

Autofleet

Commercial motor vehicle insurance policy

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Introduction

In consideration of the Insured agreeing to pay Lumley the premium stated in the Schedule, Lumley will provide the Scope of Cover stated in the Schedule.

Definitions

The words below (and any derivatives of them) have the following meanings:

Accessories

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. This definition does not apply to any item of electrical or communication equipment not permanently affixed to the Vehicle's electrical system.

Accident

A happening or event occurring in New Zealand that is unintended and unexpected by the Insured.

Bodily Injury

The Accidental death of, or Accidental bodily injury to, any person, including disability, sickness, disease, shock, fright, mental anguish or mental injury.

Description of Use

Used by the Insured, or anyone with the Insured's consent:

- (a) for the Insured's business or occupation stated in the submission or proposal;
- (b) for the Insured's private, social or domestic purposes;
- (c) for a business or occupation comparable with the Insured's stated in the submission or proposal when temporarily lent out by the Insured.

Driver

The person driving the Insured Vehicle or operating any equipment in it or on it.

Insured

The 'Insured', named on the Schedule, including any:

- (a) subsidiary company;
- (b) associated managed company;
- (c) associated social or sporting club;
- (d) employee or elected member or official of any of these;
- (e) new company or organisation formed or acquired by the named Insured during the Period of Insurance.

Insured Vehicle

Means all vehicles (including their Accessories) listed in the Vehicle Schedule and all other vehicles (including their Accessories) of every description used, leased, lent, borrowed, hired or under the care, custody and control of the Insured, or for which the Insured is responsible.

Loss

Sudden physical loss, sudden physical damage or sudden physical destruction.

Lumley

Lumley, a business division of IAG New Zealand Limited.

Market Value

The reasonable sale price of the same, or a comparable Vehicle, of similar pre-Loss age and condition.

Period of Insurance

The period of time stated in the Schedule. If this policy is renewed, the period of time stated in the most recent renewal invitation.

Reparation

An amount ordered by a New Zealand Court to be paid to the victim of an offence under section 32 of the Sentencing Act 2002.

Schedule

The most recent Schedule (and any policy endorsements) issued to the Insured.

Scope of Cover

One of the following levels of cover:

- (a) 'Comprehensive': All Sections of this policy apply; or
- (b) 'Third Party Liability Only': Only Section 2 and the Uninsured Third Party Protection extension under Section 1 of this policy apply;
- (c) 'Third Party Fire Theft and Illegal Conversion': Sections 1 and 2 of this policy apply. However, in respect of Section 1 the cover is restricted to Loss caused directly by fire, lightning, explosion, theft or illegal conversion of the Insured Vehicle, and Loss covered by the Uninsured Third Party Protection extension.

Vehicle

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.

Vehicle Schedule

The most recent underwriting Schedule supplied to Lumley, on behalf of the Insured, listing the Vehicles covered under this policy and their Market Values.

Section 1: Cover for the Insured Vehicle

A Cover

Lumley will indemnify the Insured for Accidental Loss to an Insured Vehicle during the Period of Insurance.

B Basis of settlement

- 1 Lumley will, at its option, settle the claim in one of the following ways:
 - (a) pay the reasonable cost of repairs to the Insured Vehicle, or
 - (b) pay the cash equivalent of the reasonable cost of repairs to the Insured Vehicle, or
 - (c) replace the Insured Vehicle, or
 - (d) pay the Insured Vehicle's Market Value at the time of the Loss.
 - (e) If the Insured Vehicle is leased at the time of the Loss, pay the greater of the reasonable Market Value or residual value of the Insured Vehicle. This does **not** include:
 - (i) penalties for early termination, and
 - (ii) penalties for any additional distance travelled, and
 - (iii) unpaid obligations under the lease at the time of the Loss, and
 - (iv) penalties resulting from lack of servicing or poor maintenance, and
 - (v) 'balloon' payments, and
 - (vi) the amount by which the residual value of the Insured Vehicle exceeds 120% of its Market Value, where there is a guaranteed buy back arrangement.
- 2 Unless specified elsewhere in this policy Lumley's maximum liability will not exceed the Market Value of the Insured Vehicle or the limit stated in the Schedule for any one Insured Vehicle, whichever is the lesser.
- 3 Lumley is not liable for that portion of any repair or replacement that improves the condition of the Insured Vehicle beyond its condition before the Loss.
- 4 If any part or component of the Insured Vehicle is no longer manufactured Lumley is not liable for more than the supplier's or manufacturer's last list price.
- 5 Lumley is not liable for the Deductible shown in the Schedule for each Loss to an Insured Vehicle. However, where more than one Insured Vehicle suffers Loss in relation to the same Accident, only one Deductible will apply.

