension 3.5(d).

### 3.6 Product Withdrawal Costs

Notwithstanding Exclusion 4.20 (Recall of Products) Lumley will indemnify the Insured for 80% of those costs incurred with the prior approval of Lumley in the withdrawal or recall from use in New Zealand of the Insured's Products that have the same defect as a product that has already given rise to a claim in respect of which the Insured is entitled to indemnity under the Coverage Section of this Policy.

Provided that:

- (a) a sub-limit of \$100,000, inclusive of Costs and Expenses, shall apply in respect of all such withdrawals or recalls during any one Period of Insurance, and;
- (b) an Excess of \$2,500, inclusive of Costs and Expenses, shall apply to each such withdrawal or recall.

### 3.7 Punitive or Exemplary Damages

Notwithstanding Exclusion 4.10 (Fines and Penalties), Lumley will indemnify the Insured for all sums that the Insured shall become legally liable to pay by way of punitive or exemplary damages awarded for Personal Injury (for which coverage is determined to exist under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or any amending or replacing legislation) where such Personal Injury happened in New Zealand during the Period of Insurance and was caused by an Occurrence in connection with the Insured's Business.

Provided that:

- (a) any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- (b) any punitive or exemplary damages awarded by any court outside New Zealand are excluded;
- (c) a sub-limit of \$1,000,000, inclusive of Costs and Expenses, any one Period of Insurance shall apply; and
- (d) an Excess of \$1,000, inclusive of Costs and Expenses, shall apply.

### 3.8 Tenant's Liability

Notwithstanding Exclusion 4.18 (a) (Care, Custody and Control), Lumley will indemnify the Insured in respect of Property Damage to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the Insured.

### 3.9 Underground Services

Lumley will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand to existing underground services, cables, pipes or equipment.

Provided that:

- (a) prior to the commencement of any work the Insured enquired of the relevant authority, corporation or company as to the location of such services; and
- (b) the Insured took all reasonable precautions to prevent Personal Injury or Property Damage; and
- (c) any liability arising out of work carried out more than five metres below ground level is excluded; and
- (d) any liability arising out of work carried out underground by directional drilling or by a thrusting or boring machine is excluded; and

- (e) a sub-limit of \$250,000 any one Period of Insurance shall apply; and
- (f) an Excess of \$5,000 shall apply.

### **3.10 Vehicle and Watercraft Service/Repair**

Notwithstanding Exclusions 4.18 (b) (Care, Custody & Control), 4.19 (Property Being Worked on), and 4.23 (a) and (b) (Vehicles), Lumley will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand arising from the service, repair, modification or installation by the Insured of any Vehicle, and/or Watercraft capable of being transported by trailer and not exceeding eight metres in length, and/or its internal combustion engine, accessories or fittings.

Provided that:

- (a) the Vehicle or Watercraft is not owned, hired, leased, or rented by the Insured, and is in the care custody or control of the Insured for the purposes of the service, repair, modification or installation; and
- (b) the cost of rectifying defective workmanship in respect of the actual part or parts worked on is excluded; and
- (c) liability in respect of Watercraft during testing on water is excluded; and
- (d) a sub-limit of \$250,000 any one Period of Insurance shall apply; and
- (e) an Excess of \$2,500 shall apply.

### **3.11 Vibration and Removal of Support**

Lumley will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand arising from vibration, or removing, weakening or interfering with, the support of land or buildings.

Provided that:

- (a) the land or buildings are not owned or occupied by the Insured; and
- (b) the Personal Injury or Property Damage arises from the actions of the Insured; and
- (c) a sub-limit of \$250,000 any one Period of Insurance shall apply; and
- (d) an Excess of \$5,000 shall apply.

### **3.12 Visits to any Non-Territorial Country**

Notwithstanding Exclusion 4.21 (Territorial Limits) Lumley will indemnify the Insured in respect of Personal Injury or Property Damage occurring in any Non-Territorial Country arising solely out of the actions of non resident directors, executives or salespersons temporarily visiting any Non-Territorial Country in the course of the Business of the Insured.

Provided that:

- (a) the Insured has no premises, branch or subsidiary operation in any Non-Territorial Country; and
- (b) any work performed in, on or in connection with, the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the Insured's Products in the Non-Territorial Country is excluded; and
- (c) the ownership, possession, control, or maintenance or use of any Vehicle or Watercraft is excluded; and

In addition, in respect of the Personal Injury or Property Damage occurring in the United States of America or Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies, the Limit of Indemnity specified in the Schedule shall apply in the aggregate, any one Period of Insurance, and shall include Costs and Expenses.

