

Broadform Liability

Policy

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Introduction

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

Section 1 – Definitions

The following defined words and expressions are assigned a particular meaning. That meaning will apply everywhere the word or expression appears and it applies to the plural and derivatives of the word or expressions.

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 legal costs and 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.

“Costs and Expenses” does not include any costs of the Insured’s time including for the avoidance of doubt, any time spent in assisting Lumley or its appointed solicitors with the conduct of any claim.

1.3 Hot Work

“Hot Work” means any work involving:

- (a) the application of heat, a naked flame or an open heat source, or work that produces sparks;
- (b) the use of gas, welding, arc welding, oxyacetylene welding equipment including cutting with such equipment;
- (c) cutting involving the use of rotary disc or grinding equipment;
- (d) soldering, brazing, use of heat guns.

1.4 Insured

“Insured” means:

- (a) the named Insured in the Schedule;
- (b) any subsidiary company (including a subsidiary thereof) of the named Insured provided that it is incorporated in New Zealand;
- (c) any other organisation:
 - (i) where the named Insured exercises more than 50% management control; and
 - (ii) over which the named Insured is exercising active management; and
 - (iii) whose place of incorporation is in New Zealand;
- (d) any director, executive officer, employee or partner of an entity referred to in (a), (b) or (c) but only whilst the person is acting within the scope of their duties in such capacity;
- (e) any principal who is a party to a contract with an Insured referred to in (a), (b) or (c) above, but only in respect of the principal’s liability arising as a result of that Insured entity’s acts or omissions under the contract but limited to the coverage provided by this Policy;
- (f) any office bearer or member of a social or sporting club, welfare organisation or an employee superannuation fund formed with the consent of an entity referred to in (a), (b) or (c), but only in respect of claims arising from duties connected with activities of such club or organisation;
- (g) contractors or sub-contractors but only while they are engaged by, and working in New Zealand for an entity referred to in (a), (b) or (c) above, provided that they are not otherwise insured. Policy Condition 6.4 (Cross Liability) does not apply in respect of such contractors or sub-contractors.

1.5 Insured’s Business

“Insured’s Business” means the business and undertakings of the Insured, as stated 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 to Lumley and has received confirmation of coverage of those activities 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) that is manufactured, constructed, erected, assembled, installed, applied, repaired, serviced, grown, treated, sold, supplied or distributed by the Insured, including any packaging or container (other than a Vehicle).

1.7 Limit of Indemnity

"Limit of Indemnity" means the amount stated in the Schedule.

1.8 Lumley

"Lumley" means Lumley, a business division of IAG New Zealand Limited.

1.9 Non-Territorial Country

"Non-Territorial Country" means 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 or liability, which results in Personal Injury or Property Damage that is neither expected nor intended by the Insured.

1.11 Personal Injury

"Personal Injury" means:

- (a) accidental death or accidental bodily injury including sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful entry or wrongful eviction and wrongful detention;
- (c) invasion of rights of privacy;
- (d) 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 Policy

"Policy" means the following:

- (a) the Insured's application for insurance and any oral or written supporting statements or documents supplied; and
- (b) this policy wording (including any amending endorsements); and
- (c) the Schedule.

1.13 Property Damage

"Property Damage" means:

- (a) accidental physical damage to, or destruction of, or accidental physical loss of, tangible property including the loss of use thereof, resulting from such accidental physical damage;
- (b) accidental loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use arises out of physical damage to, or destruction or loss of other tangible property.

1.14 Schedule

"Schedule" means the most recent Policy Schedule 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 terms of this Policy, Lumley agrees as follows:

2.1 General and Product Liability

Lumley will indemnify the Insured for legal liability for Personal Injury or Property Damage that:

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

2.2 Limit of Indemnity

- (a) The most that Lumley will pay for any claim or any series of claims arising out of an Occurrence shall be:
 - (i) the Limit of Indemnity; or
 - (ii) where one or more Extensions apply, the sub-limit for the Extension/s;whichever is lesser.
- (b) The most that Lumley will pay during any one period of insurance for all claims arising out of the Insured's Products shall not exceed the Goods/Products Limit of Indemnity stated in the Schedule.