C Exclusions

1 Causes of Loss

This policy does not insure Loss caused by:

- (a) Wear and tear. However, this Exclusion is limited to the part immediately affected and does not apply to resultant damage to other parts of the Insured Vehicle.
- (b) Rust or corrosion.
- (c) Faulty or defective design or specification. However, this Exclusion is limited to the part immediately affected and does not apply to resultant damage to other parts of the Insured Vehicle.
- (d) Ingestion or entry of any foreign object into any agricultural implement or machine.

2 Types of Loss

This policy does not insure the following types of Loss however caused:

- (a) Consequential loss of any kind (including loss of use);
- (b) Depreciation or loss of value;
- (c) Mechanical or electrical breakdown or failure of any part of the Insured Vehicle, including its engine, hydraulic and transmission systems. (Note: servicing and maintenance errors (among other things) are not covered.) However, this Exclusion 2(c) shall not apply if the mechanical or electrical breakdown or failure results in or from the Insured Vehicle:
 - (i) Catching fire;
 - (ii) Overturning;
 - (iii) Suffering an impact or collision;
 - (iv) Being partly or fully immersed in water;
 - (v) Being stolen or illegally converted;
 - (vi) Being maliciously damaged.
- (d) Damage to, or destruction of, tyres. However, this Exclusion 2(d) shall not apply if the damage or destruction results from separate Loss that is covered by this policy.

Please also refer to the General Exclusions.

D Section 1 Automatic extensions

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

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.

2 Claim preparation costs

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

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

3 Completion of journey costs

When, as a result of a Loss covered under Section 1, the Insured's journey cannot be continued, this policy covers the reasonable costs incurred in:

- (a) hiring another vehicle of similar make and model to complete the journey, or returning the Insured to where the journey first commenced; and
- (b) returning the Insured 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.

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

4 Death by Accident

If the Insured dies as a result of Accident covered by this policy, whether or not death occurs at the time of the Accident, Lumley will pay \$5,000 to the Insured's estate, regardless of any other insurance.

5 Disability modifications

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

However, Lumley is 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.

6 Employees' vehicles

Section 1 covers Vehicles owned by the Insured's employees, while they are using their Vehicle in the course of the Insured's business, but only if this business use results in their own personal vehicle insurance no longer applying.

7 Expediting expenses

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

8 Funeral expenses

If the Insured dies as a direct result of Loss covered under Section 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 the Insured, 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).

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

9 Goods in transit

If an Insured Vehicle suffers Loss arising from:

- (a) a fire, or
- (b) a collision, or
- (c) an impact, or
- (d) overturning

which is covered under Section 1, this extension covers Loss to property owned by the Insured carried on the Insured Vehicle at the time. Lumley's total liability will not exceed \$5,000 for any one Accident and is subject to a deductible of \$100 for any one Accident.

10 Hazardous substance emergencies

Lumley will indemnify the Insured for any charge that the New Zealand Fire Service is authorised to make in respect to any Hazardous Substance Emergency during the Period of Insurance arising out of or in connection with the Insured Vehicle. The indemnity will be payable regardless of whether the Insured Vehicle has sustained Loss.

'Hazardous Substance Emergency' has the same meaning as defined in the Fire Service Act 1975 or its amendments.

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

11 Hired use

The cover provided by this policy will not be prejudiced by the periodic hiring out of any Insured Vehicle with or without drivers subject to the policy terms and conditions being observed and no other indemnity being available.

12 Hoists

Section 1 covers mechanical breakdown or mechanical failure during the Period of Insurance of hoists permanently attached to the Insured Vehicle. Exclusion 2(c) does not apply.

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

Lumley's total liability will not exceed \$5,000 for any one Accident. Lumley is not liable for the deductible of \$500, or the standard Section 1 Deductible, whichever is the greater.

13 Load recovery

Section 1 covers the reasonable costs incurred in salvaging any load carried by an Insured Vehicle which, following Loss covered under Section 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.

Lumley's total liability will not exceed \$5,000 for any one Accident.

14 Mutually acceptable assessors

An assessor mutually agreed upon by the Insured and Lumley shall assess any claim within the terms of Section 1 of this policy.

15 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 Section 1 within 12 months of it being first registered as a new Vehicle in New Zealand, Lumley will either:

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

16 Repairs authorisation

The Insured may authorise any reasonable repairs to a maximum of \$1,000 without prior notice to Lumley.