## **Section 4 Exclusions**

Lumley shall not be liable for claims in respect of:

### **4.1 Aircraft and Watercraft**

Personal Injury or Property Damage arising out of the ownership, possession, control, service & repair, maintenance, operation, loading, unloading or use by the Insured of:

- (a) any Aircraft.
- (b) any Watercraft exceeding eight metres in length.

### **4.2 Aircraft Parts**

Personal Injury or Property Damage arising out of the Insured's Products that are used with the Insured's knowledge in Aircraft or any aerial device.

### **4.3 Asbestos**

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, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

### **4.4 Assault and Battery**

Personal Injury or Property Damage caused by or arising directly or indirectly out of or in connection with assault and battery committed by the Insured or at the Insured's direction unless reasonably necessary for the protection of persons or property.

### **4.5 Contractual Liability**

Liability assumed by the Insured under any contract or agreement except to the extent that such liability would have been implied by law. This includes a contractual obligation that excludes or limits the Insured's rights of recovery from a third party. This Exclusion shall not apply to:

- (a) those written contracts designated in the Schedule.

- (b) liability assumed by the Insured under a warranty of fitness or quality in respect of the Insured's Products subject always to Exclusions 4.14 (a) (Loss of Use) and 4.11 (Faulty Workmanship).
- (c) liability assumed by the Insured under any lease or hire of real or personal property.

#### **4.6 Damage to Insured's Products**

Property Damage to the Insured's Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

#### **4.7 Date Recognition**

Liability for or arising directly or indirectly out of or in connection with the failure or inability of :

- (a) any electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- (b) any similar device, or media or systems used in connection with any of them;

whether the Insured's property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including but without being limited to any failure or inability to recognise, capture, save, retain or restore and/or to correctly manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- (i) anything referred to in (a) or (b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
- (ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.

#### **4.8 Defamation**

Liability arising out of the publication or utterance of any defamatory or disparaging material.

#### **4.9 Employer's Liability**

- (a) Personal Injury to any employee of the Insured arising out of or in the course of employment of such person in the Insured's Business.
- (b) Any obligation for which the Insured may be held liable under the Injury Prevention, Rehabilitation, and Compensation Act 2001, or any similar amending or replacement legislation.
- (c) Any liability in respect of which the Insured is entitled to seek compensation under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation whether or not the Insured has effected such a policy.

#### **4.10 Fines and Penalties**

Aggravated, punitive or exemplary damages, fines, penalties, performance warranties or liquidated damages.

#### **4.11 Faulty Workmanship**

The cost of performing, completing, correcting or improving any work undertaken by the Insured.

#### **4.12 Information Technology Hazards**

- (a) Personal Injury or Property Damage caused by or arising, directly or indirectly, out of, or in any way involving the insured's "Internet Operations". "Internet Operations" means:
  - (i) Use of electronic mail systems by the Insured's employees, including part-time and temporary staff and others within the insured's organisation;
  - (ii) Access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including part-time and temporary staff and others within the Insured's organisation;
  - (iii) Access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the Insured's customers or others outside the Insured's organisation; and
  - (iv) The operation and maintenance of the Insured's web site.

Nothing in this Exclusion shall be construed to extend this Policy to any liability which would not have been covered in the absence of this Exclusion.

- (b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
  - (i) the use of any computer hardware or software;
  - (ii) the provision of computer or telecommunication services by the Insured or on the Insured's behalf;
  - (iii) the use of any computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

#### **4.13 Legal Jurisdiction**

- (a) in respect of legal action or litigation first brought in a court outside the Territorial Limits specified in the Schedule; or
- (b) in respect of any legal action or litigation brought in a court within New Zealand to enforce a judgement handed down in a court outside the Territorial Limits specified in the Schedule whether by way of a reciprocal agreement or otherwise; or
- (c) in respect of any legal action to which the proper law to be applied to the issue of any of them in that action is that of a country outside the Territorial Limits specified in the schedule.

#### 4.14 Loss of Use

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- (b) the failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, but this Exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the Insured's Products after such Products have been put to use by any person or entity other than the Insured.

#### 4.15 Nuclear Fuel/Weapons

Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission.
- (b) nuclear weapons material.

#### 4.16 Pollution

Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water. In addition, Lumley shall not be liable to pay any expenses incurred in the prevention, removal or clean up of such Pollutants. This Exclusion shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place.

#### 4.17 Professional Advice

The rendering of or failure to render advice or service by the Insured or any error or omission connected therewith.