2.3 Costs and Expenses

- (a) Lumley will pay Costs and Expenses necessarily and reasonably incurred to defend any civil legal action that if proven, would be covered under this Policy. Payments under this clause are payable in addition to payments under Clause 2.2 (Limit of Indemnity).
- (b) Provided that:
 - (i) Lumley may investigate, negotiate and settle any claim or suit against the Insured; and
 - (ii) if Lumley has paid the Limit of Indemnity in respect of any claim, judgement or settlement, or series of claims arising from an Occurrence, Lumley's liability in respect of any further Costs and Expenses shall cease; and
 - (iii) 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 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.
- (c) In respect of all claims and Occurrences that happen during the period of insurance that result in Personal Injury or Property Damage in the United States of America or Canada, (including those territories to which the legal jurisdiction of the United States of America or Canada applies), the most that Lumley will pay for liability and Costs and Expenses is the Limit of Indemnity. For the avoidance of doubt, cover for Costs and Expenses for such claims and Occurrences is included within the Limit of Indemnity and not in addition to it.

2.4 Excess

The excess stated in the Schedule applies for each Occurrence, unless a different amount is specified in the Schedule as applying for an Automatic or Optional Coverage Clause.

Section 3 – Automatic Coverage Clauses

The following Coverage Clauses are included automatically and are subject to the Policy terms, unless otherwise stated. Some clauses have sub-limits and excesses; these are stated in the Schedule. All sub-limits are included in, and are not in addition to, the Limit of Indemnity.

3.1 Advertising Liability

- (a) Lumley will indemnify the Insured in respect of Advertising Liability that arises from an Occurrence in connection with the Insured's Business during the period of insurance.
- (b) For the purposes of this Automatic Coverage Clause, "Advertising Liability" means legal liability arising from any advertisement, article, broadcast, telecast or communication to the public in connection with advertising the Insured's Products, goods or services, including liability for:
 - (i) defamation;
 - (ii) infringement of copyright;
 - (iii) unfair competition or idea misappropriation under an implied contract;
 - (iv) invasion of privacy.
- (c) "Infringement of copyright" means the accidental unauthorised copying, distribution or exposition of any document or work.
- (d) Provided that there is no cover under this Coverage Clause for:
 - (i) breaches undertaken at the direction of the Insured with knowledge of the illegality or falsity thereof;
 - (ii) breach of contract, other than misappropriation of advertising ideas under an implied contract;
 - (iii) incorrect description of the price of the Products, goods or services;
 - (iv) any infringement of trade mark, service mark or passing off by use thereof as the trade mark, but this exception does not apply to titles or slogans;
 - (v) an alleged failure of the Products, goods or services to conform with advertised performance, quality, fitness or durability;
 - (vi) any Insured whose business is advertising, broadcasting, publishing or telecasting.
- (e) The most Lumley will pay under this Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.
- (f) Exclusion 5.6 (Defamation) does not apply to this Coverage Clause.

3.2 Business Advice or Service

- (a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage arising out of:
 - (i) advice, service, errors or omissions by the Insured in connection with the Insured's Business, provided that no payment is charged for such advice or service;
 - (ii) the rendering of or failure to render professional medical advice by a person engaged or employed by the Insured to provide first aid and other medical services at the Insured's premises.
- (b) Exclusion 5.4 (Business Advice/Error or Omission) does not apply to this Coverage Clause.

3.3 Business Travel to a Non-Territorial Country

- (a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage occurring in any Non-Territorial Country during the period of insurance in connection with the directors, executives or salespersons of the Insured travelling to or in the Non-Territorial Country in the course of the Insured's Business, provided that they are temporarily visiting and not normally resident in the Non-Territorial Country.

(b) Provided that:

- (i) the Insured does not have a place of business in that Non-Territorial Country and is not represented by any parent or subsidiary company or joint venture in that Non-Territorial Country; and
- (ii) any work performed in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement of any product or property is excluded; and
- (iii) the ownership, possession, control, maintenance or use of any Vehicle or Watercraft is excluded.