If the estimated repair costs exceed this amount repairs must not be commenced without the consent of Lumley or its assessor. Lumley or its assessor must be given the opportunity of examining the damage to the Insured Vehicle prior to repair.

17 Rewards

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

Lumley's total liability will not exceed \$5,000 for all rewards offered for any one Loss.

18 Salvage and safety

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

19 Theft costs

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

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

20 Tyre damage

Section 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 the Insured Vehicle or not.

Lumley will indemnify the Insured by either:

- (a) repairing the damage; or
- (b) paying an amount equal to the reasonable cost of repair; or
- (c) replacing the tyre; or
- (d) paying an amount equal to the cost of the tyre.

Lumley's 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. Section 1 Exclusion 2(d) does not apply to this extension.

21 Windscreens and window glass

If Loss covered under Section 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.

E Section 1 Optional extensions

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

1 Ingestion of foreign objects

Notwithstanding Exclusion 1(d) to Section 1, Lumley will indemnify the Insured for Loss resulting from ingestion or entry of any foreign object into any agricultural implement or machine, provided this occurs whilst the Insured Vehicle is operated for the purpose for which it has been designed.

2 Loss of use

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

- (a) It only applies to the Insured Vehicles stated in the Schedule as being subject to this extension.
- (b) The substitute Vehicle must be of similar specification to the Insured Vehicle.
- (c) The extension does not apply if the Insured has available a free substitute Vehicle or purchases an additional Vehicle.
- (d) The repair of the Insured Vehicle must be carried out as soon as reasonably practicable.
- (e) This extension does not cover costs charged by the hire company for insurance, petrol or normal running costs.

Lumley's total liability under this extension will not exceed the following limits:

Deductible:	The cost of the first 7 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:

- (a) Beginning when the Insured Vehicle is delivered to the repairer to start the repair, or from the date of the Accident, if the Insured Vehicle can no longer be driven, or is lost at that date; and
- (b) Ending when the repairs are completed and the Insured has taken delivery of the Insured Vehicle, or has 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.

Section 2: Liability to the public

A Cover

Lumley will indemnify the Insured, and any Driver who is in charge of the Insured Vehicle with the Insured's consent, against the following:

(a) Liability for:

- (i) Accidental Bodily Injury to any person;
- (ii) 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).

(b) Liability for:

- (i) Accidental Bodily Injury to any person;
- (ii) Accidental Loss to any property;

occurring in New Zealand during the Period of Insurance in connection with the movement by the Insured of any Vehicle which:

- (i) is parked in a position which prevents or impedes the loading or unloading of the Insured Vehicle; or
- (ii) prevents or impedes the legitimate passage of the Insured Vehicle.

Exclusion 4 to Section 2 shall not apply to the Vehicle being moved.

(c) Liability arising out of the Insured 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 the Insured Vehicle. However, the towing must not be for hire or reward.

- (d) Defence costs necessarily and reasonably incurred to defend (a) and (b) above.
- (e) Liability to pay Reparation to a victim who has suffered Accidental Loss to any property or Accidental Bodily Injury as a result of committing of an offence in connection with:
- (i) the Insured's use of the Insured Vehicle or any other vehicle provided the Insured had the owner's permission to drive the vehicle;
 - (ii) any other Driver's use of the Insured Vehicle provided they had the Insured's consent.
- Provided that:
- (a) the Insured must notify Lumley immediately if the Insured or any other person entitled to cover under this benefit is charged with any offence in connection with the use of the Insured Vehicle or another vehicle, which resulted in Loss of property or Bodily Injury to another person; and
 - (b) Lumley must provide their written approval before any offer of Reparation is made.
- There is no cover under this benefit for any amounts that are covered under the Accident Compensation Act 2001 (Act), or would be covered but for:
- (i) a failure by the victim to correctly notify a claim to the Accident Compensation Corporation within the time required under the Act;
 - (ii) the victim's decision, for whatever reason, not to claim any amount he or she would be entitled to claim under the Act;
 - (iii) a decision by the Accident Compensation Corporation to decline a claim or limit its liability in whole or in part and for any reason whatsoever.
- Nothing in this benefit should be taken as providing cover for defence costs, court costs, levies or costs awarded for any offence.

B Basis of settlement

- 1** Lumley's maximum liability under this Section 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 Lumley's maximum liability is insufficient to cover both the Insured named in the Schedule and any other party entitled to cover under this Section it shall apply first to the Insured named in the Schedule.
- 3** Lumley is not liable for the Deductible shown in the Schedule for each claim or series of claims arising from one Accident.

