

An insurance Policy is a legal contract where You pay Us a premium based on the information You have provided. In return, based on that information, We provide the protection as outlined in the following document and Schedule for Losses that occur during the Period of Insurance.

This Policy consists of the Proposal and any other information You supplied to Us when this insurance was arranged, this document and the Schedule. They should be read as one document. This Policy is subject to Your rights under the Insurance Law Reform Act 1977 and 1985.

This Policy contains words with defined meanings. These words appear with the first letter capitalised. The particular meaning given in the definition applies.

Please take the time now to read the Policy and Schedule to make sure it meets Your needs and You understand Your requirements as laid out in this Policy.

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Section 1: General – applicable to all sections

1.1 Insurance Contract

In consideration of You having paid or agreeing to pay the premium, We agree to indemnify You in the manner and to the extent set out in this Policy.

This Policy wording consists of nine separate insurance Sections. You only have cover for the Sections that are shown as insured in the Schedule.

1.2 General Definitions

Act of Terrorism

'Act of Terrorism' means an act including but not limited to the use or threat of force or violence 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) 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.

Burglary

'Burglary' means theft accompanied by violence or threat of violence to persons, or violent and forcible entry to or exit from any fully enclosed building or securely locked motor vehicle, or any attempt thereat.

Deductible

'Deductible' means the first amount You bear in relation to each Loss.

Group of Related Companies

'Group of Related Companies' means a group of companies related or associated to one another by virtue of their ownership.

Hazardous Substance Emergency

'Hazardous Substance Emergency' means the same as the definition given to it in the Fire Service Act 1975.

Loss

'Loss' means unforeseen accidental physical loss or accidental physical damage.

Machine

'Machine' means any device that converts and directs motion or energy, or performs any electronic process including any protective component in connection with that device.

Named Entity

'Named Entity' means the entity specified in the Schedule and includes any subsidiaries.

Natural Disaster

'Natural Disaster' means earthquake, hydrothermal and geothermal activity, subterranean fire, volcanic eruption, tsunami, and fires resulting from any of these perils.

Period of Insurance

'Period of Insurance' means the period of time stated in the Schedule that this Policy is in force.

Policy

'Policy' means the proposal and any other information You supplied to Us when this insurance was arranged, this Policy wording and the Schedule.

Pressure Vessel

'Pressure Vessel' means a vessel that during ordinary use is subject to generated or applied fluid pressure or vacuum, and includes all parts, controls and systems of that vessel.

Schedule

'Schedule' means the most recent Schedule to this Policy.

Situation

'Situation' means the locations described in the Schedule as the Situation.

Subsidiary Company

'Subsidiary Company' means a company that has more than half the nominal value of its equity share capital owned by a parent company either directly or through other subsidiaries.

Vehicle

'Vehicle' means any type of machine on wheels, tracks or rollers that is propelled by its own power, and anything designed to be towed by such a machine.

We/Us/Our

'We/Us/Our' means Lumley General Insurance (N.Z.) Limited.

You/Your

'You/Your' means the persons or entities named in the Schedule as insured, who are insured severally, and any subsidiary company or any other organisation under the active management control of that insured.

Your Business

'Your Business' means Your Business and undertakings as stated in the Schedule.

1.3 General Exclusions

These are the general exclusions that apply to all Sections of this Policy. In addition, there are specific exclusions which apply to each Section of this Policy in which they are set out.

1.3.1 War and Terrorism

This Policy does not insure any event, cost or expenses of whatever nature directly or indirectly caused by, resulting from, or in connection with, any of the following regardless of any other contributing cause or event:

- 1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war;
- 2 mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any act of any person or persons acting on behalf of or in connection with any organisation the objects of which are or include the overthrowing or influencing of any de jure or de facto government by terrorism or by any violent means;
- 3 any Act of Terrorism.

This Policy also excludes any cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to the events excluded above.

1.3.2 Confiscation, Nuclear

This Policy does not insure any event, cost or expense directly or indirectly caused by:

- 1 confiscation, requisition, or destruction of or damage to property by order of government or local authority unless the order is given for the purpose of controlling fire or another peril for which insurance is provided by this Policy;
- 2 nuclear weapons material;
- 3 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 includes any self-sustaining process of nuclear fission.)

1.3.3 Electronic Data (In respect of Sections 2, 3 and 7 only)

Notwithstanding anything to the contrary in this Policy, this Policy does not insure:

- 1 the corruption, destruction or alteration of or damage to data, coding programs or software; or
- 2 the unavailability of data or reduction in the functionality, availability or operation of hardware, software and embedded chips.

1.3.4 Electronic Data (In respect of Sections 8 and 9 only)

Notwithstanding any provision to the contrary contained within this Policy or any endorsement attached thereto, this Policy does not cover any loss or damage of whatsoever kind arising directly or indirectly out of:

- 1 total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- 2 error in creating, amending, entering, deleting or using Electronic Data; or
- 3 total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all; or
- 4 any business interruption losses resulting therefrom,

regardless of any other contributing cause or event whenever it may occur, unless such loss or damage is a direct consequence of otherwise insured physical damage.

However, any accidental physical damage to an insured item, which originates directly from Your action to Your own property, and which causes or is caused by any of the matters referred to in 1 to 3 above, will be covered, subject to all other provisions of the Policy. Any business interruption Loss resulting from such physical damage will also be covered provided business interruption is insured.

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

1.3.5 Infectious Disease

This Policy does not insure any event, cost or expense directly or indirectly caused by a notifiable disease under the Biosecurity Act 1993 or an infectious disease notifiable under the Health Act 1956 or any subsequent amendment or replacing act.

1.4 General Conditions

These are the general conditions that apply to all Sections of this Policy. In addition, there are specific conditions which apply to each Section of this Policy in which they are set out.

1.4.1 Application of Additional Cover Clauses

Where the terms of any Additional Cover clause in this Policy are inconsistent with any other terms of the Policy, the terms of the Additional Cover clause will prevail. Where the terms of any Additional Cover clause are inconsistent with the terms of any other Additional Cover clause, the terms most favourable to You will prevail.

Where the Schedule states that an Additional Cover clause is subject to a special limit or other special provision, the limit or provision will apply to that Additional Cover clause but not to other Loss that would be covered under the Policy without the Additional Cover clause.

1.4.2 Breach of Warranty or Condition

The indemnity provided by this Policy will not be invalidated or prejudiced by reason of any breach of warranty or condition of this Policy where the breach occurs without Your knowledge.

This insurance will also not be prejudiced by any act of the owner or occupier whereby the risk of Loss to insured property is increased without Your authority or knowledge provided that notice is given to Us immediately You become aware of any of the above happenings and You agree to pay an appropriate additional premium if required.

1.4.3 Cancellation

- 1 By You

This Policy may be cancelled by You at any time, and with immediate effect, by written notice delivered to Us. In the event of such cancellation, We will be entitled to a pro rata proportion of the premium (subject to any adjustment required by the terms of this Policy).

- 2 By Us

This Policy may be cancelled by Us at any time by giving notice to You. The notice may be by letter, facsimile or email to Your last postal address, facsimile or email address on Our records (or Your insurance broker's or agent's).

The cancellation will take effect at 4 p.m. on the 30th day after the notice has been delivered or posted, faxed or emailed. In the event of such cancellation, We will refund to You the pro rata proportion of the premium (subject to any adjustment required by the terms of this Policy).

1.4.4 Change of Facts or Circumstances

You must notify Us immediately of any change in circumstances that has happened after the start of this Policy that You know is going to happen and which may materially:

- 1 increase the known risk insured; or
- 2 alter the nature of the risk insured.

If You do notify Us of a change We may alter the premium and/or the terms of the Policy.

If You do not comply with this obligation any Loss that happens after the date of the change in circumstance may, at Our election, not then be insured and We may, at Our election, not continue to insure You.

1.4.5 Claims

Upon becoming aware of any event, circumstance, occurrence or Loss giving rise, or likely to give rise, to a claim under this Policy:

You must:

- 1 take prompt steps to minimise the Loss;
- 2 take reasonable steps to protect the property from further Loss;
- 3 immediately notify Us;

- 4 if a criminal act is suspected, inform the police;
- 5 at Your expense, provide Us with any reasonably required proof and information in respect of the claim.

You must not:

- 1 prejudice Our ability to settle the claim;
- 2 dispose of or abandon any property for which You intend to make a claim;
- 3 start any repairs without Our permission unless it is necessary to prevent further Loss, damage or liability;
- 4 admit responsibility for any Loss, damage or liability;
- 5 make or give any admission (of fault or fact), offer, promise, payment or indemnity or say or do anything that prejudices Our ability to defend, negotiate or settle any claim made against You or make recovery for the Loss or damage from any other person who may be responsible for it.

You must then:

- 1 fully complete Our claim form as soon as practicable;
- 2 give Us free access to examine and assess any Loss, damage or liability
- 3 provide any other information or assistance We reasonably request in relation to Your claim;
- 4 forward any letters of demand or court documents to Us immediately;
- 5 if We request it, provide a statutory declaration to verify the Loss, damage or liability;
- 6 if We request it, attend interviews with any person We nominate;
- 7 be responsible for the payment of the Deductible to Us or to the repairer unless We are deducting it from any claim settlement to You.

Your compliance with the terms and conditions of this Policy, and the truth of any statements made to Us (whether made by You or not), are conditions precedent to any liability for Us to provide any indemnity under this Policy.

In the event of a valid claim under this Policy, We will make progress claim payments on production of acceptable evidence of insured Loss provided that, if the aggregate of progress payments exceeds the total amount of the adjusted Loss, You will immediately refund the difference between the amount of adjusted Loss and the aggregate of payments actually made.

1.4.6 Coverage

In all cases the coverage in each Section is subject to all the terms, exclusions and conditions of the relevant Section, and all the general obligations, general exclusions and general conditions of this Policy.

1.4.7 Deductible

We are not liable for the Deductible shown in the Schedule for each event.

Where an event causes Loss to property or items under more than one Section or Additional Cover clause of this Policy only one Deductible will apply except for the Natural Disaster Deductible.

The amount of the Deductible will be the highest of any Deductible applied by any of the Sections or Additional Cover clauses.

1.4.8 Fraud

If any claim is in any respect dishonest or fraudulent, all benefit under the claim to You will be forfeited. For the purpose of this condition if You consists of more than one person or entity, each of them will be treated as having been issued with a separate Policy.

1.4.9 Goods and Services Tax

Provided that Goods and Services Tax (GST) is recoverable by Us, the sums insured by this Policy are exclusive of GST to the extent that, in the event of a claim, We will pay a maximum of the sum insured plus additional GST to a maximum of the current rate of GST applied to that sum insured.

1.4.10 Headings

Headings have been used for ease of reference and are not to be used for interpretation of the terms and conditions of this Policy.

1.4.11 Inspection

We are entitled to inspect the insured property at any reasonable time and You must provide such information as may be reasonably required by Us in relation to Your property. Neither this condition, nor any inspection performed by Us, nor any report arising from such an inspection, are to be regarded as an undertaking by Us to determine or warrant that any operations or premises are safe.

1.4.12 Misdescription

This Policy is voidable retrospectively by Us in the event of any misrepresentation, misdescription or non-disclosure of any material fact prior to inception. However, the insurance will not be prejudiced by:

- 1 any innocent and inadvertent misdescription of property or occupancy in the proposal;
- 2 any act of the occupier whereby the risk of Loss to insured property is increased without Your authority or knowledge; provided that notice is given to Us immediately You become aware of any of the above happenings and You agree to pay an appropriate additional premium if required.

1.4.13 More than One Insured

Where this Policy is to the benefit of more than one person or entity named as the Insured in the Schedule:

- 1 the person or entity first named in the Schedule will be responsible for payment, on behalf of all of You, of any premium due or that may become due in terms of this Policy;

- 2 Our obligation to make any payment to You in terms of this Policy will be discharged on making that payment to the person or entity first named in the Schedule;
- 3 any notice, for which provision is made in this Policy, given by or given to the person or entity first named in the Schedule will be deemed sufficient notice by or to all of You.

1.4.14 Mutually Acceptable Adjusters

Where We wish to appoint a loss adjuster in respect of any claim under this Policy, the appointee must be mutually acceptable to You and Us.

1.4.15 New Zealand Policy

This Policy is to be governed by and construed in accordance with the laws of New Zealand, whose courts will have sole jurisdiction over any legal action arising out of or in connection with this Policy.

1.4.16 Other Insurance

If, at the time of any claim arising under this Policy, You have any other valid and collectable insurance covering all or part of the same Loss, this Policy will apply only to the amount of any Loss in excess of that recoverable under the other insurance.

1.4.17 Other Interested Parties

If there is any mortgagee, debenture holder, hire purchase company, conditional purchaser or other party with a financial interest in any insured property which has been notified to Us, We may, at Our option, pay any claim to the interested parties in the order of their legal priorities, and to the extent of their financial interest.

However, Our total liability will not exceed the amount that would have been paid to You.

1.4.18 Recovery Apportionment

If We, having exercised Our right of subrogation, recover any part or all of a Loss in respect of which a claim has been paid or is payable under this Policy, the amount so recovered will be apportioned as follows:

- 1 You will be fully reimbursed for any uninsured portion of the Loss, excluding any underinsurance, including that portion of the Loss which is uninsured by reason of a Deductible;
- 2 We will be fully reimbursed to the extent of Our actual payment under this Policy; with
- 3 any remaining balance belonging to You.

1.4.19 Subrogation

Where, upon accepting liability for a claim under this Policy, We are entitled to become subrogated to Your right of recovery or indemnity from any other person or corporation, You must, at Our expense, do and permit to be done anything reasonably required by Us for the purpose of enforcing that right. You must comply with this condition when required, whether before or after having been indemnified by Us.

You shall not voluntarily and knowingly release any third party from liability arising from Loss insured by this Policy unless declared to and accepted by Us.

Section 2: Material Damage

2.1 Definitions applicable to Sections 2 and 3

See also the General Definitions in Section 1

Buildings

'Buildings' means buildings, other structures, and their appurtenances including but not restricted to the plant, fixtures, fittings, pipes, cables, lights, aerials, signs and lettering, tanks, poles, power lines and their supports, walls, gates, fences, landscaping, gardens, ornamental trees and shrubs, roads, paths, yards and the like pertaining to any of them and located in or about the Situation.

Contents

'Contents' means contents of Buildings, customers' goods, chattels in the open or under shelter, tenant's improvements, plant and equipment and all other tangible property not more specifically described in the Material Damage Section of the Schedule. Contents also extends to include glass and other landlord's property, fixtures and fittings for which You are responsible if not included under Buildings.

EQC Residential Property

'EQC Residential Property' means residential Property that is covered by the relevant sections of the Earthquake Commission Act 1993 and any statutory amendment to or replacement of that Act.

Event

'Event' means an event, including continuous or repeated exposure to substantially the same conditions, or a series of events resulting from, or attributable to, one source or original cause. A series of events arising from any one cause during any period of 72 consecutive hours will be treated as one event.

Production Process

'Production Process' means any process of producing, making, treating or servicing goods.

Property

'Property' means all tangible property of every description which You:

- 1 own (solely or jointly); or
- 2 hold in Your care, custody or control, and are legally responsible for, within the four categories in the Material Damage section of the Schedule.

Region

'Region' means the area of land within the applicable Local Government regional boundary. Refer to Terralink International map – Local Government New Zealand regional boundaries.

Stock

'Stock' means stock and materials in trade.

2.2 Cover

If, during the Period of Insurance, a Loss happens to any of Your Property at the Situation, We will indemnify You for that Loss subject to the terms of this Policy.

2.2.1 Maximum Amount Payable

Subject to the 'Reinstatement of Amount of Insurance' condition, Our liability under section 2 of this Policy will not exceed the Total Sum Insured at each Situation as stated in the Schedule, and if more than one item is included in the Schedule, will not exceed in respect of each item the Sum Insured applicable to that item.

The additional covers insured under sections 2.3 Additional Cover and 2.4 Optional Additional Cover are either included in the Total Sum Insured or in addition to the Total Sum Insured as stated in each Additional Cover clause.

2.2.2 Basis of Indemnity applicable to this Section

Payment/Repair/Replacement

We will indemnify You by payment, repair or replacement of Your Property at Our option.

- 1 For the following Property We will indemnify You on the following basis.
 - (a) Customers' Property – the market value at the time of the Loss unless You are required to insure the Property for replacement cost.
 - (b) Employees' and directors' Property – the market value at the time of the Loss, except where You are required to insure the Property for replacement cost.
 - (c) Electric motors, starters, sealed and semi-sealed units – the replacement cost of items 7 years old or less. For items older than 7 years, the depreciated replacement cost.
 - (d) Experimental and research projects – the cost of all materials and the value of labour expended on the projects, but excluding the value of the projects themselves.
 - (e) Hothouses, glasshouses and shadehouses – where the exterior cladding is of flexible plastic material any claim in respect of such cladding will be based on a depreciated replacement value, notwithstanding the reinstatement provisions in the Policy.
Depreciated replacement value is a straight line depreciation based on the manufacturer's expected effective life span of the cladding with a maximum of five years.
 - (f) Portable tools of trade:
 - (i) electric, electronic (excluding portable computer and video data projectors) or other motor-driven equipment – the replacement cost, if insured for replacement, for items 5 years old or less.

(ii) portable computers and video-data projectors – the replacement cost, if insured for replacement, for items 2 years old or less.

(iii) all other portable tools of trade – the replacement cost, if insured for replacement, for items 10 years old or less.

In all other situations, We pay the market value at the time of Loss.

(g) Stock – the cost of replacing the Stock at the time immediately preceding the Loss, less a fair allowance for redundant or obsolete Stock.

(h) Works of Art

Where a claim is payable for damage to Property insured comprising a work of art, We may appoint an independent and suitably qualified valuer or restorer to determine whether the work of art can be restored to its pre-damage condition.

If the valuer or restorer determines that the work of art cannot be economically restored to its pre-damage condition, the work of art will be deemed destroyed. Its pre-damage value will be determined by the valuer or, providing the restorer is suitably qualified, by the restorer. The amount payable as indemnity will be the difference between the pre-damage value and any salvage value of the damaged work of art.

If the valuer or restorer determines that the work of art can be economically restored to its pre-damage condition, the amount payable as indemnity will be the cost of restoration or, if the restoration is not carried out, the restorer's reasonable estimate of the cost of restoration.

Where any lost or damaged work of art is an item forming part of a pair or set of items, and the lost or damaged item cannot be economically restored to its pre-Loss condition, the item will be deemed totally lost or destroyed. The amount payable as indemnity will be such proportion of the pre-Loss value of the pair or set as the item bears to the set of items.

Providing a work of art has been satisfactorily restored following damage, this insurance will not cover any reduction in market value due solely to the fact of the work of art having been damaged and restored. The onus of proving that any restoration work is unsatisfactory rests with You.

2 For all other Property We will indemnify You on the following basis:

- (a) the reasonable cost of repairing the Property to the condition it was in immediately preceding the Loss; or
- (b) the cash amount equal to the reasonable cost of repairing it; or
- (c) replacing the Property with similar Property in a similar condition; or
- (d) the cash amount equal to the market value of the Property; or
- (e) the replacement cost, but only for that Property designated in the Schedule as being insured for replacement value, subject to the reinstatement clause in the Policy.

2.3 Additional Cover

The Material Damage Section of this Policy includes cover for the following:

2.3.1 Alternative Residential Accommodation

Where any residential Property covered by the Material damage Section of this Policy is rendered uninhabitable by an insured Event, cover is extended to include expenses for alternative accommodation (including the cost of boarding out domestic cats and/or dogs which normally reside there) necessarily incurred by You or by the occupant (being Your employee or officer), provided that:

- 1 these expenses are not otherwise insured;
- 2 the period for which the expenses are covered will be limited to the period reasonably required for reinstatement of the affected Property;
- 3 We will be entitled to deduct a reasonable allowance for expenses reduced or avoided in consequence of the affected Property being rendered uninhabitable;
- 4 Our liability in respect of any one Loss will not exceed 25% of the cost incurred in reinstating the affected Property following its destruction or 25% of the cost that would have been incurred if the affected Property had been destroyed.

The amount payable under this clause is in addition to the indemnity otherwise payable for the Property listed in the Schedule.

2.3.2 Capital Additions

Cover is extended to Property acquired by You (including but not limited to: alterations, additions and improvements to existing Property) at the Situation described in the Schedule during the Period of Insurance, provided You notify Us within 90 days of You acquiring the Property.

However:

- 1 this extension of cover does not apply to stock, or Property of any kind expressly excluded from this insurance, or any appreciation of value that is not due to a physical alteration, addition or improvement.
- 2 cover under this extension takes effect on the acquired Property when the risk in the Property passes to You.
- 3 on receipt by Us of the particulars of the Property acquired We may charge an additional premium calculated pro rata from the date on which cover commenced, and if the Period of Insurance has not yet expired, the terms of this clause 2.3.2 will be fully reinstated.

The limit of cover for any one Event is the amount specified in the Schedule.

The amount payable under this clause is in addition to the indemnity otherwise payable for the Property listed in the Schedule.

2.3.3 Claims Assessment

We will cover claims assessment costs, including but not limited to fees reasonably incurred by or on behalf of You for the purpose of assessing or preparing any valid claim made under the Material Damage Section of this Policy. These costs include the reasonable

salaries, wages, overheads and other expenses of Your employees and consultants.

The costs payable are included in the sum insured on the affected Property.

2.3.4 Computer Software

Notwithstanding the definition of Property, We will cover You for Loss during the Period of Insurance to computer software not otherwise excluded by the general exclusion for electronic data 1.3.3.

The costs payable are included in the sum insured on the affected Property.