(c) The most that Lumley will pay under this Coverage Clause in respect of all claims and Occurrences that happen during the period of insurance that result in Personal Injury or Property Damage in the United States of America or Canada, (including those territories to which the legal jurisdiction of the United States of America or Canada applies) is the Limit of Indemnity specified in the Schedule. Notwithstanding clause 2.3 (Costs and Expenses), cover for Costs and Expenses for such claims and Occurrences is included within the Limit of Indemnity and not in addition to it.

(d) Exclusions 5.14 (Legal Jurisdiction) and 5.22 (Territorial Limits) do not apply to this Coverage Clause.

3.4 Care, Custody or Control

(a) Lumley will indemnify the Insured for liability for Property Damage during the period of insurance to property, including employees' property, while the property is in the care, custody or control of the Insured in connection with the Insured's Business.

(b) Provided that the most Lumley will pay in the period of insurance for all claims under this Coverage Clause shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.

(c) Exclusion 5.20 (b) (Property in your Care, Custody or Control) does not apply to this Coverage Clause.

3.5 Forest and Rural Fires Act

(a) Lumley will indemnify the Insured for liability arising from a fire (or threat of fire) during the period of insurance, in New Zealand for:

- (i) costs and losses recoverable from the Insured under section 43 of the Forest and Rural Fires Act 1977; and
- (ii) levies imposed by a Fire Authority and apportioned to the Insured under sections 46 and 46A .

(b) Cover under this Coverage Clause is available regardless of whether or not Property Damage has occurred.

(c) Provided that the most Lumley will pay under this Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.

(d) Exclusions 5.10 (Forest and Rural Fires Act) and 5.25 (a) (Vehicles) do not apply to this Coverage Clause.

3.6 Goods Lifted or Carried by Cranes

(a) Lumley will indemnify the Insured in respect of liability for Property Damage to property being lifted, lowered or carried by a crane operated by the Insured in connection with the Insured's Business, during the period of insurance.

Provided that there is no cover under this Coverage Clause for:

- (i) Property being carried under a contract of carriage;
- (ii) Property that is otherwise insured;
- (iii) Property or goods being lifted by dual or multi-lifts. For the purpose of this Coverage Clause a dual lift is where two cranes are used for any one lift and multi-lifts are where more than two cranes are used for any one lift.

(b) The most that Lumley will pay under this Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.

(c) Exclusions 5.8 (Faulty Workmanship), 5.20 (b) (Property in your Care, Custody or Control) and 5.25 (a) (Vehicles) do not apply to this Coverage Clause.

3.7 Hot Work Away From Own Premises

(a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage arising from Hot Work carried out by the Insured in connection with the Insured's Business, away from the Insured's own premises during the period of insurance.

(b) Provided that:

- (i) The area of the Hot Work will be cleared of combustible material for a safe distance from or beneath the area of Hot Work. A safe distance will be not less than ten metres from where the Hot Work is being carried out. Where such distance is impracticable, combustible material will be covered with fireproof blankets or similar protective equipment. Combustible parts of the premises will be similarly protected; and
- (ii) hose reels or fire extinguishers of a type and capacity suitable for the combustible material and the premises will be kept adjacent to the area of Hot Work and available for immediate use; and
- (iii) equipment will be lit or switched on for as short a time as possible before use and extinguished immediately after use; and
- (iv) lighted or heated Hot Work equipment will not be left unattended; and
- (v) a thorough examination for any signs of combustion will be made around the area of Hot Work immediately after completing the Hot Work and then an hour after the termination of each period of Hot Work; and
- (vi) before applying heat to metal built into or projecting through walls, floors or ceilings an examination will be made to ensure that the other end of the metal is cleared of combustible material or such material is covered; and
- (vii) any specific site Hot Work permit is complied with.

(c) Exclusion 5.12 (Hot Works Away From Own Premises) does not apply to this Coverage Clause.