C Exclusions

This policy does not insure:

1 Liability outside New Zealand

Liability determined by any court outside New Zealand;

2 Operation of plant or machinery

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

3 Person in charge

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

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 the Insured, other than:

- (a) personal baggage and wearing apparel of any passenger; or
- (b) a building leased or rented by the Insured; or
- (c) a Vehicle (not being the property of the Insured, or insured under Section 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 the Insured's business includes a vehicle recovery service;

5 Transporting of a load

Liability in connection with the transporting of a load to, or away from, the Insured Vehicle. However, this Exclusion 1 does not apply to the actual loading or unloading of the Insured Vehicle.

6 Vibration or weight

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

- (a) vibration caused by the Insured Vehicle, or
- (b) the weight of the load carried by the Insured Vehicle, or
- (c) the weight of the Insured Vehicle, or
- (d) the combined weight of the load and the Insured Vehicle.

7 Offences

Any legal defence costs, fines or court costs arising from the prosecution of any offence under any Act of Parliament including any Regulations, Rules or By-Laws made under any Act of Parliament.

Please also refer to the General Exclusions.

D Section 2 Automatic extensions

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

1 Borrowed vehicles

If the Insured borrows a Vehicle during the Period of Insurance this extension covers the Insured's liability:

- (a) to the owner of the Vehicle against Loss that would be covered under Section 1; and
- (b) to other parties that would be covered under Section 2.

Provided however the Vehicle must be used in the course of the Insured's business at the time. Lumley's liability will not exceed \$100,000 for any one Loss.

Section 2, Exclusion 4 does not apply.

2 Cleaning up costs

Section 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 Section 1 of this policy.

Lumley's total liability will not exceed \$20,000 for any one Loss. A deductible of \$500 for any one claim applies.

3 Defence costs

If any Driver Insured under Section 2:

- (a) is charged with manslaughter, or dangerous or careless driving causing death arising from Loss, covered under Section 1; and
- (b) 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.

Lumley's total liability will not exceed \$5,000 for any one Accident.

Section 2 'C Exclusions' – Clause 7 Offences does not apply to this Automatic Extension.

4 Driver's indemnity

Lumley will indemnify any person who is in charge of any Insured Vehicle on the Insured's order or with their permission, provided that:

- (a) the Driver is not entitled to indemnity under any other policy;
- (b) this indemnity will not apply to liability in connection with the letting out on hire of the Insured Vehicle without a Driver.

5 Exemplary damages

Section 2 covers the Insured's liability for exemplary damages in New Zealand for Bodily Injury. General Exclusion 2(d) is deleted.

This extension is subject to the following:

- (a) Lumley's 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.
- (b) 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.
- (c) There is no indemnity under this extension:
 - (i) arising from any dishonest, fraudulent or malicious act or omission by the Insured or anyone acting on behalf of the Insured;
 - (ii) arising from any claim first notified to the Insured but not notified to Lumley within six months of that date.

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, the Insured becomes liable to pay it, despite making proper enquiries before purchasing it.

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

7 Hired vehicles

If the Insured hires a Vehicle during the Period of Insurance and does not arrange separate insurance cover for it, this extension covers the Insured's liability:

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

Section 2, Exclusion 4 does not apply.

8 Marine liability

If an Insured Vehicle is transported by sea or air between places in New Zealand during the Period of Insurance, Section 2 covers the Insured for any resulting General Average and salvage charges recoverable from it at law.

This applies regardless of whether or not the Insured Vehicle suffers Loss.

9 Principal's indemnity

If an Insured Vehicle is used or operated on any construction or works project during the Period of Insurance, Section 2 indemnifies the Principal of that project, but only in respect of that vicarious liability in connection with the Insured's use or operation of the Insured Vehicle.

This cover is subject to the terms of Section 2.

10 Weight damage

Section 2 covers the Insured's legal liability for damage to any property (including a road) during the Period of Insurance caused by:

- (a) the weight of the load carried by the Insured Vehicle, or
- (b) from the weight of the Insured Vehicle, or
- (c) from the combined weight of the load and the Insured Vehicle.

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

Section 2 Exclusion 2 is deleted to this extent.

General policy extensions applicable to Sections 1 and 2

A Automatic extensions

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

1 Additions and deletions

- (a) Any Insured Vehicle sold during the Period of Insurance ceases to be insured from that date and is deleted.
- (b) Any Vehicle purchased by the Insured during the Period of Insurance will automatically be insured from the date of its purchase.
- (c) Each Vehicle purchased will be insured for its Market Value, and each Insured Vehicle sold was insured for the value shown on the Vehicle Schedule.
- (d) The premium for all additions and deletions will be calculated and paid at the end of the Period of Insurance based on 50% of the difference in value between all additions and deletions at the premium rate agreed at the beginning of the Period of Insurance.
- (e) Lumley's total liability will not exceed \$150,000 in respect of any new addition that has not been advised to it.