2.3.5 Demolition and Other Costs

We will cover reasonable costs necessarily incurred for any of the following purposes in consequence of Loss insured under the Material Damage Section of this Policy:

- 1 demolition, dismantling, shoring or propping up of Your Property;
- 2 removal of Stock, plant and other chattels whether damaged or undamaged;
- 3 disposal of debris (including any kind of solid, liquid or gaseous matter) from the site of Your damaged Property and the area immediately adjacent to such site.

In respect of any one Event, Our liability for these costs will not exceed the limit shown in the Schedule. If no such limit is shown, the costs will be deemed to be included in the sum insured on the affected Property.

The cover provided does not include any sums which You become legally liable to pay by way of compensation or other damages consequent upon pollution or contamination of Property by any of the debris.

2.3.6 Disclaimer and Release

Where You are required by legislation or by contractual agreement to release any of:

- 1 the Fire Service Commission;
- 2 any fire protection suppliers of equipment;
- 3 any oil company;
- 4 any other party to an agreement which has been declared to and accepted by Us;

from liability arising from Loss insured by the Material Damage Section of this Policy, the release is allowed without prejudice to this insurance. Further, this insurance will not be prejudiced by any disclaimer clause in any contract entered into by You for:

- (a) the storage of goods; or
- (b) the leasing of Property;

whether the storage and leasing contracts are declared to Us or not.

2.3.7 Electric Current Damage

Notwithstanding exclusion 2.5.8 2, the Material Damage Section of this Policy extends to cover Loss to:

- 1 electric motors and starters, sealed and semi-sealed units which do not individually exceed 3.75kw or 5hp;
- 2 distribution switchboards and permanently installed electrical reticulation;

directly caused by the failure of electrical insulation, or abnormal or artificially generated electric current, or electrically induced self-heating.

The amount payable is included in the sum insured of the affected Property.

2.3.8 Employees' Effects

We will cover the personal effects of Your directors and employees for which You are responsible, but only whilst the effects are at premises owned or occupied by You, or elsewhere whilst being worn, kept, carried or used by the directors or employees acting in the course of their duties to, or employment with, You. The effects are deemed to be included in the description of insured Property as if they were owned by You.

This extension of cover does not apply to Loss to the personal effects of any director or employee who is entitled to indemnity for that Loss under any other policy of insurance.

However, We will not be liable for more than the amount specified in the Schedule for any one director or employee, and the amount specified in the Schedule for any one Event.

The amount payable is included in the sum insured on the affected Property.

2.3.9 Expediting Costs

Where a claim is payable under the Material Damage Section of this Policy for the cost of reinstating any insured Property, We will also indemnify You for such additional costs of express freight and overtime labour as are reasonably incurred for the purpose of expediting that reinstatement.

The costs payable are included in the sum insured on the affected Property.

2.3.10 General Average / Salvage Charge

We will indemnify You against general average and salvage charges adjusted or payable in connection with any insured Property being transported during the Period of Insurance by sea or air between places in New Zealand according to the contract of affreightment and/or the governing law and practice.

This indemnity is free of any Deductible amount.

The costs payable are included in the sum insured on the affected Property.

2.3.11 Gradual Damage – Residential Portion of the building

Notwithstanding exclusions 2.5.4 1 and 2, we will cover the residential portion of Your insured Property for Loss resulting from the action of hidden mildew, hidden rot or hidden gradual deterioration, caused by water which leaks or overflows from any internal water pipe, internal waste disposal pipe or internal water tank permanently installed at the Situation.

Provided that the leak or overflow first occurs and the Loss is first discovered during the Period of Insurance.

The limit of cover is the amount specified in the Schedule for any one 12-month period. The limit includes the cost of locating the leak provided we have given our prior consent. We will not pay for repairing the leak.

The costs payable are included in the sum insured on the affected Property.

2.3.12 Hazardous Substance Emergency

We will indemnify You for the reasonable costs that the New Zealand Fire Service is authorised to make against You for any Hazardous Substance Emergency during the Period of Insurance arising out of or in connection with insured Property whether or not there is Loss to insured Property.

The limit of cover for any one Event is the amount specified in the Schedule.

The costs payable are included in the sum insured on the affected Property.

2.3.13 Landscaping

Following an insured Loss We will cover the reasonable cost to repair or replace landscaping which shall include ornamental trees, shrubs, plants and lawns including expenses reasonably incurred in clearing, cleaning or repairing drains, gutters, sewers, pipes, tanks or fixed apparatus.

The costs payable are included in the sum insured on the affected Property.

2.3.14 Money

Notwithstanding exclusion 2.5.6 2, cover is extended to include Loss during the Period of Insurance of:

Part A

- 1 Money in transit.
- 2 Money at Your Business Situation or sites of contract during Business Hours.
- 3 Money in a securely locked safe or strongroom at Your Business Situation outside Business Hours.

Part B

- 1 Money at Your Business Situation outside Business Hours and not in a securely locked safe or strongroom, including Money in cash machines or gambling machines.
- 2 Money at Your residential premises or of any Principal or authorised employee of Yours.

Definitions for this Money extension

Money

'Money' means current coin, bank and currency notes, cheques, traveller's cheques, postal notes, phone cards, credit card vouchers, money orders, unused postage stamps, redeemable vouchers and tokens, franking machine credits, and other negotiable instruments.

Business Hours

'Business Hours' means any hours during which You or any Principal or any employee entrusted with the care, custody or control of Money is on the premises for the purpose of Your Business.

Principal

'Principal' means any of your directors and executive officers, but only in their capacity as such.

Exclusions for this Money extension

This clause does not insure:

- 1 Loss due to errors in receiving or paying out;
- 2 Loss occurring whilst the Money is entrusted to any person other than You, or any Principal, or any employee or agent of Yours, or any professional money carrier;
- 3 Loss resulting from payment of money in exchange for any cheque which is subsequently dishonoured;
- 4 Loss occurring whilst the Money is in an unlocked and unattended Vehicle;
- 5 Loss of Money stolen from a safe or strongroom opened by a key or combination, either of which was left at the Situation outside Business Hours, unless such key or combination was properly secured;
- 6 Loss directly resulting from theft or fraud by any of Your employees. However, this exclusion does not apply to Loss discovered within 72 hours (excluding Saturdays, Sundays and public holidays) of the act of theft or fraud;
- 7 Loss covered by a valid and collectable claim under a policy of Fidelity Guarantee (or equivalent) form of insurance.

Limits of Liability for this Money extension

Our liability under Part A is up to the limit specified in the Schedule and Part B is up to the limit specified in the Schedule.

However, if an additional limit designated 'Christmas Carry' is shown in the Schedule, Our liability under Part A will be increased by an amount equal to the additional limit during the months of December and January.

The amount payable under this clause is in addition to the indemnity payable for the Property listed in the Schedule.

2.3.15 Portable Tools of Trade (including electronic equipment)

Notwithstanding exclusion 2.5.3, we will cover portable tools of trade including portable electronic equipment such as laptops, cell phones, electronic notebooks and diaries, video data projectors or similar used in Your Business while away from Your Business premises anywhere in New Zealand including while in transit. However, the following conditions apply:

- 1 the limit of cover is the amount stated in the Schedule, per item and per any one Event.
- 2 the Deductibles are those stated in the Schedule.
- 3 We will not cover You for theft of portable tools of trade including electronic equipment from unlocked or insecure Vehicles or insecure containers or the open air.

The amount payable is included in the sum insured on the affected Property.

2.3.16 Professional Fees

We will cover all reasonable professional and clerk of works fees, salaries and costs necessarily incurred in reinstating damage to Your Property which is insured under the Material Damage Section of this Policy.

This clause does not apply to fees for preparing claims made under this Policy.

The amount payable is included in the sum insured on the affected Property.

2.3.17 Property Under Construction

Notwithstanding exclusion 2.5.6 1 of this Material Damage Section, We will cover You for Property in the course of installation, construction, demolition, erection, or testing following any of them, provided the Property is owned or to be owned or occupied by You and provided the completed value of the contract does not exceed the amount specified in the Schedule.

The amount payable is included the sum insured on the affected Property.

2.3.18 Protection Costs

We will cover costs reasonably incurred by You for the purpose of, and for damage directly resulting from, controlling during the Period of Insurance any cause of Loss that threatens to involve the insured Property which would be covered under the Material Damage Section of this Policy. However:

- 1 this indemnity does not apply to costs or damage for which indemnity would be payable under the Material Damage Section of this Policy in the absence of this clause;
- 2 the limit of cover for any one Event is the amount specified in the Schedule.

The cost payable is included in the sum insured on the affected Property.

2.3.19 Redundant Foundations

Where the foundations of any Building or plant are made redundant for any reason in consequence of Loss to the Property resting on them covered under the Material Damage Section of this Policy and, if the value of the foundations is reduced as a result, the loss of value will be deemed to be Loss for the purpose of any claim under this Policy.

If it is not necessary to demolish the foundations in order to reinstate damaged Property, and if the presence of the abandoned foundations increases the market value of the Property to which they are fixed, the amount of the increase will be treated as salvage in the adjustment of Loss for claim settlement purposes.

The amount payable under this clause is included in the sum insured on the affected Property.

2.3.20 Redundant Plant, Equipment and Stock

We will cover the market value of Your insured plant, equipment and Stock made redundant as a result of Loss to other insured Property covered under the Material Damage Section of this Policy.

However, the following conditions apply:

- 1 the plant and equipment must be:
 - (a) part of the same interdependent system or line as the lost or damaged insured Property; or
 - (b) part of a Stock of spares held exclusively for the lost or damaged insured Property.
- 2 if the presence of the redundant plant and equipment increases the resale value of the original building site then We will offset the increase in resale value from the claim payment.
- 3 if, due to the Loss, Stock is made redundant, that Stock will be considered as part of the Loss.

The amount payable under this clause is included in the sum insured on the affected Property.

2.3.21 Refrigerated Goods

Notwithstanding exclusion 2.5.5 2, We will cover:

- 1 Loss during the Period of Insurance to perishable goods at Your Business's Situation where the goods are stored or about to be stored in refrigerated cabinets or chambers, and
- 2 costs reasonably and necessarily incurred to avoid or minimise Loss during the Period of Insurance to refrigerated goods arising from accidental stoppage, Loss, or malfunction of refrigerating plant, including the sudden failure of the public electricity supply to Your Situation unless prior notice of the disconnection has been given.

The limit of cover per Event is the amount specified in the Schedule.

The amount payable under this clause is included in the sum insured on the affected Property.

2.3.22 Rewards

We will cover the cost of any reward paid by You for the purpose of recovering any of Your Property that has suffered a Loss covered under this Policy. However:

- 1 no payment will be made unless it contributes to the protection or recovery of the Property;
- 2 the terms of the reward must be agreed by Us prior to the reward being offered;
- 3 Our liability will not be increased beyond the sum insured on Your Property concerned.

We will not unreasonably refuse Our agreement to the terms of a reward payable under this clause.

The amount payable under this clause is included in the sum insured on the affected Property.

2.3.23 Rewriting of Records

Notwithstanding the definition of Property and notwithstanding the general exclusion for electronic data 1.3.3, We will pay the reasonable costs of collecting and reproducing the information on Your Business records that suffer a Loss covered under the Material Damage Section of this Policy. The value of the information itself is not insured.

However, the following conditions apply in respect of electronic data:

- 1 You must have all electronic data on back-up files;
- 2 there must be an adequate back-up system in operation and that back-up system must have been effectively tested; and
- 3 back-ups must be kept secure on or off site and must be updated at least on a weekly basis.

The limit of cover for any one Event is the amount specified in the Schedule.

The amount payable under this clause is included in the sum insured on the affected Property.

2.3.24 Social Club

The Property of any social club, sports club or similar body whose activities are principally for the benefit of Your employees is deemed to be included in the description of insured Property as if it were owned by You.

The amount payable under this clause is included in the total sum insured of the Material Damage Section of this Policy.

2.3.25 Stock Declaration

If the Stock is subject to declaration conditions (D) in the Schedule the premium charged for cover on Stock is provisional and represents 75% of the full premium payable for the sum insured on Stock. It is adjustable at the end of the Period of Insurance in accordance with the following conditions:

- 1 declarations of the actual value of the Stock held on the last day of each month within the Period of Insurance must be made to Us not later than six weeks after the end of each month.
- 2 the sum insured on Stock is the limit of Our liability in respect of that Property. If any monthly declaration exceeds that amount, then in computing the average of the monthly declarations, the sum insured will be included in place of the actual declaration for that month.
- 3 if no declaration is received for any one month, the specified sum insured will apply in place of the declaration for that month.
- 4 the average of these monthly declarations will be computed at the end of the Period of Insurance and the actual premium payable will be assessed on that average (or on one half of the sum insured on Stock, whichever is greater).
- 5 We will refund to You the amount by which the provisional premium paid exceeds the actual premium payable as calculated above. Alternatively, You will pay to Us the amount by which the provisional premium paid falls short of the actual premium.
- 6 if, during the Period of Insurance, You fail to furnish a minimum of 75% of the declarations required in terms of this clause, the clause will cease to apply, and
 - (a) the premium will be calculated on the full sum insured; and
 - (b) You must pay to Us the amount by which the provisional premium falls short of that premium.

2.3.26 Stolen Keys

Where any key (including any equivalent device) or combination giving access to insured Property is stolen or believed on reasonable grounds to have been duplicated without proper authority during the Period of Insurance, We will indemnify You for the costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations. Cover also includes the reasonable cost of opening any safe or strongroom following theft of its key or combination.

The costs payable under this clause are included in the sum insured on the affected Property.

2.3.27 Subsidence or Landslip

The Material Damage Section of this Policy extends to cover Loss during the Period of Insurance arising directly or indirectly from subsidence or landslips.

However, the following conditions apply:

- 1 in relation to the removal of land which has moved or slipped, We will only provide cover for the area of the building line and immediately adjacent areas up to a maximum of five metres from the external walls of the Building. Cover for the removal of land is limited to \$10,000. We will not cover any land stabilisation charges incurred.
- 2 We will not cover:
 - (a) any loss or decrease in the value of the land or site;
 - (b) subsidence of land or erosion of land by the action of the sea;
 - (c) normal settling, shrinkage or expansion of land, Buildings or foundations;
 - (d) subsurface subsiding due to the water table drying out through atmospheric or climatic conditions.

3 exclusion 2.5.9 2 in the Material Damage Section of this Policy as it applies to the above perils is deleted.

4 the limit of cover is the amount specified in the Schedule for each Event.

The Deductible amount is the amount specified in the Schedule for each Event.

The costs payable under this clause are included in the sum insured on the affected Property.

2.3.28 Temperature Change Protection

We will cover the reasonable costs of avoiding Loss to insured Property in a temperature-controlled environment resulting directly from Loss to insured Property covered under the Material Damage Section of this Policy.

This includes the reasonable costs incurred of removing Your Property and storing it at another place.

The costs payable under this clause are included in the sum insured on the affected Property.

2.3.29 Temporary Removal

Notwithstanding exclusion 2.5.6 6, We will cover Your Property (except Stock) whilst Temporarily Removed to any place in New Zealand and whilst in transit to or from that place.

However, Our liability will not exceed the amount for which We would be liable had the Loss occurred at the particular place from which the Property is Temporarily Removed.

In this clause, Temporarily Removed means removed for a particular purpose, with the intention that the Property be returned to the place from which it has been removed once that purpose has been served.

2.3.30 Theft

Notwithstanding exclusion 2.5.3, We will cover theft or any attempt thereat, but We will not be liable under this clause for:

- 1 theft of insured Property from unlocked or insecure Vehicles or insured Property that is left in the open air and not in a secure yard;
- 2 theft or fraud by You or by any of Your employees or principals;
- 3 any fraudulent scheme or device or false pretence practised on You or on any other person having care of Your Property.

The Portable Tools of Trade clause 2.3.15 applies in priority over this clause.

The costs payable under this clause are included in the sum insured on the affected Property.

2.3.31 Transit

We will cover Your Property whilst it is in transit anywhere in New Zealand, including between New Zealand ports.

However, the following conditions apply:

- 1 the limit of cover for each Event is the amount specified in the Schedule.
- 2 exclusion 2.5.6 6 does not apply.

In respect of any goods destined for transit beyond New Zealand, cover under this Policy ceases at the time the goods pass over the ship's rail or through air transport loading doors at any New Zealand port or airport.

The amount payable under this clause is included in the sum insured on the affected Property.

2.3.32 Unharmed Property

If, for the sole purpose of reinstating Your Property which is insured under the Material Damage Section of this Policy, it is necessary to demolish, damage or remove any Property or part unharmed, We will indemnify You for the cost of doing so. We will also indemnify You for the cost of reinstating the Property or part to a condition the same as, but not better nor more extensive than, its condition immediately prior to the demolition, damage or removal.

The amount payable under this clause is included in the sum insured on the affected Property.

2.4 Optional Additional Cover

Each of the following clauses will have no effect unless there is a statement in the Schedule that the particular clause will apply.

2.4.1 Natural Disaster (Earthquake etc)

The Material Damage Section of this Policy extends to cover Loss to Your Property directly or indirectly caused by Natural Disaster.

However, the following conditions apply:

- 1 exclusion 2.5.9 1 in relation to the above perils is deleted.
- 2 the clause only applies to Your Property for which indemnity is not provided under the provisions of the Earthquake Commission Act 1993.
- 3 the Deductible to be paid by You is the amount or percentage shown in the Schedule.

If any EQC Residential Property insured by the Material Damage Section of this Policy suffers Natural Disaster damage during the Period of Insurance covered by the Earthquake Commission Act 1993, Our liability will be limited to any costs in excess of those covered by the Act. The Deductible amount under this Policy will only apply to the extent that it exceeds the amount of the cover under that Act. For the purpose of this clause, the cover under the Earthquake Commission Act 1993 is deemed to include the amount of 'excess' imposed by the terms of that cover.

2.4.2 Reinstatement

Applicable to those items of insured Property where it is stated in the Schedule (RV) that this clause applies.

In the Event of any insured Property to which this clause applies suffering Loss, the basis on which the amount payable under the Material Damage Section of this Policy (or under each item of the Material Damage Section of this Policy if the Property is described under separate items) is to be calculated will be the cost of Reinstatement of that Property.

Insurance under this clause is subject to the special provisions set out below, and is subject also to the terms and conditions of the Material Damage Section of this Policy except insofar as they are varied by this clause.

Definitions

In this clause, and unless the context requires otherwise

Reinstatement

'Reinstatement' means:

- (a) where Property is lost its replacement by an Equivalent Building or by Equivalent Plant as the case may require;
- (b) where Property is damaged but not Destroyed, the restoration of the damaged portion of the Property to a condition substantially the same as, but not better or more extensive than, its condition when new.

Equivalent Building

'Equivalent Building' means:

- (a) a Building or structure which is as nearly as practicable the same as the Building or structure lost or Destroyed, using currently equivalent materials and techniques and incorporating such alterations as are necessary to comply with any building or other regulations made under or framed in pursuance of any Act of Parliament or regulation or by-law of any local authority;
- (b) where, as a result of any special circumstances, no Building or structure which falls within the scope of paragraph 2 (a) can be constructed, a Building or structure which is designed to perform a purpose or function the same as or equivalent to (but not more extensive than) that performed by the Building or structure lost or Destroyed;
- (c) where, as a result of any special circumstances, no Building or structure which falls within the scope of paragraph 2 (a) is suitable to your reasonable requirement, then, with Our consent (which will not be unreasonably withheld), a Building or structure which is designed to perform a purpose or function suitable to that requirement, but not more extensive than that performed by the Building or structure lost or Destroyed.

Equivalent Plant

'Equivalent Plant' means any plant or equipment as nearly as practicable the same as or equivalent to the plant or equipment lost or Destroyed, having regard to the current state of technology, and having an equivalent capacity to that of the lost or Destroyed plant or equipment, but not greater capacity unless plant or equipment with an equivalent capacity is not available and the replacement plant or equipment has the nearest to an equivalent capacity.

Destroyed

'Destroyed' means so damaged by an insured Event that the Property, by reason only of that damage, cannot be repaired.

Site

'Site' means any parcel of land owned or occupied by You.

Regulations

'Regulations' means building or other regulations made under or framed in pursuance of any Act of Parliament or regulation or by-law of any local authority.

Undamaged

"Undamaged" means not damaged physically and directly by an Event insured under the Material Damage Section of this Policy.

Special Provisions**Compliance with Regulations**

The amount payable under this clause will include the cost incurred in Reinstatement which is necessary to comply with any Regulations, provided that the amount payable will not include any such cost:

- 1 to the extent to which the work had already been required of You by notice served prior to the happening of the Loss; or
- 2 in respect of Undamaged Property or Undamaged portions of Property other than foundations (unless foundations are expressly excluded from insurance under this Policy).

This special provision 2 will apply whether or not the Undamaged Property or portion comprises a separate building or structure or a separate item of plant or equipment.

Site of Reinstatement

Where Property is destroyed, the work of Reinstatement must be carried out on the same Site provided that the work may be carried out upon another Site –

- 1 where Reinstatement on the same Site is not permissible by reason of any Regulations; or
- 2 where Reinstatement on the same Site is not suitable to Your reasonable requirements, in which case, and with Our consent (which will not be unreasonably withheld), Reinstatement may be carried out on any alternative Site subject to Our liability in respect of the cost of Reinstatement not exceeding the cost which would have been incurred had Reinstatement been carried out on the same Site.

Limitations on Amount Payable

- 1 Where the work of Reinstatement is carried out in terms of the Equivalent Building definition (b) or (c), or on any location other than the original location at the same Site, Our liability in respect of the cost of Reinstatement will not exceed the cost which would have been incurred had Reinstatement been carried out in terms of definition (a) on the original location.
- 2 Where Your Property is damaged but not Destroyed, our liability will not exceed the amount We could have been called upon to pay for Reinstatement if the Property had been Destroyed.
- 3 Our liability under this clause in respect of any item of insured Property will not exceed the sum insured in respect of that item.