3.8 Innkeeper's Liability

(a) Lumley will indemnify the Insured for liability arising under the Innkeeper's Act 1962 for Property Damage that happens in connection with the Insured's Business, during the period of insurance.

(b) Exclusion 5.20 (b) (Property in your Care, Custody or Control) does not apply to this Coverage Clause.

3.9 Landlord's Liability

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

3.10 Lost or Stolen Keys

(a) Lumley will indemnify the Insured for the costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations if the keys or combinations are stolen or believed on reasonable grounds to have been duplicated without proper authority.

(b) Provided that:

- (i) the keys or combinations are in the Insured's possession in connection with the Insured's Business; and
- (ii) the Insured does not own, hire, lease or rent such property.

(c) Exclusion 5.20(b) (Property in your Care, Custody or Control) does not apply to this Coverage Clause.

3.11 Product Withdrawal Costs

(a) Lumley will indemnify the Insured for 80% of the costs reasonably and necessarily incurred in the withdrawal or recall of the Insured's Products during the period of insurance, in New Zealand, where the Insured's Products 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 this Policy.

(b) The most that Lumley will pay under this Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply. Notwithstanding clause 2.2 (Costs and Expenses), cover for Costs and Expenses for such claims and Occurrences is included within the Limit of Indemnity and not in addition to it.

(c) Exclusion 5.19 (Product Recall) does not apply to this Coverage Clause.

3.12 Punitive or Exemplary Damages

(a) Lumley will indemnify the Insured for liability to pay punitive or exemplary damages awarded by a New Zealand Court arising out of an Occurrence in connection with the Insured's Business during the period of insurance.

(b) Provided that:

- (i) any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- (ii) there is no cover for any punitive or exemplary damages connected with any dishonest or fraudulent act or omission by the Insured.

(c) The most that Lumley will pay under this Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.

(d) Exclusion 5.9 (Fines and Exemplary Damages) and Condition 6.14 (Reasonable Care) do not apply to this Coverage Clause.

3.13 Service/Repair - Machinery

(a) Lumley will indemnify the Insured in respect of liability for Property Damage to machinery where such Property Damage arises out of an Occurrence in connection with the Insured's Business during the period of insurance, in New Zealand and arising from the service, repair, modification or installation of machinery by the Insured.

(b) Provided that the machinery is not, and has not been owned, hired, leased, or rented by the Insured.

(c) The most that Lumley will pay under this Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.

(d) Exclusions 5.8 (Faulty Workmanship), 5.20 (b) (Property in your Care, Custody or Control) and 5.21 (Reinstatement, Repair or Replacement of Insured's Products) do not apply to this Coverage Clause.

3.14 Service/Repair - Vehicle and Watercraft

(a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage that arises out of an Occurrence in connection with the Insured's Business during the period of insurance, in New Zealand and arising from:

- (i) the service, repair, modification or installation of or to a Vehicle or Watercraft not exceeding ten metres in length by the Insured; or
- (ii) Property Damage to a Vehicle or Watercraft not exceeding ten metres in length, which is in the care, custody or control of the Insured for the purposes of service, repair, modification or installation, including while it is being driven or operated by the Insured.

(b) Provided that the Vehicle or Watercraft is not, and has not been, owned, hired, leased, or rented by the Insured.

(c) The most that Lumley will pay under this Coverage Clause for an Occurrence resulting in Property Damage to a Vehicle or Watercraft shall not exceed the sub-limit specified in the Schedule. This sub-limit does not apply to any resultant Property Damage to other property.

(d) The excess specified in the Schedule for this Coverage Clause shall apply.

(e) Exclusions 5.8 (Faulty Workmanship), 5.20 (b) (Property in your Care, Custody or Control), 5.21 (Reinstatement, Repair or Replacement of Insured's Products) and 5.25 (a) (Vehicles) do not apply to this Coverage Clause.

3.15 Tenant's Liability

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for Property Damage to premises (including landlord's fixtures and fittings) occupied, but not owned by the Insured and arising out of an Occurrence during the period of insurance.
- (b) Exclusion 5.20 (b) (Property in your Care, Custody or Control) does not apply to this Coverage clause.