#### 4.18 Property in your Care, Custody or Control

Property Damage to:

- (a) real property, or property owned, hired, leased or rented by or to the Insured; or
- (b) property in the physical or legal control of the Insured; or
- (c) property held under a contract of bailment for reward.

#### 4.19 Property Being Worked On

Property Damage to that part of any property upon which the Insured is or has been working where such Property Damage arises from such work of the Insured.

#### 4.20 Recall of Products

Damages, costs or refunds claimed for the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of the Insured's Products, or of any property of which such Products form a part, or work undertaken by or for the Insured, if such Products or property are withdrawn from the market or from use, or such work is required because of any defect or deficiency therein that the Insured knew of, or had reason to suspect, or because of any Government or statutory ban, order or notice.

#### 4.21 Territorial Limits

Personal Injury or Property Damage:

- (a) occurring in any non-territorial country;
- (b) caused by or arising out of the Insured's products that have been knowingly exported by the Insured or their agents to any non-territorial country; or
- (c) where claims are made upon the Insured outside New Zealand in any country where the Insured is represented by a branch or company or firm or individual holding the Insured's power of attorney unless specified in the schedule; or
- (d) where claims arise out of any contract entered into by the Insured under the terms of which work is to be performed outside New Zealand, unless specified in the schedule.

#### 4.22 Terrorism

Arising from or in any way related to death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with, any act of Terrorism regardless of any contributing cause or event.

For the purpose of this Exclusion, Terrorism means an act, including but not limited to the use or threat of force or violence, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is committed for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

This Policy also excludes death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing or suppressing Terrorism, or in any way relating to the above.

#### 4.23 Vehicles

Personal Injury or Property Damage arising out of the ownership, maintenance, possession, operation, use or legal control by the Insured of any vehicle:

- (a) that is required by law to be registered under the Transport Act or any similar law of any country where the vehicle requires registration for road use; or
- (b) in respect of which compulsory insurance is required by virtue of any legislation governing the use of any motor vehicle or trailer; or

- (c) being operated or driven in an unsafe condition that causes or contributes to the Occurrence; or
- (d) being loaded or has been loaded in excess of the manufacturer's specifications; or
- (e) that was in the care custody and control of any driver who had consumed any intoxicating substance or drug and/or had a proportion of alcohol or drug in the breath or blood that exceeds the legal limit prescribed by law, or fails to provide any sample or undergo any test as required by law, or fails to stop or remain at the scene following an accident as prescribed by law; or
- (f) where the driver using or operating the vehicle with the Insured's permission did not hold a current driver's licence as required by the Transport Act or where the driver using or operating the vehicle fails to comply with the conditions of their licence; or
- (g) being operated by any person who is under the influence of any liquor, substance or drug; or
- (h) that is insured, or in respect of which the Insured is insured under any other policy, even if the other insurance is not collectable because of a breach of condition or applicable exclusion.

#### **4.24 War**

Personal Injury or Property Damage arising out of or connected with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any Government or public or local authority.

## **Section 5 Conditions**

### **5.1 Adjustment of Premium**

Where premium has been calculated on estimates furnished by the Insured, the Insured shall, within 30 days after the expiry of each Period of Insurance, furnish to Lumley such information as Lumley may require to adjust the premium for the expired Period of Insurance. Any difference in premium shall be paid by or allowed to the Insured. The Insured shall allow Lumley to inspect the Insured's records of such information.

### **5.2 Cancellation**

- (a) The Insured may cancel this Policy at any time by notifying Lumley in writing. Lumley will retain or be entitled to the premium for the period during which this Policy has been in force based on Lumley's cancellation rates.
- (b) Lumley may cancel this Policy at any time by giving 30 days' notice in writing to the Insured of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the Insured at the address last notified to Lumley. Proof of mailing is sufficient proof of notification. The Insured is entitled to a pro-rata refund of the premium already paid.

### **5.3 Change of Facts or Circumstances**

Notice in writing shall be given to Lumley as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of the Insured. Lumley shall be entitled to charge an additional premium.

### **5.4 Conduct of Claims**

The Insured shall not, without Lumley's prior written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim. Lumley shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim brought against the Insured in respect of which indemnity is granted under this Policy. Lumley shall be entitled to appoint its own solicitors to conduct the defence of such claim and shall have full discretion in the conduct of any proceedings. The Insured shall give all information and assistance as Lumley may require. The solicitors shall at all times be at liberty to disclose to Lumley any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and Lumley in respect of such information.