Circumstances Where this Clause Does Not Apply

- 1 No payment, beyond the amount which would have been payable had this clause not been incorporated in the Material Damage Section of this Policy, will be made:
- 2 if You elect not to reinstate the Property;
- 3 if the work of Reinstatement is not commenced and carried out with reasonable despatch;
- 4 until the cost of Reinstatement has been actually incurred;

where a Building or structure is damaged, but not Destroyed, and the repair of the damage is not permissible by reason of any Regulations, or by reason of the Undamaged portion of the Property.

Where, by reason of any of these circumstances, no payment is to be made beyond the amount which would have been payable if this clause had not been incorporated in the Material Damage Section of this Policy, the rights and liabilities of You and Us in respect of the Loss will be the same as if this clause had not been incorporated in the Material Damage Section of this Policy.

Valuation of the Property

- 1 If We require a valuation for any Period of Insurance, You must at Your expense provide Us with a certificate by a registered professional valuer approved by Us specifying the estimated cost of Reinstatement of any item or items of insured Property to which this clause applies.
- 2 The certificate must also contain such other estimates and information as We may reasonably require.
- 3 The sum to be insured under this clause in respect of each item will not be less than the amount of the estimate specified in the certificate in respect of that item.

Rates, Tax and Other Charges

The amount payable under this clause will not include the amount of any rate, tax, duty, development charge, or any other charge or assessment arising out of capital appreciation, which may be payable in respect of the Property by reason of compliance with any Regulations.

2.4.3 Seasonal Stock Increase

The sum insured on Stock is increased for a maximum of 90 days from the date specified in the Schedule by the amount specified in the Schedule.

The amount payable under this clause is in addition to the indemnity otherwise payable.

2.5 Exclusions

Refer also to the general exclusions of this Policy.

2.5.1 Building Defects and Deterioration

The Material Damage Section of this Policy does not insure against Loss to any building or structure directly or indirectly caused by the failure of that building or structure to contain:

- 1 a material; or
- 2 a design; or
- 3 a system; or
- 4 a reasonable standard of workmanship;

that was necessary to effectively prevent or manage the presence or penetration of moisture or water to which the building or structure might reasonably be subjected.

2.5.2 Faulty Design, Material, Workmanship

The Material Damage Section of this Policy does not cover the cost of:

repairing or replacing faulty materials; or

- 1 putting right faulty workmanship; or
- 2 putting right work performed to a faulty design, plan or specification;
- 3 but this exclusion does not apply to any Loss occurring as a result of that faulty material, workmanship or design, plan, or specification not otherwise excluded by 2.5.1.

2.5.3 Disappearances / Fraud / Theft

The Material Damage Section of this Policy does not insure Loss directly resulting from:

- 1 unexplained disappearances, shortages revealed only by the taking of an inventory, shortages due to clerical or accounting errors, shoplifting, misplacing of information;
- 2 Your decision to hand over the property to someone else before You are paid for it;
- 3 theft, unless accompanied by violence or threat of violence to persons, or violent and forcible entry to or exit from any fully enclosed building or fully enclosed part of a building.

2.5.4 Deterioration / Contamination

The Material Damage Section of this Policy does not insure Loss directly caused by:

- 1 normal working, normal maintenance, wear and tear, erosion, corrosion, gradual deterioration (including but not limited to gradual deterioration caused by dampness or penetration of moisture), slowly developing deformation or distortion;
- 2 action of micro-organisms (including but not limited to rot and mould), vermin or insects;

- 3 the nature of Your Property (including but not limited to shrinkage, evaporation, loss of weight, change in flavour, colour, texture or finish, action of light);
- 4 dust, fumes, smoke or smut, from any normal industrial operation.

2.5.5 Pollution / Artificially Controlled Temperature

The Material Damage Section of this Policy does not insure Loss:

- 1 arising directly or indirectly from a polluting event;
- 2 in connection with a change in any artificially controlled temperature or atmosphere.

2.5.6 Excluded Items

Unless specifically shown in the Schedule, the Material Damage Section of this Policy does not insure:

- 1 Property in the course of installation, construction, demolition, erection, or testing following any of them;
- 2 current coin, bank and currency notes, cheques, traveller's cheques, postal notes, money orders, unused postage stamps, redeemable vouchers and tokens, franking machine credits, credit card vouchers, phone cards or other negotiable instruments, in excess of \$1,000 in value in each case for any one Loss at any one situation, except as insured under the money clause 2.3.14;
- 3 jewellery, precious stones, furs, precious metals or bullion, other than as Stock of the business or as part of any plant;
- 4 motor Vehicles and other mechanical or electrically propelled Vehicles (including but not limited to railway locomotives and rolling stock), and accessories contained in them or on them, other than:
 - (a) any unregistered crane or other mobile plant used within or in the vicinity of any Situation owned or occupied or operated by You;
 - (b) held as Stock of the business but not whilst in use or on demonstration;
- 5 watercraft and aircraft of every kind, and accessories contained in them or on them, except as held as Stock of the business or for auction but not whilst in use or on demonstration;
- 6 Property in transit other than at premises owned or occupied by You;
- 7 Property damaged as a result of it undergoing any Production Process where the damage is directly caused by the operation of that process;
- 8 any of the following Property unless it is specified in the Schedule:

standing timber, growing crops, crops harvested but not yet in storage, live plants, trees, hedges (other than live plants, trees and hedges covered under the Building definition), livestock, dams, canals, reservoirs (but not tanks), road or railway tunnels, road or railway bridges (other than bridges or tunnels at premises owned or occupied by You included in the sum insured), docks, piers, wharves, mining Property located beneath the surface of the ground, any land including topsoil and backfill;
- 9 any consequential economic losses whatsoever including penalties, loss of use of any Property, delays, or loss of market;
- 10 Property covered under any other Section of this Policy.

2.5.7 Exposure to Weather / Utilities / Cessation of Work

This Material Damage Section of this Policy does not insure Loss:

- 1 directly caused by exposure to weather conditions where the Property is not normally left in the open unless reasonable precautions have been taken to protect the Property from those conditions;
- 2 in connection with the interruption of the supply to Your Situation of water, gas, electricity or any other fuel;
- 3 in connection with the total or partial cessation of work, retarding or interruption or cessation of any process.

2.5.8 Machinery Breakdown

- 1 In respect of the boiler or Pressure Vessel immediately affected, the Material Damage Section of this Policy does not insure the cost of repairing or replacing any part that has exploded, overheated, ruptured, burst, cracked, leaked or collapsed due to generated or applied fluid pressure or vacuum (but not pressure caused by chemical explosion).

However, this exclusion does not apply to resultant Loss to other insured Property.

- 2 In respect of the Machine immediately affected, the Material Damage Section of this Policy does not insure any mechanical or electrical breakdown or derangement.

However, this exclusion does not apply:

- (a) if any insured Loss originating completely outside the Machine results in the mechanical or electrical breakdown or derangement of the Machine. For the avoidance of doubt there is no cover when the breakdown or derangement results from:
 - (i) a part of the Machine being drawn into it, or
 - (ii) any operator error or omission, or any servicing error or omission.
- (b) to resultant Loss to other insured Property.

2.5.9 Natural Disaster / Normal Settlement

Unless specifically shown in the Schedule, the Material Damage Section of this Policy does not insure:

- 1 Natural Disaster damage;
- 2 landslip, subsidence, erosion or expansion of the land;
- 3 normal settlement, shrinkage or expansion of Buildings, foundations, walls, pavements, roads and other structural improvements.

2.6 Conditions

Refer also to the general conditions of this Policy.

2.6.1 Alteration of Risk

If You become aware of a material change in the nature of the risk of Loss covered by the Material Damage Section of this Policy, this

insurance will cease in respect of the affected Property immediately unless and until the change is accepted by Us in writing.

If the change is accepted by Us, You agree to pay a reasonable premium for the increased risk.

However, this insurance will not be prejudiced by:

- 1 such changes in the use or occupancy of the Situation as are usual or incidental to Your Business;
- 2 the performance of any structural alterations or repairs to insured Property, providing the circumstances are reported to Us in writing within a reasonable time after You become aware of them, and provided that You agree to pay a reasonable additional premium for the increased risk if so required by Us;
- 3 the cessation of operations or vacancy of any Building for a period not exceeding 30 days.

However, the cessation of operations or vacancy of any Building for a period in excess of 30 consecutive days is allowed, providing the circumstances are reported to Us within a reasonable time after You become aware of them, and provided that You exercise reasonable care and attention to the premises and make sure the Situation is safe and secure.

2.6.2 Diligence

You must not be reckless and must take reasonable care at all times and at Your own expense to prevent Loss to Your Property.

You must do each of the following during the Period of Insurance:

- 1 Maintain in accordance with the manufacturer's recommendations any fire protection or detection system, security equipment (including locks and alarms) or other protective installations, in good working order and activated.
- 2 If the Situation is protected by a security alarm system (burglar alarm) the alarm must be in efficient working order and be activated at all times when the Situation is unoccupied.

2.6.3 Fat Frying Warranty

If there is a fat fryer at any of the Situations described in the Schedule then You must comply with the following:

- 1 an automatic 'over temperature' device must be fitted to the fryer and maintained to prevent fire by overheating by isolating the power supply from the deep fat fryer;
- 2 during non-working hours a close-fitting metal lid must be fitted to the deep fat fryer. During working hours it must be readily available to be used if required;
- 3 grease filters must be fitted in the flue venting and must be clean and free of any build-up of grease at all times;
- 4 a suitable-sized 'F' rated extinguisher or other similar suitable extinguisher must be installed near the fryer and accessible in the event of a fire in the unit. The extinguisher/s must be serviced at least once a year and maintained in good working order. If a fire blanket is installed, it must be a minimum of 1.2m x 1.8m in size and staff should be trained in its use;
- 5 the fryer must have a master switch for the energy supply, which must be remote from the fryer and the switch must be in the 'off' position at the finish of each day's operation and/or when the premises are unattended. The switch must be easily accessible at all times.

2.6.4 Reinstatement of Amount

In the event of a claim payment under the Material Damage Section of this Policy, and in the absence of written notice by Us or You to the contrary, any amount of insurance cancelled by the payment will be automatically reinstated. You agree to pay such pro rata premium at the applicable rate as may be required for the reinstatement.

2.6.5 Salvage

Where insured Property suffers Loss, We may:

- 1 enter any building where the Loss has occurred and take and keep possession of the damaged Property;
 - 2 deal with the salvage in any reasonable manner;
- provided that –
- (a) You are not entitled to abandon any Property to Us;
 - (b) We are not entitled to sell or otherwise dispose of salvaged branded goods without Your prior consent. In the event of You declining to give consent, You will retain possession of the salvaged goods and their reasonable salvage value will be deducted from the amount of claim that would otherwise be payable. Where it is practical to remove brands, labels or other marks, which identify the goods as supplied by You, the salvage value of the goods will be determined after such removal at Our expense.

Section 3: Business Interruption

3.1 Definitions applicable to this Section 3

See also the General Definitions in Section 1 and Definitions in Section 2

Gross Profit

'Gross Profit' means the amount by which

- 1 the sum of the Turnover and the amount of the closing stock exceeds
- 2 the sum of the amount of the opening stock and the amount of the Uninsured Working Expenses.

Notes about this calculation:

- (a) the amount of the opening and closing stock shall be arrived at in accordance with Your normal accounting methods, due provision being made for depreciation; and
- (b) the words and expressions used in this definition shall have the meaning usually attached to them in Your books and accounts.

Gross Rentals and Management Fees

'Gross Rentals and Management Fees' means the amount of fees received or receivable for services in respect of or associated with the rental of the Situation including but not restricted to contributions to any variable and/or promotional funds, operational expenses, rates, insurance premiums, car parking rentals and any other expenses of whatsoever nature and description and any services rendered by You.

Gross Revenue

'Gross Revenue' means the monies paid or payable to You for work done or services provided as part of Your Business operations.

Indemnity Period

'Indemnity Period' means the period beginning with the occurrence of the Loss and ending not later than the number of months or weeks specified in the Schedule thereafter during which the results of Your Business are affected in consequence of the Loss.

Payroll

'Payroll' means the gross remuneration (including but not limited to salaries, wages, Accident Compensation, redundancy payments, levies, bonuses, sick pay, holiday pay, long service leave, superannuation contributions and other payments and charges pertaining to payroll calculated on a 'per capita' or percentage of Payroll basis) for all employees engaged in activities of Your Business.

Rate of Wages

'Rate of Wages' means the Rate of Wages to Turnover during the financial year immediately before the date of the Loss.*

Rate of Gross Profit

'Rate of Gross Profit' means the Rate of Wages Gross Profit earned on the Turnover during the financial year immediately before the date of the Loss.*

* to which such adjustments shall be made as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Loss or which would have affected Your Business had the Loss not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Loss would have been obtained during the relative period after the Loss.

Standard Turnover

'Standard Turnover' means the Turnover during the period in the twelve months immediately before the date of the Loss which corresponds with the Indemnity Period, to which such adjustments shall be made as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Loss or which would have affected Your Business had the Loss not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Loss would have been obtained during the relative period after the Loss.

Shortage in Turnover

'Shortage in Turnover' means the amount by which the Turnover during a period shall in consequence of the Loss fall short of the part of the Standard Turnover which relates to that period.

Turnover

'Turnover' means the money paid or payable to You for goods sold and delivered and for services rendered in the course of Your Business.

Wages

'Wages' means the remunerations (including bonuses, holiday pay, sick pay, long service leave, accident compensation levies and any other benefits and charges pertaining to Wages and treated as part of remuneration) of all employees other than those whose remunerations are treated as salaries in Your books of account.

Uninsured Working Expenses

'Uninsured Working Expenses' means those expenses that vary in direct proportion to the Turnover.

3.2 Cover

If Your Business carried on at the Situation is interrupted or interfered with in consequence of a Loss at the Situation during the Period of Insurance We will indemnify You for the financial loss resulting from the interruption or interference up to the limits specified in the Schedule for each item insured set out below.

Provided that:

- 1 We will not be liable for any financial loss under this Policy unless Your Property damaged at the Situation is insured against the Loss (except Loss arising out of explosion of any boiler or economiser) and We (including the Earthquake Commission where applicable) have (or would have, but for the application of an excess or Deductible) admitted liability in respect of such Loss.
- 2 subject to the 'Goods and Services Tax' clause and 'Reinstatement of Amount of Insurance' clause of this Policy, Our liability will not

exceed the total sum insured of this Section; and if more than one item is included in the Schedule, will not exceed in respect of each item the sum insured applicable to that item.

3.2.1 Gross Profit or Gross Revenue (as selected)

Where Gross Profit or Gross Revenue has been selected in the Schedule, the amount payable as indemnity shall be:

- 1 in respect of reduction in Gross Profit/Revenue, the amount by which the Gross Profit/Revenue earned by Your Business during the Indemnity Period is less than the amount that would have been earned if the interruption or interference had not occurred; and
- 2 in respect of additional expenditure, the additional expenditure necessarily and reasonably incurred during the Indemnity Period to avoid or minimise the reduction in Gross Profit/Revenue that Your Business suffers as a result of the interruption or interference. The amount payable shall not exceed the reduction in Gross Profit/Revenue thereby avoided,

less expenses saved as a result of the Loss.

3.2.2 Gross Rental and Management Fees

Where Gross Rentals and Management Fees has been selected in the Schedule, the amount payable as indemnity shall be:

- 1 in respect of reduction in Gross Rentals and Management Fees, the amount by which the Gross Rentals and Management Fees earned by Your Business during the Indemnity Period is less than the amount that would have been earned if the interruption or interference to Your Business had not occurred; and
- 2 in respect of additional expenditure, the additional expenditure necessarily and reasonably incurred during the Indemnity Period to avoid or minimise the reduction in Gross Rentals and Management Fees that Your Business suffers as a result of the interruption or interference. The amount payable shall not exceed the reduction in Gross Rentals and Management Fees thereby avoided,

less expenses saved as a result of the Loss.

3.2.3 Wages – Dual Basis

Where dual Wages has been selected in the Schedule, the amount payable as indemnity shall be:

- 1 In Respect of Reduction in Turnover:
 - (a) Initial Period: beginning with the Loss and ending not later than the number of weeks specified in the Schedule thereafter, the actual amount You pay as Wages to employees whose services cannot, in consequence of the Loss, be used by You, being the amount produced by applying the Rate of Wages to the Shortage in Turnover during that period less any Wages saved as a result of the Loss in this period;
 - (b) Remainder Period: during the remaining portion of the Indemnity Period the sum produced by applying the Rate of Wages to the Shortage in Turnover during that Period less any Wages saved as a result of the Loss in this period; but not exceeding the sum produced by applying the remainder percentage of the Rate of Wages specified in the Schedule to the Shortage in Turnover during that remaining portion of the Indemnity Period increased by such amount as is deducted for savings under the terms of 1 (a) above;
 - (c) Optional Period: at Your option, the number of weeks referred to in 1 (a) above may be increased to the optional number specified in the Schedule provided that the amount arrived at under the provisions of 1 (b) shall not exceed such amount as is deducted under 1 (a) for savings effected during the optional number of weeks.
- 2 In respect of additional expenditure, the additional expenditure necessarily and reasonably incurred during the Indemnity Period to avoid or minimise the reduction in Wages that Your Business suffers as a result of the interruption or interference. The amount payable shall not exceed the reduction in wages thereby avoided.

3.2.4 Payroll/wages in Lieu of Notice

Where Payroll/Wages in lieu of notice has been selected in the Schedule, the amount payable as indemnity shall be:

The amount of Payroll/Wages You shall reasonably pay during the period beginning with the Loss and ending not later than the number of weeks specified in the Schedule to employees whose services cannot, in consequence of the Loss, be utilised by You at all, and an equitable part of the Payroll/Wages paid to employees whose services cannot, in consequence of the Loss, be utilised by You to the full (less any Wages/Payroll saved as a result of the Loss).

3.2.5 Redeployment Expenses

Where selected in the Schedule, the insurance under this item covers expenditure reasonably incurred by You during the Indemnity Period in the necessary relocation of employees within New Zealand where, as a result of the Loss, You elect to permanently redeploy employees at any alternative sites within New Zealand. The insured expenses will include all such expenses You would normally incur or reimburse to employees when transferring employees and their families and pets to different places of permanent residence for the purpose of Your Business.

3.2.6 Severance and Redundancy Payments

Where selected in the Schedule, the insurance under this item covers all payments which You are required to pay to employees in accordance with their employment contract whose services are terminated as a result of Loss.

3.2.7 Additional Cost of Working

Where selected in the Schedule, the insurance under this item covers the additional costs and expenditure reasonably incurred by You during the Indemnity Period in consequence of the Loss for the purpose of avoiding or diminishing a reduction in Gross Profit or Gross Revenue and/or for resuming or maintaining any normal business operations or services that are not otherwise covered under this Policy, but excluding any cost of reinstating physical damage to Your Property.

3.2.8 Book Debts

Where selected in the Schedule, the insurance under this item covers the net financial loss that is established during the twelve months

after the Loss resulting solely from the interruption or interference to the business of collectible amounts owed to You plus the reasonable costs incurred by You in establishing, tracing and recovering those debts less an equitable allowance for bad debts or variations in trade.

3.2.9 Penalty Payments

Where selected in the Schedule, the insurance under this item covers any penalties, damages or other amounts which You are legally liable to pay, in accordance with the terms and conditions of any contract, for any unavoidable breach of contract by You resulting from any interruption to or interference with Your Business as a sole consequence of Loss.

3.2.10 Claim Preparation Costs

Where selected in the Schedule, the insurance under this item covers all costs, professional fees and expenses reasonably incurred by You for the purpose of assessing, preparing, presenting and certifying any claims made under this Section and the Material Damage Section of this Policy insofar as such costs are not more specifically insured or recoverable under any other policy of insurance.

Salaries, Wages, overheads and other expenses of Your employees and consultants will be deemed to be part of such costs and expenses.

3.2.11 Rewriting of Records

Where selected in the Schedule and notwithstanding the definition of Property and the general exclusion for electronic data 1.3.3, the Business Interruption Section of this Policy insures the reasonable cost of collecting and reproducing the information on Your Business records that suffer a Loss covered under this Policy. The value of the information itself is not insured.

However, the following conditions apply in respect of electronic data:

- 1 You must have all electronic data on back-up files;
- 2 there must be an adequate back-up system in operation and that back-up system must have been effectively tested; and
- 3 back-ups must be kept secure on or off site and must be updated at least on a weekly basis.

The limit of cover for any one Event is as specified in the Schedule. The cover in this clause is in addition to the cover provided under 2.3.23 in the Material Damage Section of this Policy.

3.2.12 Loss of Lease Goodwill

Where selected in the Schedule, the insurance under this item covers loss of lease goodwill should the whole or any part of a leased Situation occupied by You suffer Loss during the Period of Insurance covered by the Material Damage Section of this Policy, provided that:

- 1 the rebuilding or reinstatement of the Situation at the existing site is prohibited by building or other regulations under or formed in pursuance of any Act of Parliament or the by-laws of any municipal or other local authority; or
- 2 the owner of the premises not being You, decides for any reason whatsoever not to undertake the rebuilding or reinstatement at the existing site following such Loss; or
- 3 the owner of the premises not being You, terminates the lease in accordance with the terms thereof following such Loss.

The amount payable as indemnity hereunder shall be limited to the unexpired value of the lease goodwill at the date of Loss calculated by reducing the purchased value of the lease goodwill pro rata according to the proportion of the term of the lease which has elapsed at the date of Loss, provided also that:

If You are able to obtain suitable alternative situations for the purpose of Your Business after the termination of the lease by the lessor then, after calculation of the loss of lease goodwill as set herein, this amount shall be reduced to a figure which shall represent as nearly as reasonably practicable the actual loss of lease goodwill.