3.16 Underground Services

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for Property Damage arising out of an Occurrence in connection with the Insured's Business during the period of insurance, in New Zealand and arising from damage to existing underground services, cables, pipes or equipment.
- (b) Provided that the Insured:
 - (i) made enquiries with the appropriate authorities or owners to verify the existence of the underground services prior to the commencement of any work; and
 - (ii) sighted a plan of their location; and
 - (iii) took all reasonable precautions to prevent Property Damage.
- (c) Exclusion 5.24 (Underground Services) does not apply to this Coverage Clause.

3.17 Vehicles/Mobile Mechanical Plant Liability

- (a) Lumley will indemnify the Insured in respect of liability for Personal Injury or Property Damage arising out of an Occurrence, in connection with the Insured's Business, during the period of insurance, in New Zealand and arising from:
 - (i) loading or unloading or bringing to or removal of a load from a Vehicle;
 - (ii) the use of any Vehicle while it is being operated or used by the Insured as mobile mechanical plant or machinery and not being driven as a Vehicle;
 - (iii) Property Damage to a Vehicle (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 the Vehicle is in a car park owned or operated by the Insured;
 - (iv) Property Damage to a bridge, viaduct, culvert, weigh bridge or road beneath a Vehicle, where the Property Damage is caused by vibration or by the weight of the Vehicle and/or its load, provided that any designated weight restrictions were not exceeded.
- (b) Exclusion 5.20 (b) (Property in your Care, Custody or Control) does not apply to claims under part (a)(iii) of this Coverage Clause. Exclusion 5.25 (a) (Vehicles) does not apply to this Coverage Clause.

3.18 Vibration and Removal of Support

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for Personal Injury or Property Damage arising out of an Occurrence in connection with the Insured's Business, during the period of insurance, in New Zealand and arising from vibration, or removing, weakening or interfering with, the support of land or buildings.
- (b) Provided that:
 - (i) the land or buildings are not owned or occupied by the Insured; and
 - (ii) the Personal Injury or Property Damage arises from the actions of the Insured.
- (c) The most that Lumley will pay under this Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Coverage Clause shall apply.
- (d) Exclusion 5.26 (Vibration and Removal of Support) does not apply to this Coverage Clause.

Section 4 – Optional Coverage Clause

This Optional Coverage Clause only applies if it is shown in the Schedule and is subject to the Policy terms. Cover under the Optional Coverage Clause is included in, and is not in addition to the Limit of Indemnity.

4.1 Property Being Worked On

- (a) Lumley will indemnify the Insured in respect of the Insured's liability for Property Damage to property being worked on by the Insured during the course of the Insured's Business, during the period of insurance, in New Zealand. Provided that the property is not owned, hired, leased, or rented by the Insured.
- (b) There is no cover under this Optional Coverage Clause for Property Damage to machinery or to a Vehicle or Watercraft. Cover for damage to these types of property is available under Automatic Coverage Clauses 3.13 (Service/Repair – Machinery) and 3.14 (Service/Repair – Vehicle and Watercraft).
- (c) The most that Lumley will pay under this Optional Coverage Clause for all Occurrences that happen during the period of insurance shall not exceed the sub-limit specified in the Schedule and the excess specified in the Schedule for this Optional Coverage Clause shall apply.
- (d) Exclusions 5.8 (Faulty Workmanship) and 5.20 (b) (Property in your Care, Custody or Control) do not apply to this Optional Coverage Clause.

Section 5 – Exclusions

5.1 Aircraft

There is no cover for liability in connection with:

- (a) any ownership, possession, control, service, repair, maintenance, operation, loading, unloading or use of an Aircraft;

(b) the Insured's Products that are knowingly incorporated in any Aircraft or aerial device.

5.2 Asbestos

There is no cover for liability in connection with asbestos.