The Insured shall use its best endeavours to preserve all property, products, appliances and plant and all other things that may assist in the investigation and defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair shall be effected without the prior written consent of Lumley and until Lumley shall have had an opportunity of inspection and authorised such repairs.

In the event of an Occurrence, or the likelihood of an Occurrence, the Insured shall promptly take at its own expense all reasonable steps to prevent Personal Injury or Property Damage from arising or continuing out of the same or similar conditions, but such expense shall not be recoverable from Lumley.

Lumley may at any time pay the Insured, in respect of all claims against the Insured arising directly or indirectly from one Occurrence, the amount of the Limit of Indemnity or applicable sub-limit (after deduction of any amounts already paid as compensation in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment Lumley shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for its proportion of Costs and Expenses incurred prior to the date of such payment.

### **5.5 Cross Liability**

Where the Insured consists of more than one legal entity that is named on the Schedule, each shall be considered as a separate entity and the word "Insured" shall apply to each as if a separate Policy had been issued to each.

Nothing contained in this Condition shall result in an increase of Lumley's Limit of Indemnity in respect of any Occurrence or Period of Insurance.

### **5.6 Defence of Legal Proceedings**

Lumley shall not require the Insured to contest any legal proceedings in respect of any claim against the Insured, nor shall the Insured require Lumley to contest, on its behalf, any legal proceedings in respect of any such claim unless a legal counsel (to be mutually agreed upon by the Insured and Lumley) shall advise that such proceedings should be contested.

In formulating such advice, counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion shall be payable under clause 2.2 (Costs and Expenses).

In the event that counsel advises that, having regard to all the circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then the Insured shall not object to any such settlement and shall co-operate with Lumley to effect such settlement in accordance with this Policy.

#### **5.7 Fraudulent Claims**

If the Insured makes any claim knowing the same to be fraudulent or false in any respect, this Policy shall become void and any claims hereunder shall be forfeited.

#### **5.8 Goods and Services Tax**

Where the Insured is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this Policy, Lumley will indemnify the Insured for the costs of that tax. The indemnity under this clause is payable by Lumley in addition to the Limit of Indemnity.

#### **5.9 Hot Work Warranty**

Where the Insured carries out any welding and/or cutting work it is warranted that the Insured shall comply with the New Zealand Standard 4781:1973 Code of Practice for Safety in Welding and Cutting (or any amending or updated Standard).

#### **5.10 Inspection of Property**

Lumley shall be permitted but not obligated to inspect the Insured's property and operations at any time. Neither Lumley's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured, or others, to determine or warrant that such property or operations are safe.

#### **5.11 Insured's Warranty**

It is agreed between the Insured and Lumley that the written proposal provided by the Insured and any other underwriting information shall be deemed to be incorporated into and forms the basis of this Policy and the Insured warrants the truth of all statements made therein.

#### **5.12 Other Insurance**

Upon giving notice of any claim or Occurrence, the Insured agrees to provide to Lumley written details of any other insurance that may cover or partially cover that claim or Occurrence.

In the event that the Insured holds other insurance cover with another insurer in respect of any claim then the indemnity under this Policy shall not be available until the limit of indemnity under any other policy has been exhausted, even if the other insurance policy has an Other Insurance condition to similar effect.

#### **5.13 Policy Disputes**

This Policy shall be governed by the laws of New Zealand whose courts shall have jurisdiction in any dispute arising herein.

#### **5.14 Reasonable Precautions**

The Insured shall take all reasonable precautions to:

- (a) prevent the manufacture, sale or supply of defective Products.
- (b) comply, and ensure that the Insured's employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.
- (c) at the Insured's own expense, trace or recall or modify any of the Insured's Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect.

#### **5.15 Reporting of Claims**

Irrespective of the quantum, the Insured shall give to Lumley immediate notice in writing of every Occurrence, claim, summons, proceedings, impending prosecution or inquest and all information in relation thereto in respect of which a claim may result under this Policy, irrespective of whether the Insured believes that no claim will proceed or that any claim would be groundless.

#### **5.16 Subrogation**

Lumley shall be entitled to prosecute in the name of the Insured and at Lumley's expense any recovery claim for indemnity or damages or otherwise. Lumley shall be entitled to do this before a claim is paid and whether or not the Insured has been fully compensated for its actual loss. The Insured shall execute all papers and do all that is necessary to assist Lumley in the full exercise of such rights. If the Insured effects any recovery in respect of any claim it shall account to Lumley for the full amount received.