3.3 Additional Cover

3.3.1 Accumulated Stocks

In adjusting any claim, account will be taken and an equitable allowance made if, during the Indemnity Period Turnover is temporarily maintained from accumulated stocks of finished goods held by You, thus causing a shortage of stock of finished goods after the Indemnity Period has expired.

3.3.2 Acts of Civil Authorities

The Business Interruption Section of this Policy insures financial loss resulting from interruption or interference because the whole or part of Your Situation is closed by order of any lawfully constituted civil authority during the Period of Insurance as a result of:

- 1 danger to human life or bodily injury to any person in the vicinity of the Situation;
- 2 damage to any property;
- 3 defects in drains or other sanitary arrangements but not defects in water or sewerage;
- 4 vermin or pests;
- 5 fumes or the escape of any hazardous materials;
- 6 any other criminal act, but excluding any criminal act by You.

Proviso 1 of 3.2 Cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.3.3 Closure of Transport Routes, Ports or Airports

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by the closure during the Period of Insurance of any transport route, port, container port, airport or railway terminal in New Zealand due to Loss to any property at such premises that would be covered under Section 2 of this Policy if it had covered that property.

Proviso 1 of 3.2 Cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.3.4 Contractual Commitments

The Business Interruption Section of this Policy insures the amount You are legally liable to pay under contracts for purchases unavoidably not used during the Indemnity Period as a result of a Loss during the Period of Insurance covered under this Section, less any sums received or receivable by You in respect of such purchases through any salvage handling operations or resale.

3.3.5 Customers' / Suppliers' Premises

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that property during the Period of Insurance at any place within New Zealand or Australia that is:

- 1 occupied by manufacturers, processors or suppliers of goods or services to You; or
- 2 occupied by any of Your customers.

Proviso 1 of 3.2 Cover does not apply to this clause.

This clause is subject to the limit shown in the Schedule.

3.3.6 Dependent Business that Attracts Customers

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that property during the Period of Insurance to an anchor tenant situated in the same retail shopping complex as Your Business.

Proviso 1 of 3.2 Cover does not apply to this clause.

Our liability in respect of any one Loss will be limited to an Indemnity Period of 30 days from the date Turnover is first affected and this clause is subject to a 24-hour time Deductible.

3.3.7 Loss of Utilities

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that property during the Period of Insurance to any electricity station or sub-station or power lines or telecommunication networks or gas works or natural gas works (but excluding any offshore installation) or energy-producing plant or water works or treatment plants or any other supplier of utilities, and including all property or plant or equipment or supply pipes or supply lines of any of them.

Proviso 1 of 3.2 Cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.3.8 Prevention of Access

The Business Interruption Section of this Policy insures financial loss resulting from interruption or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that property during the Period of Insurance in the vicinity of Your Situation that prevents or hinders the use of or access to the Situation during the Period of Insurance regardless of whether Your property or Situation suffers Loss.

Proviso 1 of 3.2 Cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.4 Optional Additional Cover

The following optional clauses will apply only when designated or specified in the Schedule.

3.4.1 Natural Disaster Damage (Earthquake etc)

Notwithstanding exclusion 3.5.1 1), this Policy insures financial loss resulting from interruption of or interference with Your Business caused by:

- 1 Natural Disaster;
- 2 measures taken under proper authority, following an Event listed above to:
 - (a) avoid its spreading, or
 - (b) reduce its consequences,

during the Period of Insurance.

3.5 Exclusions

Refer also to the general exclusions of this Policy.

3.5.1 Natural Disaster / Mechanical or Electrical Breakdown / Transit

The Business Interruption Section of this Policy does not cover any financial loss resulting from interruption of or interference with the business arising from:

- 1 Natural Disaster;
- 2 mechanical or electrical breakdown or derangement of Machinery or electrical equipment other than as a result of a Loss arising from electric current damage cover 2.3.7 under the Material Damage Section of this Policy or the boiler explosion cover under 3.2;
- 3 property in transit other than at Your Situation.

3.6 Conditions

Refer also to the general conditions of this Policy.

3.6.1 Adjustment of Premium

The premium payable by You is deemed to be provisional and subject to adjustment on expiry of each Period of Insurance as follows:

- 1 within six months of the period for which the premium is to be adjusted or as soon as practicable thereafter, You will submit to Us a certificate from Your auditors or accountants setting out, if insured, the actual Gross Profit, Gross Revenue, Gross Rentals and Management Fees, Wages – dual basis, Payroll/Wages in lieu of notice and book debts for the accounting year most nearly concurrent with the Period of Insurance.
- 2 the provisional premium will be adjusted at the agreed rate(s) on such actual amounts, or a multiple thereof if the Indemnity Period exceeds twelve months, by payment to Us of an additional premium or by refund to You of a return premium as the case may be, provided that if an additional premium or a return premium is due, it will in no case exceed 50% of the provisional premiums charged for the items involved.
- 3 in the event of a claim occurring during the Period of Insurance, the amount paid or payable for the loss in respect of the period will be regarded as actually earned.

3.6.2 Alternative Index

In the event of a claim under this Policy, adjustments may be based on Turnover or output or whatever other index of business activity affords the most equitable result, and, except in the definition of Turnover, the word Turnover wherever used in this Policy shall be read as Turnover or alternative index.

3.6.3 Departments

If Your Business is conducted in departments, subsidiaries or other units and the independent trading results are ascertainable, the provisions of this Policy shall apply separately to each department, subsidiary or other unit affected by the Loss. However, Our total liability remains unchanged.

3.6.4 Liquidation, Receivership or Cessation of Interest

The cover provided by this Policy will be voided if, for any reason other than Loss:

- 1 Your Business is wound up or carried on by a liquidator or receiver or is permanently discontinued; or
- 2 Your interest in Your Business ceases other than by death;

at any time after the commencement of this insurance, unless We have agreed to its continuance.

3.6.5 New Business

For the purpose of any claim arising from Loss occurring before the completion of the first year's trading of Your Business at the Situation the terms Rate of Wages Gross Profit, Rate of Wages and Standard Turnover shall have the following meanings and not as stated within:

Rate of Gross Profit means the rate of gross profit earned on the Turnover during the period between the date of the commencement of Your Business and the date of the Loss.

Rate of Wages means the rate of wages to Turnover during the period between the date of the commencement of Your Business and the date of the Loss.

Standard Turnover means the proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the commencement of Your Business and the date of the Loss.

For the purposes of this clause the Rate of Wages Gross Profit, Rate of Wages and Standard Turnover shall be adjusted as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Loss or which would have affected Your Business had the Loss not occurred, so that the figure thus adjusted shall represent as nearly as may be reasonably practicable the results which, but for the Loss, would have been achieved during the relative period after the Loss.

3.6.6 Reduced Margin

If, in consequence of Loss giving rise to a claim under this Policy, Turnover is maintained at a reduced Rate of Wages Gross Profit, an equitable allowance shall be made for the loss of Gross Profit resulting from an increase in the ratio of stock usage or purchases (adjusted for stock variation) to Turnover.

No allowance shall be made for an increase in the ratio of any other Uninsured Expense to Turnover.

3.6.7 Reinstatement of Amount of Insurance

In the event of a claim payment under the Business Interruption Section of this Policy, and in the absence of written notice by Us or You to the contrary, any amount of insurance cancelled by the payment will be automatically reinstated. You agree to pay such pro rata premium at the applicable rate as may be required for the reinstatement.

3.6.8 Turnover Elsewhere

If during the Indemnity Period, any goods are sold or services are rendered elsewhere than at the Situation for the benefit of Your Business, either by You or by others on Your behalf, the money paid or payable in respect of those sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

3.6.9 Use of Accountant or Auditors

Any particulars or details contained in Your books of account or any other business books or documents which may be required by Us under the claims condition of this Policy for the purpose of investigating or verifying any claim may be produced and certified by Your accountant or auditors or their agents, whose certificate shall be prima facie evidence of the particulars and details required.

Section 4: Broadform Liability

4.1 Definitions for this Section 4

See also the General Definitions in Section 1

Aircraft

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

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 Us, or by You with Our prior written consent, and also includes expenses incurred by you for first aid to others at the time of any personal injury for which you are entitled to compensation.

Deductible

'Deductible' means (for this Section only): the amount You bear in relation to each Occurrence.

Medical Persons

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

Non-Territorial Country

'Non-Territorial Country' means any country other than the territorial limits specified in the Schedule.

Occurrence

'Occurrence' means an event, including continuous or repeated exposure to substantially the same general conditions, that results in personal injury or property damage neither expected nor intended from Your standpoint.

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 You:

- 1 false arrest, false imprisonment, wrongful eviction and wrongful detention; or
- 2 invasion of rights of privacy; or
- 3 assault and battery not committed by or at the direction of you unless committed for the purpose of preventing or eliminating danger to persons or property.

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.

Property Damage

'Property Damage' means (for this Section only):

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

Vehicle

'Vehicle' means (for this Section only): 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.

Watercraft

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

You / Your

'You / Your' (for this Section only) means:

- 1 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 whose places of incorporation are within New Zealand;
- 2 any director, executive officer, employee or partner of the named Insured or of a company designated in 1 but only whilst acting within the scope of their duties in such capacity;
- 3 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 1 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;
- 4 any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of You (other than an Insured designated in 3) in respect of claims arising from duties connected with activities of any such club or organisation.

Your Products

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

4.2 Coverage

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

- 1 happens during the Period of Insurance; and
- 2 is caused by an Occurrence in connection with Your Business.

4.2.1 Limits of Indemnity

- 1 Our 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.
- 2 Our total aggregate liability during any one Period of Insurance for all claims arising out of Your products shall not exceed the limit of indemnity.

4.2.2 Costs and Expenses

In addition to the applicable limit of indemnity, We will pay Costs and Expenses necessarily and reasonably incurred in relation to any claim against you for which there is cover under this Policy. We may investigate, negotiate and settle any claim or suit as it deems expedient; but We 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:

- 1 Our 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.
- 2 immediately that We have paid the limit of indemnity in respect of any judgment or settlement, Our liability in respect of any further Costs and Expenses shall cease.
- 3 if a payment exceeding the limit of indemnity has to be made to dispose of a claim, Our liability 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.

4.3 Additional Cover

The following coverage clauses to the Policy are included automatically, provided always that each clause is to be read in conjunction with 4.2 coverage above, and are subject to the Policy terms, unless otherwise stated. Some clauses have specified sub-limits and Deductibles 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.

4.3.1 Business Advice or Service

Notwithstanding exclusion 4.4.17 Professional Advice, We will indemnify You in respect of Personal Injury or Property Damage arising out of:

- 1 the rendering of or failure to render professional medical advice by medical persons employed by You to provide first aid and other medical services on Your premises; or
- 2 the rendering of advice or service by You, or error or omission connected therewith, provided that such advice or service is not given for a fee.

4.3.2 Care, Custody or Control

Notwithstanding exclusion 4.4.18 2 Property in your Care, Custody or Control, but subject to exclusions 4.4.19 Property being Worked on and 4.4.10 Faulty Workmanship, We will indemnify You 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 You.

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

4.3.3 Forest and Rural Fires Act

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

- 1 costs and Losses incurred during the Period of Insurance recoverable under section 43;
- 2 levies imposed by a Fire Authority and apportioned to you during the Period of Insurance under sections 46 and 46A.

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

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

4.3.4 Landlord's Liability

We will indemnify You in respect of Personal Injury or Property Damage arising from Your legal ownership, but not physical occupation, of any premises.

4.3.5 Mechanical Plant Liability/Vehicles

Notwithstanding exclusion 4.4.23 1 and 2 Vehicles, We will indemnify You in respect of Personal Injury or Property Damage:

- 1 arising from loading or unloading any vehicle used by or on Your behalf but not in Your care, custody or control;
- 2 arising from any vehicle while it is being operated or used by You as plant or a tool of trade, and not as a vehicle;
- 3 to vehicles (not belonging to or used by or on Your behalf) in the physical or legal control of You where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by You, provided that You as part of Your Business does not own or operate a car park for reward;
- 4 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. A Deductible of \$2,500 shall apply to each and every claim under this extension 4.3.5 4.

4.3.6 Product Withdrawal Costs

Notwithstanding exclusion 4.4.20 Recall of Products, We will indemnify You for 80% of those costs reasonably incurred in the withdrawal or recall from use in New Zealand of Your products that have the same defect as a product that has already given rise to a claim in respect of which You are entitled to indemnity under the 4.2 coverage.

Provided that:

- 1 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
- 2 a Deductible of \$2,500, inclusive of Costs and Expenses, shall apply to each such withdrawal or recall.

4.3.7 Punitive or Exemplary Damages

Notwithstanding exclusion 4.4.11 Fines and Penalties, We will indemnify You for all sums that You 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 Your Business.

Provided that:

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

4.3.8 Tenant's Liability

Notwithstanding exclusion 4.4.18 1 Property in your Care, Custody or Control, We will indemnify You in respect of Property Damage to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by You.

4.3.9 Underground Services

We will indemnify You in respect of Personal Injury or property damage in New Zealand to existing underground services, cables, pipes or equipment.

Provided that:

- 1 prior to the commencement of any work You enquired of the relevant authority, corporation or company as to the location of such services; and
- 2 You took all reasonable precautions to prevent Personal Injury or property damage; and
- 3 any liability arising out of work carried out more than five metres below ground level is excluded; and
- 4 any liability arising out of work carried out underground by directional drilling or by a thrusting or boring machine is excluded; and
- 5 a sub-limit of \$250,000 any one Period of Insurance shall apply; and
- 6 a Deductible of \$5,000 shall apply.

4.3.10 Vehicle and Watercraft Service/Repair

Notwithstanding exclusions 4.4.18 2 Property in your Care, Custody or Control, 4.4.19 Property being Worked on, and 4.4.23 1 and 2 Vehicles, We will indemnify You in respect of Personal Injury or Property Damage in New Zealand arising from the service, repair, modification or installation by You 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:

- 1 the vehicle or Watercraft is not owned, hired, leased, or rented by You, and is in the care, custody or control of You for the purposes of the service, repair, modification or installation; and
- 2 the cost of rectifying defective workmanship in respect of the actual part or parts worked on is excluded; and
- 3 liability in respect of Watercraft during testing on water is excluded; and
- 4 a sub-limit of \$250,000 any one Period of Insurance shall apply; and
- 5 a Deductible of \$2,500 shall apply.

4.3.11 Vibration and Removal of Support

We will indemnify You 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:

- 1 the land or buildings are not owned or occupied by You; and
- 2 the Personal Injury or Property Damage arises from the actions of You; and
- 3 a sub-limit of \$250,000 any one Period of Insurance shall apply; and
- 4 a Deductible of \$5,000 shall apply.

4.3.12 Visits to any Non-Territorial Country

Notwithstanding exclusion 4.4.21 Territorial Limits, We will indemnify You 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 Your Business.

Provided that:

- 1 You have no premises, branch or subsidiary operation in the Non-Territorial Country; and
- 2 any work performed in, on, or in connection with, the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of Your products is excluded; and
- 3 the ownership, possession, control, or maintenance or use of any vehicle or Watercraft is excluded.

In addition, in respect of 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 in any one Period of Insurance, and shall include Costs and Expenses.

4.4 Exclusions

Refer also to the general exclusions of this Policy.

We shall not be liable for claims under the Public Liability Broadform Section of this Policy in respect of:

4.4.1 Aircraft and Watercraft

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

- 1 any Aircraft;
- 2 any Watercraft exceeding eight metres in length.

4.4.2 Aircraft Parts

Personal Injury or property damage arising out of Your products that are used with Your knowledge in Aircraft or any aerial device.

4.4.3 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.

4.4.4 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 You or at Your direction unless reasonably necessary for the protection of persons or property.

4.4.5 Confiscation

Any event, cost or expense directly or indirectly caused by confiscation, nationalisation, requisition, destruction, or damage to property by or under the order of any Government or public or local authority.

4.4.6 Contractual Liability

Liability assumed by You 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 your rights of recovery from a third party. This exclusion shall not apply to:

- 1 those written contracts designated in the Schedule;
- 2 liability assumed by You under a warranty of fitness or quality in respect of your products, subject always to exclusions 4.4.15 1 Loss of Use and 4.4.10 Faulty Workmanship;
- 3 liability assumed by You under any lease or hire of real or personal property.

4.4.7 Damage to Insured's Products

Property Damage to Your products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

4.4.8 Defamation

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

4.4.9 Employer's Liability

- 1 Personal Injury to any employee of You arising out of or in the course of employment of such person in Your Business.
- 2 Any obligation for which You may be held liable under the Injury Prevention, Rehabilitation, and Compensation Act 2001, or any similar amending or replacement legislation.
- 3 Any liability in respect of which You are 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 You have effected such a policy.

4.4.10 Faulty Workmanship

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

4.4.11 Fines and Penalties

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

4.4.12 GMO (Genetically Modified Organisms)

Personal Injury or Property Damage of whatsoever nature or kind, caused by, or contributed to, directly or indirectly, or howsoever arising from, or connected with any genetically modified or engineered organisms or material, transgenic seeds or any other products of a similar nature.

4.4.13 Information Technology Hazards

- 1 Personal Injury or Property Damage caused by or arising, directly or indirectly, out of, or in any way involving your 'internet operations'.
'Internet operations' means

- (a) use of electronic mail systems by Your employees, including part-time and temporary staff and others within Your Business;
- (b) access through Your network to the world wide web or a public internet site by Your employees, including part-time and temporary staff and others within Your Business;
- (c) access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide web for Your customers or others outside Your Business; and
- (d) the operation and maintenance of Your 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.

- 2 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:
 - (a) the use of any computer hardware or software;
 - (b) the provision of computer or telecommunication services by You or on Your behalf;
 - (c) the use of any computer hardware or software belonging to any third party, whether authorised or unauthorised, including damage caused by any computer virus.

4.4.14 Legal Jurisdiction

- 1 Any legal action or litigation first brought in a court outside the territorial limits specified in the Schedule; or
- 2 any legal action or litigation brought in a court within New Zealand to enforce a judgment handed down in a court outside the territorial limits specified in the Schedule whether by way of a reciprocal agreement or otherwise; or
- 3 any legal action to which proper law to be applied to the issue of any of them in that action is of a country outside the territorial limits specified in the Schedule.

4.4.15 Loss of Use

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

- 1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- 2 the failure of Your products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You, 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 your products after such products have been put to use by any person or entity other than You.

4.4.16 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, We 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.

4.4.17 Professional Advice

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

4.4.18 Property in your Care, Custody or Control

Property Damage to:

- 1 real property, or property owned, hired, leased or rented by or to You; or
- 2 property in your physical or legal control; or
- 3 property held under a contract of bailment for reward.

4.4.19 Property being Worked on

Property Damage to that part of any property upon which You are or have been working where Property Damage arises from such work.

4.4.20 Recall of Products

Damages, costs or refunds claimed for the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of Your products, or of any property of which such products form a part, or work undertaken by or for You, 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 you knew of, or had reason to suspect, or because of any government or statutory ban, order or notice.

4.4.21 Territorial Limits

Personal Injury or Property Damage:

- 1 occurring in the non-territorial country;
- 2 caused by or arising out of Your products that have been knowingly exported by You or Your agent to any Non-Territorial Country; or
- 3 where claims are made upon You outside New Zealand in any country where You are represented by a branch or company or firm or individual holding Your power of attorney unless specified in the Schedule; or
- 4 where claims arise out of any contract entered into by You under the terms of which work is to be performed outside New Zealand, unless specified in the Schedule.

4.4.22 Terrorism

Liability, loss, damage or expenses of whatsoever nature directly or indirectly caused by or resulting from, happening through or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense.

For this Section only, 'act of terrorism' means an act of violence or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

4.4.23 Vehicles

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

- 1 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
- 2 in respect of which compulsory insurance is required by virtue of any legislation governing the use of any motor vehicle or trailer; or
- 3 being operated or driven in an unsafe condition that causes or contributes to the Occurrence; or
- 4 being loaded or has been loaded in excess of the manufacturer's specifications; or
- 5 that was in the care, custody or 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
- 6 where the driver using or operating the vehicle with your 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
- 7 being operated by any person who is under the influence of any liquor, substance or drug; or
- 8 that is insured, or in respect of which You are insured under any other policy, even if the other insurance is not collectable because of a breach of condition or applicable exclusion.

4.5 Conditions

Refer also to the general conditions of this Policy.

4.5.1 Adjustment of Premium

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

4.5.2 Change of Facts or Circumstances

Notice in writing shall be given to Us 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 Your knowledge. We shall be entitled to charge an additional premium.

4.5.3 Conduct of Claims

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

You shall use Your 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 Us and until We shall have had an opportunity of inspection and authorised such repairs.

In the event of an Occurrence, or the likelihood of an Occurrence, You shall promptly take at Your 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 Us.

We may at any time pay You, in respect of all claims against You 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 We 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.

4.5.4 Cross Liability

For the purpose of Section 4 only, where the Insured named in the Schedule consists of more than one legal entity, each shall be considered as a separate entity and the word 'You' 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 Our limit of indemnity in respect of any Occurrence or Period of Insurance.

4.5.5 Defence of Legal Proceedings

We shall not require You to contest any legal proceedings in respect of any claim against You, nor shall You require Us to contest, on Your behalf, any legal proceedings in respect of any such claim unless a legal counsel (to be mutually agreed upon by You and Us) 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 You successfully defending the action. The cost of counsel's opinion shall be payable under clause 4.2.2 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 you shall not object to any such settlement and shall co-operate with Us to effect such settlement in accordance with this Policy.

4.5.6 Hot Work Warranty

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

4.5.7 Reasonable Precautions

You shall take all reasonable precautions to:

- 1 prevent the manufacture, sale or supply of defective products;
- 2 comply, and ensure that Your 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;
- 3 at Your own expense, trace or recall or modify any of Your products containing any defect or deficiency of which you have knowledge or have reason to suspect.