5.3 Building Defects

There is no cover for liability in connection with:

- (a) the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose in relation to leaks, water penetration, weatherproofing, moisture or any effective water exit or control system;
- (b) the action of fungi, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms in any building or structure;
- (c) the costs and expenses of abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating, disposal of or in any way responding to or assessing the effects of micro-organisms, mould, fungi, mildew, rot or decay, gradual deterioration, bacteria, protozoa or similar or like forms, in any building or structure.

This exclusion does not exclude indemnity for liability for Personal Injury or Property Damage that is caused by leakage of internal water pipes or cisterns.

5.4 Business Advice/Error or Omission

There is no cover for liability in connection with the rendering of, or failure to render, advice or service or any error or omission in the rendering of advice or a service.

5.5 Contractual Liability

There is no cover for liability in connection with any liability assumed by the Insured under any contract or agreement except to the extent that such liability would have been imposed by law in the absence of the contract. 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) written contracts that have been notified to and agreed by Lumley and are referred to in the Schedule.
- (b) liability assumed by the Insured under a warranty of fitness or quality in respect of the Insured's Products but subject always to the Policy, including for the avoidance of doubt, Exclusions 5.8 (Faulty Workmanship) and 5.15 (Loss of Use).
- (c) liability assumed by the Insured under any lease or hire of real or personal property.

5.6 Defamation

There is no cover for liability in connection with libel or slander being the publication or utterance of any defamatory or disparaging material.

5.7 Employer's Liability

There is no cover for liability in connection with:

- (a) Personal Injury to any employee of the Insured arising out of or in the course of employment of such employee;
- (b) any obligation for which the Insured may be held liable under the Accident Compensation Act 2001;
- (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.

5.8 Faulty Workmanship

There is no cover for liability for the cost of performing, completing, repairing, correcting or improving any work undertaken by or on behalf of any Insured.

This exclusion does not apply to liability for resultant damage to other property.

5.9 Fines and Exemplary Damages

There is no cover for liability in connection with any aggravated, punitive or exemplary damages, fines, penalties, performance warranties or liquidated damages, whether imposed under contract or statute.

5.10 Forest and Rural Fires Act

There is no cover for liability in connection with the Forest and Rural Fires Act 1977, unless the Insured is (or would be) otherwise legally liable for such sums.

5.11 GMO (Genetically Modified Organisms)

There is no cover for liability in connection with any genetically modified or engineered organisms or material, transgenic seeds or any other products of a similar nature.

5.12 Hot Work Away From Own Premises

There is no cover for liability in connection with Hot Work carried out away from the Insured's own premises.

5.13 Information Technology Hazards

There is no cover for liability in connection with:

- (a) the Insured's Internet Operations;
- (b) computer data or programs and their storage media where the loss, liability or expense is 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.

"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;
- (iv) the operation and maintenance of the Insured's web site.

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

5.14 Legal Jurisdiction

There is no cover for liability in connection with:

- (a) any legal action brought in a court or tribunal in a Non-Territorial Country;
- (b) any legal action brought in a court or tribunal within New Zealand to enforce a judgement handed down in a court or tribunal in a Non-Territorial Country whether by way of a reciprocal agreement or otherwise;
- (c) any legal action to which the proper law to be applied is that of a Non-Territorial Country;
- (d) liability under the law of any country, state or territory (outside of New Zealand) that requires such liability to be insured or secured with an insurer or organisation in that country, state or territory to grant such insurance or security.

5.15 Loss of Use

There is no cover for liability in connection with loss of use of tangible property which has not been physically damaged or destroyed, where that loss of use is caused by:

- (a) a delay in, or lack of performance by or on behalf of the Insured, of any contract or agreement;
- (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.

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 they have been put to use by any person or entity other than the Insured.

5.16 Nuclear Fuel/Weapons

There is no cover for liability in connection with the:

- (a) use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- (b) use, handling or transportation of radioactive materials;
- (c) use, handling, transportation of any weapon of war or explosive device employing nuclear fission or fusion.

5.17 Offshore Oil or Gas Platforms

There is no cover for liability in connection with any offshore oil or gas platform.