4.5.8 Reporting of Claims

Irrespective of the quantum, You shall give to Us 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 You believe that no claim will proceed or that any claim would be groundless.

Section 5: Employers Liability

5.1 Definitions for this Section 5

See also the General Definitions in Section 1

Any word or expression that is defined in this Section as having a particular meaning will have that meaning everywhere it appears in this Section.

Claim

'Claim' means:

- 1 legal proceedings instituted and served upon You;
- 2 any threat or intimation that legal proceeding will be issued against You;
- 3 any circumstance that a reasonable Insured in Your position would have considered may give rise to a demand for damages.

Conduct of the Claim

'Conduct of the Claim' means the investigation, defence, compromise or handling of the claim in any manner whatsoever on Your behalf.

Damages

'Damages' means monetary compensation ordered to be paid or agreed to be paid pursuant to a judgment or settlement of any common law action brought or capable of being brought in a New Zealand court in respect of Personal Injury to an Employee of Yours, but does not include any such monies payable pursuant to any remedy, relief or penalty provided in any statute of New Zealand, whether by way of damages, fine, reparation or other order.

Defence Costs

'Defence Costs' means reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with the prior written consent of Us that:

- 1 relate directly to the Conduct of the Claim; or
- 2 are associated with you making application to the court to determine whether a Personal Injury is properly the subject of cover under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or any amending or replacing legislation; or
- 3 is an amount required to be paid by you as security for costs in any legal proceeding.

Defence Costs do not include charges for time spent by directors, officers, partners or employees of You or reimbursement of any remuneration for such people.

Employee

'Employee' means any person who is employed by You in connection with Your Business and in respect of whose remuneration You deduct PAYE tax at source.

Personal Injury

'Personal Injury' means bodily injury, sickness, disease or infection, including death resulting therefrom, and shall include disability, shock, fright, mental anguish or mental injury.

Punitive and Exemplary Damages

'Punitive and Exemplary Damages' means monies ordered to be paid as punitive or exemplary damages pursuant to a judgment of a New Zealand court in respect of a common law action brought by an Employee against You in relation to Personal Injury.

You/Your

'You/Your' means (for this Section only): the person or entities named in the schedule as insured and if the insured is a company it includes its directors and any subsidiaries and their directors.

5.2 Cover

In consideration of payment of the premium and subject to the clauses of this Policy, We agree as follows:

5.2.1 Insured Liability

We will indemnify You against any Claim that You become legally liable to pay as:

- 1 Damages as a result of the Employee sustaining Personal Injury in New Zealand that arose out of or in the course of such Employee's employment in Your Business and for which the Employee is not covered under the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
- 2 Punitive or Exemplary Damages as a result of the Employee sustaining Personal Injury in New Zealand that arose out of or in the course of such Employee's employment in Your Business and for which the Employee is eligible for compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Provided that in respect of clauses 5.2.1 1 and 2 above:

- (a) the Claim against You was first made during the Period of Insurance; and
- (b) the Claim was notified to Us as soon as practicable by You during the Period of Insurance or within 30 days of expiry; and
- (c) the Personal Injury arose out of an event, circumstance or accident that occurred subsequent to the retroactive date and before the expiry of the Period of Insurance.

There is no indemnity under this Policy for Claims that do not comply with (a), (b) and (c) of this clause.

5.2.2 Defence Costs

We shall pay the Defence Costs arising out of any Claim covered by this Policy.

5.2.3 Limits of Liability

- 1 The limit of Our liability in respect of any one Claim, inclusive of Defence Costs, shall not exceed the limit of indemnity stated in the Schedule.
- 2 Our total aggregate liability during any one Period of Insurance for all Claims and Defence Costs shall not exceed the limit of indemnity stated in the Schedule.

5.2.4 Deductible

Where a Deductible is specified in the Schedule, You must pay this amount in respect of each and every Claim inclusive of Defence Costs.

5.3 Additional Cover**5.3.1 Acquisitions and Creations**

The definition of You, will include any subsidiary acquired or created during the Period of Insurance. Provided that You shall advise Us within 30 days of the acquisition or creation, and We shall have the right to charge any additional premium. However, We will not pay on Your behalf any Claim arising out of Personal Injury occurring before any such entity became a subsidiary of You.

5.3.2 Previous Subsidiaries

The definition of You, will include any entity that ceased to be a subsidiary before or during the Period of Insurance, but We will not pay on Your behalf any Claim arising out of Personal Injury occurring after it ceased to be a subsidiary, nor will We pay on Your behalf any Claim arising out of Personal Injury occurring before it became a subsidiary.

5.3.3 Continuous Cover

We will indemnify You for any Claim that would be covered under this Policy but is excluded by exclusion 5.4.1 3 Known Claims and Circumstances, subject to the following additional conditions:

- 1 We were Your Employers Liability Insurer at the primary level under a Policy ('the former Policy') at the time when You first became aware of the circumstances that subsequently gave rise to the Claim; and
- 2 We continued without interruption as Your Employers Liability Insurer at the primary level from the time when You first became aware of the circumstances up until such time as the Claim was made against You and notified to Us; and
- 3 Our liability is limited to the amount for which We would have been liable at the time referred to in 5.3.3 1 in accordance with the terms and conditions of the former Policy; and
- 4 Our liability will be reduced by the amount that fairly represents the extent to which liability for the Claim could have been reduced had the circumstances been duly reported under the former Policy.

5.4 Exclusions

Refer also to the general exclusions of this Policy.

We shall not be liable to indemnify You under the Employers Liability Section of this Policy in respect of any liability arising out of any Claim:

5.4.1 Known Claims and Circumstances

- 1 Made against, or intimated to, You prior to the commencement of the Period of Insurance; or
- 2 notified under any previous Policy; or
- 3 arising out of or connected with any facts or circumstances that:
 - (a) You were aware of prior to commencement of the Period of Insurance; and
 - (b) a reasonable person in Your position would have considered may give rise to a Claim.

5.4.2 Intentional Torts

Based on or in any way arising out of a cause of action alleging intentional wrongdoing or conscious recklessness on Your part, including (but not limited to) causes of action alleging intentional infliction of harm, trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse.

5.4.3 Other Activities

Made as a result of Your directing an Employee to undertake activities otherwise than in the course of or in connection with the usual activities of Your Business.

5.4.4 Retroactive Date

That arose out of any event, circumstances or accident that occurred prior to the retroactive date.

5.4.5 Defamation

For liability based on or in any way arising out of a cause of action based on defamation or injurious falsehood.

5.4.6 Punitive and Exemplary Damages, Fines, Wages and Contractual Obligations

- 1 for Punitive or Exemplary Damages except by way of a Claim for Punitive or Exemplary Damages in respect of Personal Injury pursuant to clause 5.2.1 2 of this Policy;
- 2 for fines, penalties, reparation, court costs, prosecution witness expenses or solicitors' costs ordered to be paid by You upon conviction of an offence;
- 3 for unpaid wages or other benefits due to any Employee;
- 4 for any contractual obligation in the nature of a performance warranty or Claim for liquidated damages.

5.4.7 Legal Jurisdiction

- 1 in respect of legal action or litigation first brought in a court outside New Zealand; or

- 2 in respect of any legal action or litigation brought in a court within New Zealand to enforce a judgment handed down in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- 3 in respect of any legal action in which the proper law to be applied to the issue or any of them in that action is that of a country other than New Zealand.

5.4.8 Health and Safety in Employment Act

As a result of an Employee sustaining Personal Injury which arose out of the failure by You to comply with any improvement, prohibition or suspension notice issued to You or Your Employees under the Health and Safety in Employment Act 1992 or any amending or replacing legislation.

5.4.9 Asbestos

Whatsoever, 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.

5.5 Conditions

Refer also to the general conditions of this Policy.

5.5.1 Reporting of Claims

Irrespective of the quantum, You must give Us immediate notice in writing of:

- 1 any Claim made against You; or
- 2 the receipt of notice from, or information as to any intention by, any party to make a Claim against You; or
- 3 any circumstance that a reasonable Insured in Your position would have considered may give rise to a Claim. Where such notice is given to Us by You, any Claim that may subsequently be made shall be deemed to be a Claim made against You during the Period of the Insurance.

Provided that in order to qualify as a Claim capable of being covered by this Policy, Your notice in writing must:

- (a) relate to a Claim that occurred during the Period of Insurance; and
- (b) be given during the Period of Insurance or within 30 days after its expiry.

5.5.2 Conduct of Claims

You must not admit liability for or make any decision that affects the Conduct of a Claim, or incur any costs or expenses in connection therewith without Our prior written consent.

We are entitled at any time to nominate a solicitor to act as Your solicitor and shall have total discretion as to the Conduct of a Claim, in Your name. The solicitor shall at all times be at liberty to disclose to Us any information obtained in the course of so acting, whether from You or howsoever. You hereby waive all claims to legal professional privilege that You might otherwise have as between You and Us in respect of such information.

If We believe that the Claim will not exceed the Deductible, We may instruct You to assume responsibility for the Conduct of the Claim at Your expense. Should the Claim subsequently exceed the Deductible, We agree to reimburse the reasonable costs and expenses incurred by You that exceed the Deductible. You must advise Us as soon as the total costs of the Claim exceed the Deductible or it becomes apparent that they are likely to do so.

5.5.3 Defence of Legal Proceedings

We will not require You to defend any legal proceedings in respect of any Claim against You, nor will You require Us to defend, on Your behalf, any legal proceedings in respect of any such Claim unless a legal counsel (to be mutually agreed upon by You and Us) advises that such proceedings should be defended.

In formulating such advice, appointed 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 You successfully defending the action. The cost of counsel's opinion will be treated as part of the Defence Costs of any Claim.

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

Provided always that if you do not agree with a decision by Us to settle a Claim, You can elect to contest the Claim at Your own expense but Our liability will not exceed the amount for which the Claim could have been settled in the opinion of the counsel appointed.

5.5.4 Allocation of Costs

If costs or expenses are incurred both in respect of a Claim insured under this Policy and a matter which is not insured under this Policy then We shall be liable to pay only a fair proportion of such costs or expenses. In the event that We and You are unable to agree as to a fair proportion, then legal counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

5.5.5 Reasonable Precautions

You shall take all reasonable precautions to:

- 1 prevent Personal Injury; and
- 2 comply, and ensure that Your 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.

Section 6: Statutory Liability

6.1 Definitions for this Section 6

See also the General Definitions in Section 1

Act of Parliament

'Act of Parliament' means any act of the New Zealand parliament, including any amendments, enactments or statutory regulations, codes or rules of such act.

Claim

'Claim' means:

- 1 any threatened or actual prosecution or investigations or inquiry regarding an Event; or
- 2 any circumstances which indicate to the reasonable insured in Your position that a prosecution, investigation or inquiry regarding an Event may occur, which is connected with Your Business and which may give rise to the imposition of a Fine.

Conduct of the Claim

'Conduct of the Claim' means the investigation, defence, compromise or handling of the Claim in any manner whatsoever on Your behalf.

Defence Costs

'Defence Costs' means reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with Our prior written consent which relate directly to the Conduct of the Claim. 'Defence Costs' does not include charges for time spent by sole traders, partners, directors, officers or employees of the named entity or reimbursement of any form of remuneration for such people.

Event

'Event' means (for this Section only): any act or omission done or omitted to be done by You in connection with Your Business that may result in an allegation that You have committed an offence under an Act of Parliament punishable by conviction.

Fine

'Fine' means any monetary penalty, infringement fee or costs for which You are liable on conviction of any offence under an Act of Parliament or may be imposed by a statutory body or authority.

Insured Person

'Insured Person' means any person who is currently, or was at the date of the Event, or becomes during the Period of Insurance, a sole trader, partner, director, officer, or employee of You.

Named Entity

'Named Entity' means the entity specified in the Schedule and includes any subsidiaries

Order for Reparation

'Order for Reparation' under the HSE Act means an order for reparation imposed by the Court on sentencing following Your conviction for an offence under the Health and Safety in Employment Act 1992.

6.2 Cover

In consideration of payment of the premium and subject to the clauses of this Policy contained herein, We agree as follows:

6.2.1 Insured Liability

We will pay on Your behalf any Fine under any Act of Parliament, any Order for Reparation under the HSE Act, and any Defence Costs arising out of a Claim made against You provided that:

- 1 You first became aware of, or ought to have been aware of, the Claim during the Period of Insurance; and
- 2 the Claim is notified to Us during the Period of Insurance or within 30 days of expiry; and
- 3 the Event giving rise to the Claim occurred on or after the retroactive date.

There is no indemnity under this Policy for Claims that do not comply with 6.2.1 1, 2 and 3 of this clause.

6.2.2 Limits of Liability

- 1 The limit of Our liability in respect of any one Claim, inclusive of Defence Costs, shall not exceed the limit of indemnity stated in the Schedule.
- 2 Our total aggregate liability during any one Period of Insurance for all Claims and Defence Costs shall not exceed the limit of indemnity stated in the Schedule.

6.2.3 Deductible

Where a Deductible is specified in the Schedule, You must pay this amount in respect of each and every Claim inclusive of Defence Costs.

6.3 Optional Additional Cover

6.3.1 Previous Subsidiaries of the Named Entity

The definition of Named Entity will include any entity that ceased to be a subsidiary before or during the Period of Insurance, but we will not pay on behalf of You any Fine or Order for Reparation under the HSE Act arising from an Event occurring after it ceased to be a subsidiary, nor will We pay on Your behalf any Fine or Order for Reparation under the HSE Act arising from an Event occurring before it became a subsidiary.

6.4 Exclusions

Refer also to the general exclusions of this Policy.

We shall not be liable to indemnify You under this Statutory Liability Section of the Policy in respect of any Claim:

6.4.1 Known Claims and Events

- 1 made against, or intimated to, You prior to the commencement of the Period of Insurance; or
- 2 notified under any previous Policy; or
- 3 arising out of or connected with any Event that:
 - (a) You were aware of prior to commencement of the Period of Insurance; and
 - (b) a reasonable person in Your position would have considered may give rise to a Claim.

6.4.2 Intentional or Deliberate Disregard

Arising out of or based upon, attributable to, or in any way involving, Your intentional, wilful or deliberate disregard of the provisions of any Act of Parliament.

6.4.3 Other Activities

Arising out of activities otherwise than in the course of or in connection with Your Business.

6.4.4 Retroactive Date

That arose out of any Event that occurred prior to the retroactive date.

6.4.5 Excluded Acts

Arising out of, based upon, attributable to, or in any way involving, directly or indirectly, the following Acts of Parliament:

- Arms Act 1983
- Aviation Crimes Act 1972
- Crimes Act 1961
- Land Transport Act 1998
- Land Transport Act 1962
- Proceeds of Crime Act 1991
- Summary Offences Act 1981
- Transport (Vehicle and Driver Registration and Licensing) Act 1986

and any other Act of Parliament specified in an endorsement to this Policy as an excluded Act of Parliament.

6.4.6 Damages and Non-Criminal Penalties

For payment of money arising from a breach of a legal obligation (including an obligation owed pursuant to an Act of Parliament) other than consequent upon Your conviction for an offence. In particular (but without limitation), this Policy does not cover any proceeding seeking:

- 1 damages, including punitive, aggravated, liquidated, multiple or exemplary damages;
- 2 compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation; or
- 3 penalties provided by an Act of Parliament.

6.4.7 Reparation

For any monetary amount ordered to be paid by the Named Entity and/or Insured Persons by way of an order for reparation imposed by a court following conviction under any Act of Parliament, except an Order for Reparation under the HSE Act.

6.4.8 Legal Jurisdiction

- 1 in respect of any Claim where the threatened or actual prosecution, the investigation or inquiry, is brought or may be brought in a court outside New Zealand; or
- 2 in respect of any Claim which is brought or may be brought in a court within New Zealand to enforce a Fine ordered in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- 3 in respect of any Claim in which the proper law to be applied is that of a country other than New Zealand.

6.4.9 Commerce Act

For any pecuniary penalty, restitution, compensation or order for payment imposed by a court upon the Named Entity or Insured Person pursuant to Part 6 of the Commerce Act 1986.

6.4.10 Health and Safety in Employment Act

For any Fine or infringement fee (other than reparation) ordered to be paid by the Named Entity and/or the Insured Persons following conviction under the Health and Safety in Employment Act 1992.

6.4.11 Monetary Amounts Paid or Offered before Sentence

For any sum paid, or offered to be paid, by the Named Entity and/or Insured Persons, without our prior written consent, to or for a complainant prior to imposition of sentence by the court, as reparation or otherwise, following an Occurrence under any Act of Parliament.

6.4.12 Taxes

For the payment of any tax, including any Fine or penalty resulting from the failure to pay any tax.

6.4.13 Continuing Fine

For payment of any Fine (or part of a Fine) which is imposed in relation to a period of time after the Named Entity or Insured Person first received notice from the prosecuting body of the intention to commence a prosecution in relation to the offence.

6.4.14 Compliance Costs

- 1 for payment of any Fine (or part of a Fine) which is a penalty imposed for failing to comply with any enforcement order or remedial order;
- 2 for the cost incurred by You in complying with any enforcement or remedial order.

6.4.15 Asbestos

Whatever, directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

6.5 Conditions

Refer also to the general conditions of this Policy.

6.5.1 Reporting of Claims

Irrespective of the quantum, You must give Us immediate notice in writing of:

- 1 any Claim made against You; or
- 2 the receipt of notice from, or information as to any intention by, any party to make a Claim against You; or
- 3 any Event that a reasonable Insured in Your position would have considered may give rise to a Claim. Where such notice is given to Us by You, any Claim that may subsequently be made against You shall be deemed to be a Claim made during the Period of Insurance.

Provided that in order to qualify as a Claim capable of being covered by this Policy, Your notice in writing must:

- (a) relate to a Claim that occurred during the Period of Insurance; and
- (b) be given during the Period of Insurance or within 30 days after its expiry.

6.5.2 Conduct of Claims

You must not make any admission or any decision that affects the Conduct of a Claim, or incur any costs or expenses in connection therewith without Our prior written consent.

We are entitled at any time to nominate a solicitor to act as Your solicitor and shall have total discretion as to the Conduct of the Claim, in Your name. The solicitor shall at all times be at liberty to disclose to Us any information obtained in the course of so acting, whether from You or howsoever. You hereby waive all claims to legal professional privilege that You might otherwise have as between Yourself and Us in respect of such information.

If We believe that the Claim will not exceed the Deductible, We may instruct You to assume responsibility for the Conduct of a Claim at Your expense. Should the Claim subsequently exceed the Deductible, We agree to reimburse the reasonable costs and expenses incurred by You that exceed the Deductible. You must advise Us as soon as the total costs of the Claim exceed the Deductible or it becomes apparent that they are likely to do so.

6.5.3 Defence of Prosecutions

We shall not require You to defend any prosecution in respect of any Claim against You, nor shall You require Us to defend, on Your behalf, any prosecution in respect of any such Claim unless a legal counsel (to be mutually agreed upon by You and Us) shall advise that such prosecution should be defended.

In formulating such advice, counsel shall take into consideration whether the defence of the prosecution has a reasonable prospect of success. The cost of counsel's opinion shall be regarded as part of the Defence Costs of any Claim.

In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended, then You can elect to defend the prosecution at your own expense but Our liability will not exceed the amount of the Fine (or Order for Reparation under the HSE act, if applicable) and Defence Costs that would have been payable had You elected not to defend.

6.5.4 Allocation of Costs

If costs or expenses are incurred both in respect of a Claim insured under this Policy and a matter that is not insured under this Policy then We shall be liable to pay only a fair proportion of such costs or expenses. In the event that You and Us are unable to agree as to a fair proportion, then counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

Section 7: Commercial Motor

7.1 Definitions applicable to this Section 7

See also the General Definitions in Section 1

Accessories

'Accessories' means accessories and spare parts of the Vehicle (including when temporarily removed from the Vehicle), such as (but not limited to) on-board computers, telephone installations, load-securing or protection equipment in, on or in connection with the Vehicle, but excluding any item of electrical or communication equipment not permanently affixed to the Vehicle's electrical system.

Accident / Accidental

'Accident / Accidental' means a happening or event occurring in New Zealand that is unintended and unexpected by You.

Bodily injury

'Bodily injury' means the death of, or bodily injury to, any person, including disability, sickness, disease, shock, fright, mental anguish or mental injury.

Description of Use

'Description of Use' means used by You, or anyone with Your consent:

- 1 for Your Business or occupation stated in the submission or proposal;
- 2 for Your private, social or domestic purposes;
- 3 for a business or occupation comparable with Your Business stated in the submission or proposal when temporarily lent out by You.

Driver

'Driver' means the person driving your Vehicle or operating any equipment in it or on it.

Insured Vehicle

'Insured Vehicle' means any vehicle listed in the Vehicle Schedule including its Accessories.

Market Value

'Market Value' means the reasonable sale price of the same, or a comparable Vehicle, of similar pre-Loss age and condition.

Scope of Cover

'Scope of Cover' means one of the following levels of cover as shown in the Schedule:

- 1 'Comprehensive': All parts of this Section apply; or
- 2 'Third Party Liability Only': Only Part 2 and the Uninsured Third Party Protection extension under Part 1 of this Policy apply;
- 3 'Third Party Fire Theft and Illegal Conversion': Part 1 and Part 2 of this Section apply. However, in respect of Part 1 the cover is restricted to Loss caused directly by fire, lightning, explosion, theft or illegal conversion of your vehicle, and Loss covered by the Uninsured Third Party Protection extension.

Vehicle Schedule

'Vehicle Schedule' means the most recent underwriting schedule supplied to Us, by You or on Your behalf, listing the Vehicles covered under this Policy and their Market Values.

7.2 Part 1: Cover for your vehicle

We will indemnify You for accidental Loss to an Insured Vehicle during the Period of Insurance.

7.2.1 Basis of Settlement

- 1 We will, at our option, settle the claim in one of the following ways:
 - (a) pay the reasonable cost of repairs; or
 - (b) pay the cash equivalent of the reasonable cost of repairs; or
 - (c) replace Your Vehicle; or
 - (d) pay the Market Value at the time of the Loss;
 - (e) if Your Vehicle is leased at the time of the Loss, pay the greater of the reasonable Market Value or residual value of Your Vehicle. This does not include:
 - (i) penalties for early termination or any additional distance travelled, and resulting from lack of servicing or poor maintenance;
 - (ii) unpaid obligations under the lease at the time of the Loss; and
 - (iii) 'balloon' payments; and
 - (iv) the amount by which the residual value of Your Vehicle exceeds 120% of its Market Value, where there is a guaranteed buy back arrangement.
- 2 Our maximum liability will not exceed the Market Value of Your Vehicle or the amount stated in the Schedule for that Insured Vehicle, whichever is the lesser.
- 3 We are not liable for that portion of any repair or replacement that improves the condition of Your Vehicle beyond its condition before the Loss.
- 4 If any part or component of Your Vehicle is no longer manufactured We are not liable for more than the supplier's or manufacturer's last list price.

7.3 Part 1 Additional Cover

These extensions apply automatically. They are otherwise subject to the terms of the Policy.

7.3.1 Car sharing agreement

Payment made by passengers as part of a car sharing agreement does not constitute the conveyance of passengers for hire or reward.

7.3.2 Claim preparation costs

This Policy covers reasonable costs incurred by You in preparing a claim for Loss covered under Part 1, or proving that a Loss is a claim under Part 1 (but not costs incurred in disputing the claim if it is declined).

Our total liability in respect of any one claim will not exceed \$5,000. A Deductible of \$500 for any one claim applies.

7.3.3 Completion of journey costs

When, as a result of a Loss covered under Part 1, Your journey cannot be continued, this Policy covers the reasonable costs incurred in:

- 1 hiring another vehicle of similar make and model to complete the journey, or returning You to where the journey first commenced; and
- 2 returning Your Vehicle to the premises where it is normally based following its repair, or the cost of recovering it in the event of theft or illegal conversion.

Our total liability will not exceed \$5,000 in the aggregate for all Accidents during the Period of Insurance.

7.3.4 Death by accident

If You die as a result of an Accident, whether or not death occurs at the time of the Accident, We will pay to the executors or administrators of your estate the amount of \$5,000, regardless of any other insurance.

7.3.5 Disability modifications

If You are injured as a direct result of Loss covered under Part 1, and this results in permanent disability which necessitates vehicle modifications (such as hand controls), either to an Insured Vehicle or to Your private vehicle, Part 1 covers the reasonable cost of these modifications.

However, We are only liable in excess of any amount payable by the Accident Compensation Corporation, and its total liability will not exceed \$5,000 for any one Accident.

7.3.6 Employees' vehicles

Part 1 covers Vehicles owned by Your employees, while they are using their vehicle in the course of Your Business, but only if this business use results in their own personal vehicle insurance no longer applying.

7.3.7 Expediting expenses

This Policy covers You for the additional costs of express freight and overtime to expedite repairs as a result of Loss for which a claim is payable under Part 1 of this Policy.

7.3.8 Funeral expenses

If You die as a direct result of Loss covered under Part 1, whether or not death occurs at the time of the Loss, this Policy covers all funeral expenses associated with the burial or cremation of You, in excess of any amount payable by the Accident Compensation Corporation or another insurer.

Cover includes any travel costs within New Zealand of the deceased Insured or any member of his or her immediate family (e.g. father, mother, brother).

Our total liability will not exceed \$5,000 in respect of any one Accident.

7.3.9 Goods in Transit

If Your Vehicle suffers Loss arising from:

- 1 a fire; or
- 2 a collision; or
- 3 an impact; or
- 4 overturning;

which is covered under Part 1, this extension covers Loss to property owned by You carried on Your Vehicle at the time.

Our total liability will not exceed \$5,000, for any one Accident, and is subject to a deductible of \$100 for any one Accident.

7.3.10 Hazardous substance emergencies

We will indemnify you for any charge that the New Zealand Fire Service is authorised to make in respect to any hazardous substance emergency arising out of or in connection with your Vehicle. The indemnity will be payable regardless of whether your Vehicle has sustained Loss.

Our total liability will not exceed \$5,000 in respect of any one Accident.

7.3.11 Hoist

Part 1 covers mechanical breakdown or mechanical failure during the Period of Insurance of hoists permanently attached to Your Vehicle. Exclusion 7.5.2 3 does not apply.

There is no cover if the breakdown or failure is caused by wear and tear.

Our total liability will not exceed \$5,000 for any one Accident. We are not liable for the Deductible of \$500, or the standard Part 1 Deductible, whichever is the greater.

7.3.12 Load recovery

Part 1 covers the reasonable costs incurred in salvaging any load carried by an Insured Vehicle which, following Loss covered under Part 1, has spilled onto a road, carriageway or parking area. This includes the reasonable costs of reloading or trans-shipping the load to the nearest place of safe storage.

Our total liability will not exceed \$5,000 for any one Accident.

7.3.13 New replacement vehicle

If a car, stationwagon, utility, van or four-wheel drive Vehicle under 3,500kgs, suffers a total Loss or a constructive total Loss covered under Part 1 within 12 months of it being first registered as a new Vehicle in New Zealand, We will either:

- 1 provide a new replacement Vehicle of the same make, model and specification, or
- 2 if a new replacement is not available, pay the price for which such a Vehicle was last available.

7.3.14 Repairs authorisation

You may authorise any reasonable repairs to a maximum of \$1,000 without prior notice to Us. If the estimated repair costs exceed this amount, repairs must not be commenced without our consent or the consent of the assessor. We or the assessor must be given the opportunity of examining the damage to Your Vehicle prior to repair.

7.3.15 Rewards

If Loss caused by theft of an Insured Vehicle is covered under Part 1, this extension covers any reward offered, with Our prior approval, to secure the return of Your Vehicle.

Our total liability will not exceed \$5,000 for all rewards offered for any one claim.

7.3.16 Salvage and safety

Following Loss covered under Part 1, this Policy covers reasonable costs incurred in salvaging or recovering Your Vehicle, including the costs of ensuring its safety and delivery to a place of suitable repair or inspection.

7.3.17 Theft costs

If Loss caused by theft of Your Vehicle is covered under Part 1, this extension covers reasonable costs incurred by You of hiring another vehicle of similar make and model subject to:

- 1 the maximum hire cost of \$2,500 (including GST);
- 2 the Deductible of 7 days' hire.

7.3.18 Tyre damage

Part 1 covers damage during the Period of Insurance to any tyre (including its inner tube) fitted to an Insured Vehicle not principally used for driving on public roads, regardless of whether there has been Loss to any other part of Your Vehicle or not.

We will indemnify you by either:

- 1 repairing the damage; or
- 2 paying an amount equal to the reasonable cost of repair; or
- 3 replacing the tyre; or
- 4 paying an amount equal to the cost of the tyre.

Our total liability shall not exceed the purchase price of a new replacement tyre, less a reasonable deduction for the damaged tyre's wear and tear, but in all cases not exceeding \$5,000. This extension is free of Deductible. Part 1 exclusion 7.5.24 does not apply to this extension.

7.3.19 Windscreens and window glass

If Loss covered under Part 1 occurs solely to an Insured Vehicle's windscreen, sunroof, headlights or window glass, no Deductible applies unless otherwise specified in the Schedule. This will also apply in respect to bodywork that has been scratched or damaged as a result of the above items sustaining Loss.

7.4 Part 1 Optional Additional Cover

These extensions are optional and only apply if stated in the Schedule. They are otherwise subject to the terms of the Policy.

7.4.1 Agreed value – applicable to Specialist Mobile Plant only

In the event of a total Loss covered under Part 1, the total amount payable shall be the agreed value as declared by You in the Schedule. Provided:

- 1 the agreed value shall have been proven as correct to Our satisfaction prior to inception or renewal of this Policy;
- 2 no payment beyond the Market Value will be made:
 - (a) if you elect not to replace Your Vehicle;
 - (b) if replacement is not carried out within a reasonable time;
 - (c) until the cost of replacement has been actually incurred.

7.4.2 Appreciation – applicable to mobile plant only

This Policy covers you for appreciation of the Market Value of the mobile plant specified in the Vehicle Schedule as a result of Loss covered under Part 1. Provided:

- 1 the specified Market Value of the mobile plant was correct at the time of inception or renewal of this Policy;
- 2 the appreciation shall be no greater than 25% of the Market Value specified in the Vehicle Schedule.

7.4.3 Ingestion of foreign objects

Notwithstanding exclusion 7.5.1 4 to Part 1, We will indemnify You for Loss resulting from ingestion or entry of any foreign object into any agricultural implement or machine, provided this occurs whilst Your Vehicle is operated for the purpose for which it has been designed.

7.4.4 Loss of use

If Loss to an Insured Vehicle covered under Part 1 prevents You from using it, this extension covers the reasonable cost of Your hiring a substitute Vehicle, during the Period of Loss (as defined below). This extension is subject to the following:

- 1 it only applies to Your Vehicles stated in the Schedule as being subject to this extension.
- 2 the substitute Vehicle must be of similar specification to Your Vehicle.
- 3 the extension does not apply if you have available a free substitute Vehicle or purchase an additional Vehicle.
- 4 the repair of Your Vehicle must be carried out as soon as reasonably practicable.
- 5 this extension does not cover costs charged by the hire company for insurance, petrol or normal running costs.

Our total liability under this extension will not exceed the following limits:

Deductible:	The cost of the first seven days' hire
Maximum limit any one Insured Vehicle:	\$(as per Schedule)
Maximum Period of Loss any one Insured Vehicle:	2 months (60 days)

'Period of Loss' means the period:

- 1 beginning when Your Vehicle is delivered to the repairer to start the repair, or from the date of the Accident, if your Vehicle can no longer be driven, or is lost at that date; and
- 2 ending when the repairs are completed and you have taken delivery of Your Vehicle, or have returned the substitute hire Vehicle, whichever occurs first. In the case of a total Loss, the period ends on the date the Insurer makes payment for the total Loss.

7.5 Part 1 Exclusions

Refer also to the general exclusions of this Policy.

7.5.1 Causes of Loss

Part 1 of the Commercial Motor Section of this Policy does not insure Loss caused by:

- 1 wear and tear;
- 2 rust or corrosion;
- 3 faulty or defective design or specification;
- 4 ingestion or entry of any foreign object into any agricultural implement or machine.

7.5.2 Types of Loss

Part 1 of the Commercial Motor Section of this Policy does not insure the following types of Loss however caused:

- 1 consequential loss of any kind (including loss of use);
- 2 depreciation or loss of value;
- 3 mechanical or electrical breakdown or failure of any part of Your Vehicle, including its engine, hydraulic and transmission systems. (Note: servicing and maintenance errors (among other things) are not covered.) However, this exclusion 7.5.2 3 shall not apply if the mechanical or electrical breakdown or failure results in or from Your Vehicle:
 - (a) catching fire;
 - (b) overturning;
 - (c) suffering an impact or collision;
 - (d) being partly or fully immersed in water;
 - (e) being stolen or illegally converted;
 - (f) being maliciously damaged;
- 4 Damage to, or destruction of, tyres. However, this exclusion 7.5.2 4 shall not apply if the damage or destruction results from separate Loss that is covered by this Policy.

7.6 Part 1 Conditions

Refer also to the general conditions of this Policy and also conditions applicable to Part 1 and Part 2.

7.6.1 Minimise the loss

If there is a claim under Part 1, You must take prompt steps to minimise the Loss and to prevent further Loss, and if your Vehicle can be driven safely and without causing further Loss, take it to any repairer, or otherwise have it towed to the nearest suitable repairer or tow-yard.

No repairs should be carried out until Our surveyor/assessor has examined Your Vehicle and approved any repair work, unless We have agreed otherwise.

7.7 Part 2: Liability to Third Parties

7.7.1 Cover

We will indemnify You, and any Driver who is in charge of Your Vehicle with Your consent, against the following:

- 1 liability for:
 - (a) Accidental Bodily Injury to any person;
 - (b) Accidental Loss to any property;
 occurring in New Zealand during the Period of Insurance in connection with an Insured Vehicle (including whilst being loaded or unloaded) or in connection with the movement by You of any Vehicle which:
 - (i) is parked in a position which prevents or impedes the loading or unloading of Your Vehicle; or
 - (ii) prevents or impedes the legitimate passage of Your Vehicle.

Exclusion 7.9.4 shall not apply to the Vehicle being moved.

- 2 liability arising out of Your Vehicle being used in accordance with the Description of Use, during the Period of Insurance, for the purpose of towing any one trailer or caravan, or any one disabled vehicle, while attached to Your Vehicle. However, the towing must not be for hire or reward.
- 3 Defence costs necessarily and reasonably incurred to defend 1 above.

7.7.2 Basis of Settlement

- 1 Our maximum liability under Part 2 (inclusive of all costs and expenses) will not exceed the limit stated in the Schedule for each claim, or series of claims, arising from one Accident.
- 2 If Our maximum liability is insufficient to cover both You and any other party entitled to cover under this Section it shall apply first to You.
- 3 We are not liable for the Deductible shown in the Schedule for each claim or series of claims arising from one Accident.

7.8 Part 2 Additional Cover

Part 2 Liability to Third Parties part of this Policy includes cover for the following.

7.8.1 Borrowed vehicles

If You borrow a Vehicle during the Period of Insurance this extension covers Your liability:

- 1 to the owner of the Vehicle against Loss that would be covered under Part 1; and
- 2 to other parties that would be covered under Part 2.

Provided however the Vehicle must be used in the course of Your Business at the time. Our liability will not exceed \$100,000 for any one Loss. Exclusion 7.9.4 is deleted to this extent.

7.8.2 Cleaning up costs

Part 2 covers all costs lawfully charged by any local government body or authority, the New Zealand Fire Service, or any other entity for cleaning or restoring the site of an Accident following Loss, which is covered under Part 1 of this Policy.

Our total liability will not exceed \$20,000 for any one Loss. A Deductible of \$500 for any one claim applies.

7.8.3 Defence costs

If any Driver insured under Part 2:

- 1 is charged with manslaughter, or reckless or dangerous or careless driving causing death arising from Loss, covered under Part 1; and
- 2 is legally represented at any enquiry or coroner's inquest in connection with the death, this Policy covers the reasonable costs of the Driver's legal representation.

Our total liability will not exceed \$5,000 for any one Accident.

7.8.4 Driver's indemnity

We will indemnify any person who is in charge of any Insured Vehicle on your order or with their permission, provided that:

- 1 the driver is not entitled to indemnity under any other policy;
- 2 this indemnity will not apply to liability in connection with the letting out on hire of Your Vehicle without a driver.

7.8.5 Exemplary damages

Part 2 covers your liability for exemplary damages in New Zealand for Bodily Injury. Exclusion 7.12.2 3 is deleted to this extent.

This extension is subject to the following:

- 1 Our total liability will not exceed \$500,000 for any one claim, or series of claims arising from one Accident, and \$1,000,000 in the aggregate for all claims during the Period of Insurance.
- 2 each claim will be subject to a Deductible of 10% of the claim, with a minimum of \$5,000, in addition to any other Policy Deductible.
- 3 there is no indemnity under this extension:
 - (a) arising from any dishonest, fraudulent or malicious act or omission by You or anyone acting on behalf of You;
 - (b) arising from any claim first notified to you but not notified to Us within six months of that date.

7.8.6 Financial charge

Where there is Loss, this Policy covers the balance of any outstanding charge on an Insured Vehicle if, after it is purchased during the Period of Insurance, you becomes liable to pay it, despite making proper enquiries before purchasing it.

Our total liability will not exceed \$5,000 for any one Insured Vehicle.

7.8.7 Hired vehicles

If You hire a Vehicle during the Period of Insurance and do not arrange separate insurance cover for it, this extension covers Your liability:

- 1 to the owner of the Vehicle, against:
 - (a) Loss that would be covered under Part 1, subject to Our liability not exceeding \$100,000 for any one Vehicle; and
 - (b) consequential losses caused by this Loss, subject to Our liability not exceeding \$50,000 for any one claim; and
- 2 to other parties that would be covered under Part 2.

Exclusion 7.9.4 does not apply.

7.8.8 Marine liability

If an Insured Vehicle is transported by sea or air between places in New Zealand during the Period of Insurance, Part 2 covers You for any resulting general average and salvage charges recoverable from it at law. This applies regardless of whether or not Your Vehicle suffers Loss.

7.8.9 Principals' indemnity

If an Insured Vehicle is used or operated on any construction or works project during the Period of Insurance, Part 2 indemnifies the principal of that project, but only in respect of that vicarious liability in connection with your use or operation of Your Vehicle. This cover is subject to the terms of Part 2.

7.8.10 Weight damage

Part 2 covers your legal liability for damage to any property (including a road) during the Period of Insurance caused by:

- 1 the weight of the load carried by Your Vehicle; or
- 2 from the weight of Your Vehicle; or
- 3 from the combined weight of the load and Your Vehicle.

Our total liability will not exceed \$500,000 for any one Accident, and is subject to a Deductible of \$2,000 for each claim.

Exclusion 7.9.6 is deleted to this extent.

7.9 Part 2 Exclusions

Refer also to the general exclusions of this Policy and also exclusions to Part 1 and Part 2.

Part 2 of the Commercial Motor Section of this Policy does not insure:

7.9.1 Liability outside New Zealand

Liability determined by any court outside New Zealand;

7.9.2 Operation of plant or machinery

Liability directly or indirectly caused while any component on Your Vehicle is being used or operated for the purpose for which it was designed (e.g. operation of a crane or back hoe);

7.9.3 Person in charge

Liability in respect of Loss to property, or Bodily Injury to any person, who at the time of the Accident, was in charge of Your Vehicle;

7.9.4 Property in care, custody or control

Liability in connection with any property that belongs to, or is in the care, custody or control of You, other than:

- 1 personal baggage and wearing apparel of any passenger; or
- 2 a building leased or rented by You; or
- 3 a Vehicle (not being the property of You, or insured under Part 1 of the Policy) which is being towed by an Insured Vehicle. However, this does not apply to Vehicles which are towed or recovered for reward where your business includes a vehicle recovery service;

7.9.5. Transporting of a load

Liability in connection with the transporting of a load to, or away from, Your Vehicle. However, this exclusion does not apply to the actual loading or unloading of Your Vehicle.

7.9.6 Vibration or weight

Liability for Loss to property (including a road) arising from:

- 1 vibration caused by Your Vehicle; or
- 2 the weight of the load carried by Your Vehicle; or
- 3 the weight of Your Vehicle; or
- 4 the combined weight of the load and Your Vehicle.

7.10 Part 2 Conditions

Refer also to the general conditions of this Policy and conditions applicable to Part 1 and Part 2.

7.10.1 Settlement option

We have the option to pay to You the full amount of Our liability under Part 2, or any lesser amount for which the claim can be settled, plus defence costs incurred to date.

We will then give up the conduct of the defence or proceedings. We will not be liable for any further costs or expenses after this.

7.11 Part 1 and Part 2 Additional Cover

These extensions automatically apply. They are otherwise subject to the terms of the Policy.

7.11.1 Additions and Deletions

Any Insured Vehicle sold during the Period of Insurance ceases to be insured from that date and is deleted.

- 1 Any Vehicle purchased by You during the Period of Insurance will automatically be insured from the date of its purchase as an addition, as long as the purchase is advised to Us within 30 days (or if the Vehicle is purchased for more than \$100,000, within 7 days).
- 2 Each purchased Vehicle will be insured for its Market Value, and each sold Insured Vehicle was insured for the value shown on the Vehicle Schedule.
- 3 The premium for all additions and deletions will be calculated and paid at the end of the Period of Insurance based on Our current premium rates.
- 4 Our total liability will not exceed the limit specified in the Schedule in respect of any new addition that has not been advised to it.

7.11.2 Breach of Condition

This Policy will not be invalidated by any breach of condition, where the breach occurs without Your knowledge, provided We are advised immediately it becomes known to You and any additional premium paid.

7.11.3 Invalidation

This Policy covers an Insured Vehicle (including hired or borrowed vehicles) driven in any of the circumstances referred to in exclusion 7.12.1, provided:

- 1 the driving was without Your knowledge or consent; and
- 2 You have not waived any right of recovery against the Driver; and

For the purposes of this extension You shall mean any person employed by You with the delegated authority of You to control the conduct of the Driver or, if the Driver is of such senior capacity in Your Business that his/her knowledge and consent is effectively the knowledge and consent of You, the Driver himself/herself.

7.11.4 Uninsured third party protection

If a third party has no valid and collectable insurance, this extension covers Your no claims bonus, Policy Deductible, and uninsured Loss, where:

- 1 the third party was at fault for the Accident; and
- 2 the identity of the third party is established; and
- 3 You are unable to make any recovery from the third party.

Provided that in respect of the Third Party Liability Only, and Third Party Fire Theft and Illegal Conversion scope of covers, Our total liability will not exceed \$5,000 in respect of any one Accident.

7.12 Part 1 and Part 2 Exclusions**7.12.1 This policy does not insure any insured vehicle while it is:**

- 1 being driven outside the Description of Use, including being driven on a race track, or for pace making, reliability trials, hill climbs or speed tests, or being driven in preparation for any one of these activities;
- 2 being driven in an unsafe condition. This includes any condition:
 - (a) which is contrary to any recommendation by the manufacturer of the Insured Vehicle;
 - (b) as a result of which Your Vehicle is not fit to deal with any peril likely to be encountered during the course of its operation.

This exclusion only applies if You or the person in charge of Your Vehicle was aware, or with reasonable diligence ought to have been aware, of the unsafe condition;

- 3 loaded or operated in excess of the manufacturer's recommended specifications, or loaded contrary to the law, or its ancillary plant or machinery being operated contrary to the law.