5.18 Pollution

There is no cover for liability in connection with 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, including for the prevention, removal or clean-up of any 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.

However, this Exclusion shall not apply if the discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended event and takes place in its entirety at a specific time and place.

Provided that, the Exclusion stands and there is no cover whatsoever under this policy for liability in connection with Pollution that occurs 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.

5.19 Product Recall

There is no cover for liability in connection with the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of the Insured's Products, or of any property which the Insured's Products form a part of, if such products or property are withdrawn from the market or from use because of any known, or suspected defect or deficiency therein, or because of any Government or statutory ban, order or notice.

5.20 Property in your Care, Custody or Control

There is no cover for liability for Property Damage to:

- (a) property owned by any Insured;
- (b) property in the physical or legal control of any Insured.

5.21 Reinstatement, Repair or Replacement of Insured's Products

There is no cover for liability for Property Damage to any Insured's Product arising out of such Insured Product or any part of such Insured Product.

5.22 Territorial Limits

There is no cover for liability in connection with:

- (a) an Occurrence in a Non-Territorial Country;
- (b) claims made upon the Insured outside the Territorial Limits specified in the Schedule;
- (c) claims that arise out of any contract entered into by the Insured under the terms of which the work is to be performed outside the Territorial Limits specified in the Schedule.

However, this Exclusion does not apply to liability arising from the Insured's Products where they have been exported to a Non-Territorial Country without the knowledge of the Insured.

5.23 Terrorism

There is no cover for liability in connection with any Act of Terrorism, regardless of any contributing cause or event, including in connection with controlling, preventing, suppressing, retaliating against, or responding to an Act of Terrorism.

"Act of Terrorism" means any unlawful act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public, or a section of the public, of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:

- (a) involves violence against one or more persons;
- (b) involves damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public;
- (e) is designed to interfere with or disrupt an electronic system.

5.24 Underground Services

There is no cover for liability in connection with Property Damage to any existing underground services, cables, pipes or equipment.

5.25 Vehicles

There is no cover for liability in connection with:

- (a) the ownership, maintenance, service, repair, possession, operation, use or legal control of any Vehicle by the Insured;
- (b) any Vehicle being used or driven when the Insured:
 - (i) does not hold an appropriate driver's licence or does not comply with the conditions of his or her driver's licence;
 - (ii) has a proportion of alcohol in their breath or blood that exceeds the legal limit;
 - (iii) is under the influence of any other intoxicating substance or drug;
 - (iv) fails or refuses to supply a breath or blood sample as required by law;
 - (v) fails or refuses to stop, or remain at the scene, following an accident (as required by law);
 - (vi) is using the Vehicle outside the manufacturer's recommended specifications;
- (c) driving a Vehicle in an unsafe condition if:
 - (i) the condition of the Vehicle causes or contributes to, the Personal Injury and/or Property Damage; and
 - (ii) the Insured was aware, or ought to have been aware, of the unsafe condition of the Vehicle.

5.26 Vibration and Removal of Support

There is no cover for liability in connection with vibration, weakening of or removal of support of any buildings, structures or land.

5.27 War

There is no cover for liability in connection 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.

5.28 Watercraft

There is no cover for liability in connection with:

- (a) ownership, possession, repair or use of any Watercraft that exceeds ten metres in length;
- (b) operation of any Watercraft:
 - (i) while under the influence of alcohol or any other intoxicating substance or drug; or
 - (ii) outside the manufacturer's recommended specifications.

Section 6 – Conditions

6.1 Assignment

No assignment of interest under this Policy shall bind Lumley unless Lumley's written consent is obtained and endorsed on this Policy.

6.2 Cancellation

The Insured may cancel this policy at any time by notifying Lumley in writing.

Lumley may cancel this policy at any time by giving notice in writing or by electronic means to the Insured (or the Insured's broker or agent).

The policy will be cancelled from 4pm on the 30th day after the date of the notice.