This exclusion only applies if You, or the person in charge of Your Vehicle, was aware, or with reasonable diligence ought to have been aware, of the unsafe condition;

- 4 being driven by any person who is not the holder of a licence for the appropriate class and use applicable to the operation of Your Vehicle or its components, or who is breaching any condition of their licence.

This exclusion will not apply if the Driver had held and is not disqualified from holding or obtaining, and actually obtains a licence, nor if Your Vehicle is being used for the purpose of teaching a learner to drive, if all requirements of the law are being complied with;

- 5 being driven by any person who:
 - (a) is under the influence of any intoxicating substance or drug; or
 - (b) has a proportion of alcohol in the breath or blood which exceeds the legal limit; or
 - (c) fails to supply a blood or breath sample as required by law; or
 - (d) fails to stop, or remain at the scene, following an Accident as required by law;
- 6 being driven in breach of the law relating to driving hours.

Exclusions 1 – 6 will not apply in respect of Loss which results from fire, theft or conversion.

7.12.2 This policy does not insure:

- 1 liability incurred by You under an agreement where there would have been no liability without the agreement;
- 2 liability for Bodily Injury which is covered by the Accident Compensation Corporation;
- 3 liability for exemplary damages.

7.13 Part 1 and Part 2 Conditions**7.13.1 Additional information**

You, and any other person covered under this Policy, must:

- 1 agree to be examined under oath by a person named by Us whenever reasonably required;
- 2 supply any information or documentation that We reasonably require;
- 3 authorise the disclosure to Us of any personal information about them held by other parties, which is relevant to the claim or this Policy.

7.13.2 Notification to authorities

You must notify the police immediately in respect of Loss or liability as a result of theft, illegal conversion, arson, malicious damage, or Bodily Injury to any person.

7.13.3 Alteration

This Policy was arranged on the basis of the information supplied to Us by You. If any of the information changes during the Period of Insurance which:

- 1 increases the nature of the risk covered; or
- 2 alters the nature of the risk covered;

You must tell Us as soon as You become aware of the change.

Examples of changes are:

- (a) modifications made to Your Vehicle (excluding conversion to LPG or CNG);
- (b) a change in the use of Your Vehicle;
- (c) a change in the physical ability of any Driver;
- (d) criminal convictions.

7.13.5 Sums Insured

All values of Insured Vehicles stated in the Vehicle Schedule must represent, as nearly as possible, their Market Value. Values such as book value, depreciated cost, written down value and residual value are not sufficient to comply with this Policy condition.

In the event of a claim We may require You to provide schedules of Insured Vehicles showing their book value, depreciated cost, written down value or residual value in Your Business records.

7.13.5 Total loss

If a claim for an Insured Vehicle is paid as a total Loss (or constructive total Loss), the cover on that Insured Vehicle ceases entirely from the date of the Loss and no premium will be refundable for the unexpired Period of Insurance in respect of that Insured Vehicle.

Your Vehicle then becomes the property of Us.

Section 8: Machinery Breakdown

8.1 Definitions applicable to this Section 8

See also the General Definitions in Section 1

Average

The meaning of subject to average:

- 1 this insurance Policy contains a provision making it 'subject to average'.
- 2 that provision will have effect only if the property insured under the Policy is underinsured at the time of Loss.
- 3 if the property insured under the Policy is underinsured at the time of Loss, the following rules apply:
 - (a) if You suffer a total Loss, the provision will have no effect;
 - (b) if You suffer a partial Loss, the maximum amount that You may recover will bear the same proportion to Your actual Loss as the amount for which the property is insured bears to the full value of the property; e.g. Your property is worth \$20,000. You insured it for \$10,000. You suffer a loss of \$5,000. If Your Policy is 'subject to average', the maximum amount that You may recover will be \$2,500.
 - (c) whatever Your Loss, in no case will You be entitled to recover more than the amount for which the property is insured.

Breakdown

'Breakdown' means sudden and unforeseen accidental physical Loss or damage from any cause not excluded which necessitates immediate repair or replacement before the Property Insured can resume normal work.

Boilers and/or Pressure Vessels

'Boilers and/or Pressure Vessels' means any vessel which is normally subject to applied or generated steam, air, gas or other fluid pressure and includes any mountings and fittings attaching directly to them.

Property Insured

'Property Insured' means for the purpose of this Section only, items of electrical, electronic and mechanical machinery including their interconnecting cabling and piping, and/or boilers and pressure vessels, specified in the Schedule excluding office and laboratory machinery and mobile items of plant and equipment. Notwithstanding exclusion 8.4.1 5, this Section covers addition to or replacement refrigerant gas necessitated by a Breakdown.

8.2 Part 1: Machinery Breakdown

8.2.1 Cover

We will pay You in accordance with the basis of settlement for damage as a result of a Breakdown occurring during the Period of Insurance to the Property Insured while that property is within the precincts of the Situation whilst:

- 1 working or at rest; and/or
- 2 is being dismantled or moved for the purpose of cleaning, inspecting, overhauling or repairing, or in the course of re-erection.

But only after completion of successful initial commissioning at the Situation.

8.2.2 Basis of Indemnity applicable to Part 1

We will indemnify You, at our option, in cash or by repair or by replacement to a maximum of the sum insured shown in the Schedule for each item of specified machinery, as follows:

- 1 where damage to property insured can be repaired the reasonable cost of:
 - (a) restoring the damaged item to its former working order;
 - (b) dismantling and re-erecting and removal of debris necessary to complete repairs;
 - (c) ordinary freight costs to and from the repair shop;
 - (d) any customs duty.

If You complete the repairs Yourself We will pay the reasonable cost of materials and wages incurred for the purpose of the repairs plus a reasonable percentage to cover overhead charges.

No deduction shall be made for depreciation in respect of parts replaced.

- 2 Where an insured item is totally destroyed We shall, at Our option, either:
 - (a) pay the actual value of the item immediately before the Breakdown, such actual value being calculated by deducting reasonable depreciation from the installed new replacement cost of the item; or
 - (b) supply an equivalent replacement item similar in type, capacity and condition of the item immediately before the Breakdown.

An item will be deemed to be totally destroyed if the cost of repairs detailed in 1 above equals or exceeds the actual value of Your item immediately before the Breakdown.

8.2.3 Sum Insured

The sum insured for each item at the commencement of this insurance and any subsequent renewal thereof must not be less than the new replacement cost, which shall mean the cost of replacement of the insured item by a new item of the same kind and capacity including packing, freight, customs duties and dues if any, and installation charges.

8.3 Optional Additional Cover applicable to Part 1: Machinery Breakdown

These extensions are optional and only apply if stated in the Schedule. They are otherwise subject to the terms of the Policy.

8.3.1 Business Interruption

Notwithstanding exclusion 3.5.1 2, this Policy insures Loss resulting from interruption of or interference with Your Business caused by

mechanical or electrical breakdown or derangement of machinery or electrical equipment. The cover provided is as set out in Section 3 of the Policy with a Deductible of 48 hours or the Deductible specified in the Schedule.

8.3.2 Increased Cost of Working

We will indemnify You in respect of increased cost of working following Breakdown of the insured machinery that is indemnifiable under this Policy or would have been indemnified but for the application of a Deductible.

The amount payable will be:

- 1 the additional expenses You reasonably incur in order to continue the business during the indemnity period immediately following the Occurrence less any savings in expenses as a result of the Occurrence;
- 2 auditors' or accountants' charges reasonably incurred for producing and certifying details of a claim under this extension.

Provided that Our total liability in respect of any one claim shall not exceed the limit specified in the Schedule less the amount of any Deductible specified within this Section to be borne by You before Our liability commences.

'Indemnity Period' means the period beginning 48 hours following the Occurrence of the damage and ending not later than three months during which the results of the business shall be affected in consequence of the Breakdown.

8.3.3 Overseas Airfreight

We will indemnify You for those extra costs that are necessary and reasonable for overseas airfreight connected with the restoration or repair of Loss or damage covered by this Policy Section.

This is on the condition that Our total liability for any one claim including this extension shall not exceed the sum insured specified in the Schedule less the appropriate Deductible.

'Airfreight' means transportation by any recognised airline's normal scheduled service and does not include any chartered flight.

8.3.4 Overtime, Express Freight

Notwithstanding anything to the contrary contained in the Policy, it is hereby declared and agreed that We will indemnify You for the extra costs necessarily and reasonably incurred in respect of express delivery, airfreight within New Zealand, overtime and holiday rates or wages incurred in connection with the restoration or repair of Loss or damage indemnifiable under the Policy.

Provided that Our total liability in respect of any one claim shall not exceed the limit specified in the Schedule less the amount of any Deductible specified within the Policy to be borne by You before Our liability commences.

And further provided that in respect of any one claim the amount payable as overtime or express or airfreight charges separately in respect of such charges shall not exceed 25% of the amount We would otherwise be liable for in respect of carrying out the restoration or repair at ordinary charges.

'Airfreight' shall be deemed to mean transportation by any recognised airline's scheduled service and shall not include transport by aircraft specifically chartered for the purpose.

8.3.5 Reinstatement Insurance (Boilers and Pressure Vessels Only)

In the event of damage to item(s) where this optional extension has been taken as shown in the Schedule for which a claim is admitted under the Policy, the basis upon which the amount payable is to be calculated shall be the reinstatement of the plant damaged.

'Reinstatement' shall mean:

- 1 where the item is damaged beyond repair its replacement by a similar item in a condition equal to but not better or more extensive than its condition when new.
- 2 where the item is damaged and repairable the repair of the damaged item so that its working condition is substantially the same as that immediately before the accident.

Provided that:

- (a) the work of reinstatement will be commenced and carried out with reasonable despatch otherwise no payment beyond the amount which would have been payable under the Policy if this option had not been incorporated therein shall be made.
- (b) no payment beyond the amount which would have been payable under the Policy if this option had not been incorporated therein shall be made until the cost of reinstatement shall have been actually incurred.
- (c) no payment beyond the amount which would have been payable under the Policy if this option had not been incorporated therein shall be made if at the time of damage to the insured item such damage shall be covered by any other insurance effected by or on Your behalf which is not on a reinstatement basis.
- (d) where by reason of the above provisions no payment is to be made beyond the amount which would have been payable under the Policy if this option had not been incorporated therein the rights and liability of You and Us in respect of damage shall be subject to the terms and conditions of the Policy as if this option had not been incorporated therein.
- (e) the amount payable for the cost of reinstatement of a destroyed or damaged item shall not exceed the sum insured set opposite to that item in the Schedule.

8.4 Exclusions applicable to Part 1: Machinery Breakdown

Refer also to the general exclusions of this Policy.

8.4.1 This Policy does not insure:

- 1 foundations and masonry;
- 2 exchangeable and replaceable parts such as shear pins, bits, drills, knives, saw blades;
- 3 dies, moulds, patterns, blocks, stamps, punches, coatings or engravings on cylinders and rolls, parts made of glass, rubber, textile or synthetics;

- 4 parts which by their use or nature suffer a high rate of wear or depreciation such as crushing surfaces, balls, hammers, screens and sieves, wear plates, elevator and conveyor belts or bands, chains, flexible pipes, jointing and packing materials, filter cloths, grinding wheels, ropes, belts, straps, cables other than electrical conductors, fuses, brushes, batteries, tyres, refractory material, grate bars, burner jets;
- 5 operating media such as fuels, chemicals, catalysts, filter substances, heat transfer media, cleansing agents, lubricants;
- 6 consequential loss of any kind or description whatsoever;
- 7 damage caused by any faults or defects existing at the time of commencement of this insurance or any subsequent renewal thereof and known to You and not disclosed to Us;
- 8 damage resulting from experiments or overload or similar tests requiring the imposition of abnormal conditions;
- 9 damage resulting from the direct application of any tool or process in the course of maintenance, inspection, repair, alteration, modification or overhaul.

8.4.2 This Policy does not insure any damage directly or indirectly caused by or resulting from:

- 1 Natural Disaster damage or landslip, subsidence or erosion of the land;
- 2 fire, smoke, soot, chemical explosion of any kind, lightning; wind, storm, flood, hail, snow, frost, ice, water, leakage or spillage of gas, vapour or liquid;
- 3 aircraft or other aerial devices or articles dropped therefrom;
- 4 impact by animals, landborne vehicles, or waterborne craft;
- 5 riot, civil commotion, strike, locked-out workers, vandalism, malicious acts;
- 6 theft, or attempts thereat.

8.4.3 In respect of the machinery or part immediately affected, this Policy does not insure:

- 1 scratching of painted or polished surfaces;
 - 2 wasting or wearing away or wearing out of any part caused by or naturally resulting from ordinary use or working;
 - 3 gradual deterioration; or
 - 4 other direct consequences of progressive or continuous influences of atmospheric or chemical action;
- but We shall be liable for other damage insured by this Policy and resulting from such causes.

8.4.4 We will not pay the cost of any:

- 1 alterations, additions, improvements, overhauls, or maintenance;
- 2 provisional repairs unless such repairs constitute part of the final repairs and do not increase the total repair cost;
- 3 extra charges incurred for overtime work or work performed on public holidays, express freight, or airfreight.

8.5 Conditions that apply to Part 1: Machinery Breakdown

Refer also to the general conditions of this Policy.

8.5.1 Boilers and Pressure Vessel extension

This Policy is extended to include physical damage happening to your Boilers and Pressure Vessels that are specified in the Schedule. This extension includes explosion, which means the sudden and violent rendering of the permanent structure of the Boiler or Pressure Vessel by force of internal steam or fluid pressure (other than by ignited flue gases) causing bodily displacement of any part of the item together with forcible ejection of its contents.

We do not cover the following defects in such Boilers and Pressure Vessels and will not pay for that damage even though repair or replacement may be necessary. We do not exclude resultant physical damage from any such defect.

- 1 Cracks, fractures, blisters, laminations, flaws or grooving, even when accompanied by leakage.
- 2 Leakage of joints.

8.5.2 Cover for Submerged and Deep-Well Pumps

It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon We shall indemnify You for Loss of or damage to submerged pumps contained in the specification of the Policy. Damage due to sand erosion and damage resulting from operating without water are not indemnifiable. Excluded also is damage due to collapse of the well or destruction of tubes or reinforced walls.

8.5.3 Depreciation of Sealed and Semi-sealed Refrigeration Compressors

Notwithstanding anything contained herein to the contrary, it is agreed that where insured damage necessitates repair, replacement or exchange of sealed or semi-sealed units, depreciation shall be deducted from the delivered cost of replacement or exchange units or parts at a rate of depreciation of 7% per annum for each completed year of service following initial commissioning or replacement whichever has most recently occurred.

Provided that You will not be required at any time to bear more than 50% (fifty per cent) of any such amount before deduction of the Deductible.

8.5.4 Extruder Screws and Barrels

In the event of damage to extruder screws and/or barrels necessitating replacement, Our liability will be limited to the proportion the life expended prior to breakdown bears to a life expectancy of 10 years.

Subject to the proviso that You will not be required at any one time to bear more than 50% of any such amount.

8.5.5 Obsolete Equipment

In event of a claim under this Policy, and it is found that the manufacturer has ceased production of the respective model and spare parts are no longer available as an off-the-shelf stock item in New Zealand, We will pay no more than the manufacturer's last list price for those damaged components/parts at the time of Loss or damage.

8.5.6 Reinstatement of the amount of insurance

In the event of damage for which a claim is payable under this Policy, and in the absence of written notice by You to the contrary, the amount of insurance cancelled by damage will be automatically reinstated from the date of damage. You undertake to pay such premium as may be required for the reinstatement.

8.5.7 Your Obligations

You shall make reasonable endeavours to ensure that Your Property Insured is maintained in good working order and that statutory or other regulations relating to the operation of the Property Insured are observed.

8.6 Part 2: Spoilage

8.6.1 Definitions

Accident shall mean:

- 1 a rise or fall in the temperature of a refrigerated chamber as a direct result of Breakdown of the refrigeration machinery described in the Schedule of this Policy from any cause other than those excepted by Part 1 and not otherwise excluded in this Part.
- 2 the accidental escape of refrigerant gas or liquid into the refrigerated chambers.
- 3 failure of the public electricity supply not otherwise excluded in this Part.
- 4 failure of fuses and overload devices protecting the refrigeration machinery.

8.7 Cover

We will pay You, as per the sum insured 8.7.1, for deterioration of refrigerated goods owned by You or for which You are legally responsible whilst contained within cold storage spaces caused by an Accident. Provided always that at the time of the Accident the goods are stored in chambers refrigerated by items of Property Insured under 8.2 or which at the time of the event giving rise to damage are elsewhere on Your premises which would but for the event have been placed in the said chamber.

8.7.1 Sum Insured – Subject to Average

The sum insured shall not be less than the replacement cost of the goods stored in the refrigeration chambers. If in the event of Loss or damage it is found that the sum insured is less than the amount required to be insured then the amount recovered by You under this Policy shall be reduced in such proportion as the sum insured bears to the amount required to be insured.

8.7.2 Basis of Settlement

Any claims which are admitted under this Part shall be settled on the basis of the cost to You of replacement of the goods immediately prior to the Accident. The proceeds from any sale of damaged goods shall be deducted from the claim.

8.7.3 Protection costs

We will pay You any reasonable expenses that You incur in preventing or minimising Loss or damage caused by Accident:

- 1 insofar as those expenses will reduce the extent of Our liability; or
- 2 insofar as You could reasonably consider it expedient to incur such expenses but were unable to obtain Our prior approval. We shall however be notified of the measures taken as soon as possible.

8.8 Exclusions applicable to Part 2: Spoilage

Refer also to the general exclusions of this Policy and exclusions to Part 1

8.8.1 We will not pay for Loss or damage caused by:

- 1 shrinkage, inherent defects or diseases, natural deterioration or natural putrefaction;
- 2 improper storage or stowage, collapse of packing material, deviations from manufacturer's specifications or instructions;
- 3 penalties for delay or detention or consequential Loss or damage or liability of any nature whatsoever;
- 4 Loss arising from any failure of the public electricity supply occasioned by or resulting from:
 - (a) fire extinguishing of a fire or subsequent demolition, smoke, soot, direct lightning, chemical explosion (other than explosions of flue gas in boilers);
 - (b) earthquake, subsidence, landslide, avalanche, hurricane, cyclone, subterranean fire, volcanic eruption, flood, inundation, storm, tempest, windstorms or similar natural disasters;
 - (c) aircraft or other aerial devices or articles dropped therefrom or impact from waterborne craft;
 - (d) water discharged or leaking from any pipe or water system;
 - (e) theft, burglary or attempts thereat;
 - (f) riot, strike, lock-out, civil commotion, malicious persons acting on behalf of or in connection with any political organisation;
 - (g) the deliberate act of any public electricity supply authority;
 - (h) the exercise by any public electricity supply authority of its power to withhold or restrict supply;
 - (i) shortage of fuel or water for generating public electricity supply.

Section 9: Electronic Equipment

9.1 Definitions applicable to this Section 9

See also the General Definitions in Section 1

Item

'Item' means hardware, software, or other assets subject of cover, and listed in the Schedule.

Material Loss or Damage

'Material Loss or Damage' means physical and tangible loss or damage capable of being readily diagnosed by normal techniques but specifically excluding corruption of computer data or software.

Breakdown

'Breakdown' means internal breakdown of electrical, electronic or mechanical components not due to any external cause.

Effective Market Replacement Cost

'Effective Market Replacement Cost' means the price at which an Item is available from reputable suppliers in normal market conditions, including installation and commissioning where applicable, and taking account of discounts currently available and offered. If you are a reseller of equipment or other Items, the effective market replacement cost does not include any element of profit made by You.

Back-ups

'Back-ups' means duplicate copies of software or data, kept on magnetic or other media capable of being readily recopied to operational equipment.

9.2 Part 1: Cover for Your Computer and Electronic Equipment (Hardware)

We insure You against Material Loss or Damage to any of the Items listed in the Schedule applicable to this Part 1 of the Policy whilst at the Situation, subject always to the general conditions and general exclusions in this Section 9 and the general conditions and general exclusions in Section 1 and the exclusion in this Part 1.

9.2.1 Basis of Settlement Part 1 – Hardware

The basis of settlement under Part 1 will be as follows:

1 Repairable Material Loss or Damage

If repairs to the Item are practical or economical, settlement will be based upon the reasonable repair costs agreed by Us.

If the repair costs are more than the Effective Market Replacement Cost of the Item, We will deem the Item a total loss, as detailed in 2 below.

We will only accept diagnosis or estimates provided from personnel who are qualified in repairing the Item subject of claim. Diagnosis and the decision as to whether to repair the Item will also be subject to technical assessment on Our behalf.

Where any repair incorporates an element of betterment in improving the type, capacity, speed, performance, or function of the Item beyond that which existed before the event subject of the claim, due adjustment will be made for this improvement, and You will have to bear the appropriate proportion of repair costs.

2 Total Loss

In the event of total loss of an Item, settlement will be based upon the Effective Market Replacement Cost of an Item identical to that lost in type, capacity, speed, performance, and function.

No deduction will be made for age, depreciation, or fair wear and tear except where:

- (a) the Loss is directly a result of fair wear and tear, in which case it is excluded altogether; or
- (b) the Item subject of claim ceased to be manufactured more than five years prior to the date of loss.

3 Obsolete Equipment

Where an Item of the same type, capacity, speed, performance, and function is no longer available, settlement will be on the basis of either:

- (a) the last Effective Market Replacement Cost of an identical Item; or
- (b) the current Effective Market Replacement Cost of the nearest equivalent Item in type, capacity, speed, performance, and function as that lost, with an appropriate adjustment for betterment;

whichever is the less.