Adjustment of Premium:

- (a) After cancellation by the Insured, Lumley will retain or be entitled to the premium for the period during which this policy has been in force.
- (b) After cancellation by Lumley, the Insured is entitled to a pro-rata refund of any unused premium.

6.3 Conduct of Claims

- (a) The Insured shall not make any admission, offer, promise or payment in connection with any Occurrence or claim without Lumley's prior written consent.
- (b) 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 otherwise. 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.
- (c) The Insured shall use its best endeavours to preserve all property, products, appliances, 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 to inspect and give authorisation for such repairs.
- (d) In the event of an Occurrence, or the likelihood of an Occurrence, the Insured shall, at its own expense, promptly take 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.
- (e) 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 the applicable sub-limit (after deduction for any amounts already paid in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment, Lumley shall relinquish conduct and/or control of the claim or claims, and Lumley will 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.

6.4 Cross Liability

Where the Insured consists of more than one legal entity, the word "Insured" shall apply to each as if a separate Policy had been issued to each. Except that this Condition shall not apply to entities that are deemed insured pursuant to the definition of Insured at 1.4(g) (contractors or sub-contractors).

Nothing contained in this Condition increases the Limit of Indemnity in respect of any Occurrence or period of insurance.

6.5 Defence of Legal Proceedings

- (a) If the lawyer appointed to defend the Insured advises that the claim should not be defended, then Lumley is not required to defend a claim. If the Insured disagrees with the lawyers advice not to defend a claim, a second lawyer that Lumley and the Insured agree to will be instructed to provide a second opinion.
- (b) If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. In formulating their advice, the lawyer must be instructed to consider the:
 - (i) economics of the matter; and
 - (ii) damages and costs likely to be recovered; and
 - (iii) likely costs of defence; and
 - (iv) prospects of successfully defending the claim.
- (c) The cost of the second lawyer's opinion is to be taken as part of the Costs and Expenses covered under this Policy.
- (d) If the second lawyer advises that the claim should be settled and if the terms of settlement that Lumley recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters they are required to consider), then:
 - (i) the Insured cannot object to the settlement, and
 - (ii) the Insured must immediately pay the excess shown in the Schedule.

6.6 Fraudulent Claims

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

6.7 Goods and Services Tax

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

6.8 Disputes about this Policy

The law of New Zealand applies to disputes about this policy and the New Zealand Courts have exclusive jurisdiction.

6.9 Inspection of Property

Lumley shall be permitted, but is not obliged, to inspect the Insured's property and operations at any time. Neither Lumley's right to make inspections, the making of any inspections, or any report issued following such an inspection, shall constitute an undertaking or warranty that such property or operations are safe.

6.10 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.

6.11 Legislation Changes

Any reference to any Act of Parliament or subordinate rules referred to in this Policy includes any amendments made or substitutions to that law.

6.12 Material Change of Facts or Circumstances

The Insured shall give Lumley notice in writing as soon as possible, of every change that materially varies any of the facts or circumstances that existed, or that the Insured thought existed, at the commencement of this Policy. Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

6.13 Other Insurance

The Insured shall give notice to Lumley of any other insurance policy that covers any of the risks covered under this policy.

This policy does not indemnify any claim or Occurrence if it is indemnified to any extent under any other insurance policy. Lumley will not contribute towards any claim under any other insurance policy.

6.14 Reasonable Care

The Insured shall take reasonable care at all times to avoid circumstances that could result in a claim and shall take all reasonable steps to minimise any claim and avoid any further loss or liability arising. Lumley shall not be liable if the Insured is reckless or grossly irresponsible.

6.15 Reporting of Claims

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

6.16 Subrogation

If Lumley accepts any part of an Insured's claim under this Policy, Lumley is entitled to assume the Insured's legal right of recovery.

If Lumley initiates a recovery, Lumley will include the excess and any other uninsured losses suffered by the Insured. Where this happens, the Insured agrees to pay its proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis, except that the excess will be reimbursed to the Insured first.

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 makes any recovery in respect of any amount for which it received indemnity under this Policy, it shall account to Lumley for the full amount received.