9.2.2 Sum Insured

The sum insured for each Item at the commencement of this insurance and any subsequent renewal thereof must not be less than the new replacement cost, which shall mean the cost of replacement of the insured Item by a new Item of the same kind and capacity including packing, freight, customs duties and dues if any, and installation charges.

9.3 Additional Cover applicable to Part 1 – Hardware

9.3.1 Breakdown

Cover for the Items listed in the Schedule is extended to include Breakdown, but not for Items or interconnected Items with a Total Effective Market Replacement Cost greater than \$50,000 unless a full remedial maintenance agreement on the file server is in force.

9.3.2 Other Situations and Locations

Cover for the Items listed in the Schedule is extended to include Material Loss or Damage in New Zealand whilst:

- 1 at alternative Situations during the normal course of business, including the homes of Your directors, employees, or at a repairer's premises, provided that in the case of theft or burglary, forcible and violent entry occurs;
- 2 in a securely locked motor vehicle;
- 3 in transit other than by air, unless as accompanied hand baggage on a recognised airline's scheduled service;

- 4 on a vessel on inland or coastal waters, but not resulting from being dropped overboard.

9.3.3 Additional Items

Cover under this Part of the Policy is extended to additional Items similar to that already covered, which are purchased or leased by You after the inception or renewal of this Policy, up to 10% of the total sum insured under this Part. You must notify Us of such additions in writing at the next renewal of this Policy, and pay Us the appropriate extra premium due from the date of acquisition.

9.3.4 Upgraded Items

Cover under this Part of the Policy is extended to improvements or upgrades to the Items, up to 10% of the total sum insured under this Part, provided that:

- 1 the Material Loss or Damage subject of claim was not caused by or during the installation of the improvement or upgrade;
- 2 in the event of any claim You provide Us with written evidence of the improvement or upgrade;
- 3 the Items continue to be operated and maintained in accordance with manufacturer's recommendations.

You must notify Us of such improvements or upgrades in writing at the next renewal of this Policy, and pay Us the appropriate extra premium due from the date of improvement or upgrade.

9.4 Exclusions applicable to Part 1 – Hardware

Refer also to the general exclusions of this Policy and general exclusion to this Section.

- 9.4.1** We do not cover You for Breakdown of any Item or interconnected Items which have an Effective Market Replacement Cost exceeding \$50,000 unless a full remedial maintenance agreement on the file server is in force.

9.5 Part 2: Cover for Computer Programs (Software)

Only applicable if selected by You and stated in the Schedule.

We insure the Items listed in the Schedule applicable to this Part of the Policy against Loss or damage provided that such Loss or damage is caused by Material Loss or Damage covered under Part 1 of this Section 9 of the Policy subject always to the general conditions and general exclusions in this Section 9 and the general conditions and general exclusions in Section 1 and the exclusion in this Part 2.

9.5.1 Basis of Settlement Part 2 – Software

The basis of settlement under Part 2 will be as follows:

- 1 Restorable Loss or damage

If restoration to the Item is practical or economical, settlement will be based upon the reasonable restoration costs agreed by Us.

If the restoration costs are more than the Effective Market Replacement Cost of the Item, We will deem the item a total Loss, as detailed in 2 below.

We will only accept diagnosis or estimates provided from personnel who are qualified in restoring the Item subject of claim. Diagnosis and the decision as to whether to restore the Item will also be subject to technical assessment on Our behalf.

Where any restoration incorporates an element of betterment in improving the specification of the Item beyond that which existed before the event subject of the claim, due adjustment will be made for this improvement, and You will have to bear the appropriate proportion of restoration costs.

- 2 Total Loss

In the event of total loss of an Item, settlement will be based upon the Effective Market Replacement Cost of an Item identical in specification.

- 3 Obsolete Software

Where an Item of the same specification is no longer available, settlement will be on the basis of either:

- (a) the last Effective Market Replacement Cost of an identical Item; or
- (b) the current Effective Market Replacement Cost of the nearest equivalent Item to that lost, with an appropriate adjustment for betterment;

whichever is the less.

9.6 Additional Cover applicable to Part 2 – Software

9.6.1 Packaged Software – Masters and Manuals

Cover for the Items listed in the Schedule is extended to include Material Loss or Damage to original master copies of software and manuals, notwithstanding that Loss or damage has not occurred to Items covered under Part 1.

9.6.2 Other Situations and Locations

Cover for Items listed in the Schedule is extended to include Material Loss or Damage in New Zealand whilst:

- 1 at alternative Situations during the normal course of business, including the homes of Your directors, employees, or at a repairer's premises, provided that in the case of theft or burglary, forcible and violent entry occurs;
- 2 in a securely locked motor vehicle;
- 3 in transit other than by air, unless as accompanied hand baggage on a recognised airline's scheduled service;
- 4 on a vessel on inland or coastal waters, but not resulting from being dropped overboard.

9.6.3 Additional Items

Cover under this Part of the Policy is extended to additional Items similar to that already covered, which are purchased or leased by You

after the inception or renewal of this Policy, up to 10% of the total sum insured under this Part. You must notify us of such additions in writing at the next renewal of this Policy, and pay us the appropriate extra premium due from the date of acquisition.

9.6.4 Upgraded Items

Cover under this Part of the Policy is extended to improvements or upgrades to the Items, up to 10% of the total sum insured under this Part, provided that:

- 1 the Loss or damage subject of claim was not caused by or during the installation of the improvement or upgrade;
- 2 in the event of any claim You provide Us with written evidence of the improvement or upgrade;
- 3 the Items continue to be operated and maintained in accordance with manufacturer's recommendations.

You must notify Us of such improvements or upgrades in writing at the next renewal of this Policy, and pay Us the appropriate extra premium due from the date of improvement or upgrade.

9.7 Optional Additional Cover Applicable to Part 2 – Software

Only applicable if selected by You and stated in the Schedule.

9.7.1 Corruption of software without Material Damage

If an Item of software covered under this Policy is corrupted by power interruption whilst loaded on any of the Items covered under Part 1 of this Section, then this loss is covered subject to the terms and conditions of this Policy, notwithstanding that Material Loss or Damage has not been suffered by the Item on which the software was loaded.

9.8 Exclusions to Part 2 – Software

Refer also to the general exclusions of this Policy and general exclusion to this Section.

We do not cover you for:

- 9.8.1** Loss or damage to the software whilst loaded on any equipment and not resulting from Material Loss or Damage under Part 1 of this Section of the Policy unless the optional extension for power interruption has been selected by You and is shown in the Schedule.
- 9.8.2** Software downloaded by electronic means and for which master copies are not in your possession.
- 9.8.3** Software error or defects.

9.9 Conditions applicable to Part 2 – Software

Refer also to the general conditions of this Policy and general conditions to this Section.

9.9.1 Legal Software

This Part only covers lawfully purchased and licensed software, and for which the original manuals and master floppy discs are in Your possession, or were in Your possession prior to any theft subject of claim.

9.9.2 Proof of Ownership

On the happening of any claim, You must provide Us with sufficient proof of Your ownership of and license to use the software subject of claim.

9.9.3 Back-ups

Unless You are prevented by licence conditions, You must keep back-ups of the software at a secure offsite location.

9.9.4 Bespoke Software

If the software was written especially or substantially modified by You or on Your behalf, cover is only granted on the condition that a complete back-up copy is kept at a secure offsite location or in a fireproof safe on the premises and that these back-ups are regularly updated.

For the purpose of this condition, 'regularly' means at least on a weekly basis unless no changes have been made to the software since the last back-up. However, this is a minimum requirement and does not constitute a recommendation that weekly back-ups are adequate.

9.9.5 Damage to all copies of Software

If loss or damage occurs to all copies of the software, You must use Your best endeavours to obtain or assist Us to obtain replacement copies of the software at a cost which reflects Your existing ownership of the software licence. You must not agree to repurchase the software without first obtaining Our authorisation.

9.10 Part 3: Data Restoration

Only applicable if selected by You and stated in the Schedule.

9.10.1 Cover applicable to Part 3 – Data restoration

We insure You for the costs of data restoration following Loss or damage, provided that such loss or damage is caused by Material Loss or Damage covered under Part 1 of this Section of the Policy and subject always to the general conditions and general exclusions in this Section 9 and the general conditions and general exclusions in Section 1 and the exclusion in this Part 3.

9.10.2 Basis of Settlement to Part 3 – Data Restoration

Settlement will be based on reasonable costs of restoring or rekeying data, as charged at normal market rates by competent external personnel.

Where such restoring or rekeying is carried out by Your own personnel, costs will be calculated on the reasonable hourly cost of the personnel who normally key in the data.

Cover is for actual data restoration costs and not for the value of the data itself.

9.11 Optional Additional Cover to Part 3 – Data Restoration

Only applicable if selected by You and stated in the Schedule.

9.11.1 Corruption of Data Without Material Damage

If data is corrupted by power interruption or failure of the external telecommunications network whilst the data is loaded on any of the equipment covered under Part 1, then this loss is covered subject to the terms and conditions of this Policy, notwithstanding that Material Loss or Damage has not been suffered by the equipment on which the data was loaded.

9.12 Conditions to Part 3 – Data Restoration

Refer also to the general conditions of this Policy and general conditions to this Section.

9.12.1 Back-up System Tested

An adequate back-up system must be in operation, such back-up system to have been tested and verified by appropriately qualified personnel.

9.12.2 Offsite Back-up

Back-ups must be kept at a secure offsite location and must be regularly updated.

For the purpose of this condition, 'regularly' means at least on a weekly basis unless no changes have been made to the data since the last back-up. However, this is a minimum requirement and does not constitute a recommendation that weekly back-ups are adequate.

9.13 Exclusions to Part 3 – Data Restoration

Refer also to the general exclusions of this Policy and general exclusion to this Section.

9.13.1 We do not cover You for:

- 1 Loss or damage to the data whilst loaded on any equipment and resulting from power interruption, unless the optional extension to Part 3 has been selected by You and is shown in the Schedule.
- 2 Loss of data arising from software error or defects.

9.14 Part 4: Increased Costs of Working

Only applicable if selected by You and stated in the Schedule.

9.14.1 Cover

We insure You for unavoidable and reasonable increased costs of working which are necessary to maintain normal business operations, following a claim admissible under Parts 1, 2 or 3 of this Section of the Policy, subject always to the general conditions and general exclusions in this Section 9 and the general conditions and general exclusions in Section 1 and the exclusion in this Part 4.

9.14.2 Basis of Settlement Increased Costs

If delays in completing repairs or replacements are unavoidable, We will pay the reasonable additional costs, including:

- 1 external data processing services;
- 2 hire of substitute equipment or systems;
- 3 necessary internal costs including staff overtime.

9.15 Exclusions to Part 4 – Increased Costs

Refer also to the general exclusions of this Policy and general exclusion to this Section.

9.15.1 We do not cover You for:

- 1 increased costs of working incurred as a result of replacement equipment, parts, or software support being unavailable in New Zealand.
- 2 the Deductible period shown in the Schedule, which means the number of normal working days immediately after the interruption during which You will bear all increased costs of working.

9.16 Conditions to Part 4 – Increased Costs

Refer also to the general conditions of this Policy and general conditions to this Section.

9.16.1 If equipment or systems hire charges or other increased costs are payable to the same party as that providing diagnosis or repairs, or to an associated entity, then if required that party must prove to our satisfaction that any delays in diagnosis or repairs were unavoidable.

9.17 General Exclusions to Section 9**9.17.1 Section 9 of this Policy does not cover any claim arising from:**

- 1 Fair wear and tear, including scratching, marking, or cosmetic damage to external surfaces.
- 2 Gradual deterioration, including rust, corrosion, or other ongoing effects caused by environmental conditions.
- 3 Unlawful, mischievous, or wilfully negligent acts carried out either by You or Your employees, or by any other person permitted by You or Your employees with the collusion of You or Your employees.
- 4 Defects or design faults known to You before taking out or renewing cover under this Policy.
- 5 Loss or damage to software or data caused by software virus or other disruptive or destructive programming techniques.
- 6 Loss or damage caused by interference by another party and carried out remotely by electronic means.
- 7 Loss or damage covered under any maintenance agreement.
- 8 Theft whilst any Item is unattended in an open or public place.
- 9 Consequential loss of any description except as specifically selected and covered under Part 3 and Part 4 of this Section of the Policy.

9.18 General Conditions applicable to Section 9**9.18.1 Installation and Use**

You agree to install, maintain, and operate the items in accordance with the manufacturer's recommendations.

9.18.2 Due Care

You agree to employ due care and diligence in avoiding loss or damage to the Items.

9.18.3 Reinstatement of Sum Insured

If Items insured under this Policy are lost or damaged, that part of the sum insured which is paid in settlement of a claim will not reduce Your total cover provided any additional premium is paid by You, unless:

- 1 You request otherwise in writing; or
- 2 the Period of Insurance has expired; or
- 3 the cover is cancelled.

In the case of a total loss, where Items are replaced in accordance with settlement of Your claim, those Items will be deemed automatically covered subject to payment of the additional premium as above, when requested by Us.

9.18.4 Claims Procedure

In addition to the claims procedure set out in 1.4.5, the following conditions also apply:

- 1 You must not authorise repairs without Our consent unless the costs of such repairs are less than \$1,000 or 10% of the sum insured for the Item concerned (whichever is the less), unless immediate authorisation is necessary to avoid a greater loss under this Policy. You must endeavour to ensure that repairs are carried out only by qualified personnel.
- 2 if an Item is repaired or replaced for any reason and costs exceed those which are calculated as described under Basis of Settlement in this Section of the Policy, then You will have to bear the difference between the two costs.
- 3 You must co-operate with Us or personnel engaged by Us to assess Your claim, and in particular You must at Your expense provide Us with all necessary proof in respect of the Items lost or damaged of:
 - (a) their original purchase and ownership;
 - (b) their original configuration or specification;
 - (c) the circumstances of the loss.

You must also provide Us with any other information which may be reasonably required to investigate the cause of loss, assess the response of this Policy, assess reasonable costs, and recover costs from any other responsible person or party.

9.18.5 Salvage

Any salvage remaining after loss or damage covered under this Policy must be safeguarded by You for a reasonable period, and We will have the right but not the obligation to take possession of this salvage after Your claim has been settled.

9.18.6 Application of Settlement

Where any Item subject of claim is a total loss and is under lease or similar agreement, settlement will be made to the credit of Your account with the lessor as owner, unless otherwise agreed.

In any case where the settlement exceeds the amount owing on lease, Our payment to the lessor will be limited to that owing, and the balance will be remitted to You.

Where the Item is owned by You, we will at Our option either:

- 1 pay the settlement monies directly to suppliers of the replacement Item; or
- 2 pay the settlement monies to You, limited to but not necessarily based on the sums expended directly by You in replacing the Item.

The replacement Item may be purchased from suppliers nominated by Us, or from Your usual supplier, provided that if costs exceed the Effective Market Replacement Cost, We may require You to pay the difference.

9.18.7 Cash Settlement

This Policy does not provide a cash settlement except:

- 1 where lessors require settlement to the credit of Your account with them; or
- 2 as reimbursement for replacement costs actually expended by You.

In all cases, such settlement will not exceed the Effective Market Replacement Cost.

Section 10: Cargo within New Zealand

10.1 Definitions applicable to this Section 10

See also the General Definitions in Section 1

Conveyance

'Conveyance' means the vehicle, vessel, aircraft or train by which the property insured is being transported.

Transit

'Transit' means the period during which the property insured is being transported within NZ:

- 1 from the time of loading onto or into the Conveyance at the commencement of transportation at Your premises or at the consignor's premises; and
- 2 during the transportation; and
- 3 ending on delivery to the consignee or other final warehouse or place of storage or any other warehouse or place of storage You use.

10.2 Cover

We will pay You in accordance with the basis of settlement for this Section if any of the property insured for this Section specified in the Schedule suffers Loss during the Period of Insurance whilst in Transit anywhere in New Zealand. We will also pay general average and salvage charges adjusted according to the contract of affreightment and/or governing law or practice in relation to any Transit during the Period of Insurance.

10.2.1 Basis of Settlement applicable to this Section

- 1 Where the property insured has been damaged and is uneconomic to repair, We will pay:
 - (a) for goods You have sold – Your invoice value;
 - (b) for goods You have purchased – the purchase price as shown on the supplier's invoice;
 - (c) for all other property insured, the market value including an allowance for wear and tear and general condition.
- 2 Where the property insured has been damaged and can be economically repaired, We will pay the reasonable and necessary costs to reinstate or repair to a condition substantially the same as its condition immediately before the damage.

In addition, We will pay the incurred cost of freight attaching to the damaged property insured unless already included in the invoice value or purchase price. The most We will pay for any one occurrence or series of occurrences arising out of the one event will be the amount specified in the Schedule.

10.3 Additional Cover

If due to circumstances beyond Your control:

- 1 the contract of carriage is terminated at a place other than the destination, or
- 2 the Transit is otherwise prematurely terminated,

then this cover will remain in force for a period of ten (10) days at the place of termination.

10.4 Exclusions

Refer also to the general exclusions of this Policy.

The following exclusions apply to the Cargo Within New Zealand Section of this policy:

10.4.1 We will not pay for any Loss arising directly or indirectly out of or in any way connected with:

- 1 delay including loss of market due to delay;
- 2 the insolvency or financial default of the owners, managers, charterers, or operators of the Conveyance;
- 3 goods carried by You for payment or reward;
- 4 capture, seizure, arrest, restraint or detainment and the consequences thereof or any attempted threat;
- 5 the following:
 - (a) ordinary leakage, ordinary loss of weight or volume, or ordinary wear and tear of the property insured;
 - (b) inherent vice or nature of the property insured;
 - (c) unexplained shortage or disappearance;
 - (d) theft unless there is visible proof of violent and forcible entry;
- 6 the following types of goods:

money, jewellery, furs, antiques, paintings, works of art, precious stones and precious metals and items composed of them, explosives, petroleum products in bulk or gas in bulk, livestock, tobacco products, wines, spirits or other alcoholic beverages, unless specified in the Schedule.
- 7 theft from unattended motor vehicles:
 - (a) left overnight unless within securely locked premises;
 - (b) otherwise, unless securely locked;
- 8 In relation to the Conveyance:
 - (a) the unseaworthiness of the vessel or craft; or
 - (b) an unfit, unsafe or unsuitable Conveyance or container.

However, if You can prove that You and Your employees were unaware of the unsuitable nature of the Conveyance or container at the time the Transit commenced, this exclusion will not apply.

- 9 The unsuitability or insufficiency of packing or preparation of the property insured (including but not limited to stowage in a container or lift-van when such stowage is carried out by You prior to commencement of cover under this Section).

10.4.2 Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons

This clause shall be paramount and shall override anything contained in this Section inconsistent therewith.

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

- 1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- 3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- 4 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;
- 5 any chemical, biological, bio-chemical, or electromagnetic weapon.

10.4.3 Absolute Asbestos Exclusion

It is hereby understood and agreed that this contract shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos.

10.4.4 Cargo Termination Of Transit (Terrorism)

This clause shall be paramount and shall override anything contained in this Section inconsistent therewith.

- 1 Notwithstanding any provision to the contrary contained in this Policy or the clauses referred to therein, it is agreed that insofar as this Policy covers Loss of or damage to the subject-matter insured caused by any terrorist or any person acting from a political motive, such cover is conditional upon the subject-matter insured being in the ordinary course of transit and, in any event, shall terminate either:
 - (a) as per the transit clauses contained within the Policy;
 - or
 - (b) on delivery to the consignee's or other final warehouse or place of storage at the destination named herein;
 - (c) on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which You elect to use either for storage other than in the ordinary course of transit or for allocation or distribution;
 - or
 - (d) in respect of marine transits, on the expiry of 60 days after completion of discharge overseas of the goods hereby insured from the overseas vessel at the final port of discharge;
 - (e) in respect of air transits, on the expiry of 30 days after unloading the subject-matter insured from the aircraft at the final place of discharge;

whichever shall first occur.
- 2 If this Policy or the clauses referred to therein specifically provide cover for inland or other further Transits following on from storage, cover will re-attach, and continues during the ordinary course of that Transit, terminating again in accordance with 1.

This clause is subject to New Zealand law and practice.

10.4.5 Process

No claims are to attach hereto for damage to property hereby insured which may be sustained whilst the same is in use and/or being worked upon and directly resulting thereon.

10.5 Conditions

Refer also to the general conditions of this Policy.

10.5.1 In the event of damage to property insured, You and Your agents must:

- 1 lodge a claim immediately with the carrier;
- 2 give immediate notice to Us or Our agents;
- 3 not give clean receipts where goods are in doubtful condition, except under written protest;
- 4 take such measures as may be reasonable for the purpose of averting or minimising the Loss; and
- 5 ensure that all rights against carriers, bailees or other third parties are properly preserved and protected.

10.5.2 It is a condition that:

- 1 in the event of damage to property insured forming part of a pair or set We will not pay more than the value of the part which is lost or damaged;
- 2 cover will not be provided for the benefit of the carrier or other bailee;
- 3 measures taken by You or by Us with the object of saving, protecting or recovering the property insured will not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party;
- 4 You will act within a reasonable time with regard to all circumstances within Your control; and

- 5 You will keep accurate records of all inbound and outbound sendings the subject of cover under this Section, and allow Us reasonable access to inspect those records.

10.5.3 Declaration

It is a condition of this Policy that You are bound to declare hereunder every consignment without exception, We being bound to accept same up to but not exceeding the limit specified in the Schedule.

Unless otherwise agreed in writing, an agreed deposit premium is to be paid to Us based upon the estimated annual aggregate value of all sendings to be insured hereunder. The premium is to be adjusted, based on the actual aggregated value of all sendings insured hereunder, within 30 days from the review date.

You are required to pay any additional premium due following the deduction of the deposit premium. Should a credit balance result, We will refund you the credit amount up to a maximum of 20% of the deposit premium, but in no case will the deposit premium, less any refund, be less than Our minimum premium.