2 Breach of condition

This policy will not be invalidated by any breach of condition, where the breach occurs without the knowledge of the Insured, **provided** Lumley is advised immediately it becomes known to the Insured and any additional premium paid.

3 Invalidation

This policy covers an Insured Vehicle (including Hired or Borrowed vehicles) driven in any of the circumstances referred to in General Exclusion 1, **provided**

- (a) the driving was without the knowledge or consent of the Insured named on the Schedule; and
- (b) the Insured named on the Schedule has not waived any right of recovery against the Driver; and

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

4 Uninsured third party protection

If a third party has no valid and collectable insurance, this extension covers the Insured's no claims bonus, policy Deductible, and uninsured Loss, where:

- (a) the third party was at fault for the Accident; and
- (b) the identity of the third party is established; and
- (c) the Insured is 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, Lumley's total liability will not exceed \$5,000 in respect of any one Accident.

B Optional extensions

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

1 Burning cost

The premium payable under this Policy shall be adjusted on Losses incurred (Losses paid plus outstanding estimates) during the Period of Insurance. This will be calculated as follows:

- (a) At the end of each Period of Insurance the total premium shall be adjusted by dividing the Losses incurred by the multiplier as agreed in the Schedule.
- (b) If the premium produced is greater than the premium paid the Insured shall pay the difference but not exceeding the percentage of the deposit premium as agreed in the Schedule.
- (c) If the premium produced is less than the premium paid Lumley shall refund the difference to a minimum retained premium of the agreed percentage in the Schedule of the deposit premium.

For the purposes of this extension, total premium shall mean deposit premium plus any additional or return premium adjustments processed during the Period of Insurance.

2 Profit share

If, at the end of the Period of Insurance, the Insured agrees to renew the insurance with Lumley, Lumley will adjust the premium paid for that Period of Insurance as follows:

- (a) At the end of the Period of Insurance the net premium (gross premium and any additional or return premium adjustments and less commission if applicable) shall be totalled together with incurred claims (total amount of claims paid and reasonable estimates of claims yet to be paid, including fees and net of actual and estimated recoveries), as a result of Accidents during the Period of Insurance, and
- (b) A loss ratio shall be calculated by comparing the net premium to the total of incurred claims, and
- (c) If the incurred claim ratio is more than 60% then no profit share is payable. However, if the loss ratio is 60% or less, the amount of profit share will be calculated by using one of the following profit share percentages:

Profit Share Percentage

- | | |
|--|-----|
| (a) If the incurred claims ratio is 40% or less | 20% |
| (b) If the incurred claims ratio is between 40% and 50% | 15% |
| (c) If the incurred claims ratio is 50% or more but not greater than 60% | 10% |

If a profit share is payable, then it will be calculated by multiplying the profit share percentage against the sum of net premium less incurred claims. This adjustment is processed net of commission.

General policy exclusions

1 This policy does not insure any Insured Vehicle while it is:

- (a) 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;
- (b) being driven in an unsafe condition. This includes any condition:
 - (i) which is contrary to any recommendation by the manufacturer of the Insured Vehicle, or
 - (ii) as a result of which the Insured Vehicle is not fit to deal with any peril likely to be encountered during the course of its operation.This exclusion only applies if the Insured or the person in charge of the Insured Vehicle was aware, or with reasonable diligence ought to have been aware, of the unsafe condition.
- (c) 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 the Insured, or the person in charge of the Insured Vehicle, was aware, or with reasonable diligence ought to have been aware, of the unsafe condition.

- (d) being driven by any person who is not the holder of a licence for the appropriate class and use applicable to the operation of the Insured 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 the Insured Vehicle is being used for the purpose of teaching a learner to drive, if all requirements of the law are being complied with;
- (e) being driven by any person who:
 - (i) is under the influence of any intoxicating substance or drug, or
 - (ii) has a proportion of alcohol in the breath or blood which exceeds the legal limit, or
 - (iii) fails to supply a blood or breath sample as required by law, or
 - (iv) fails to stop, or remain at the scene, following an Accident as required by law.
- (f) being driven in breach of the law relating to driving hours.

Exclusions 1(a) – 1(f) will not apply in respect of Loss which results from fire, theft or conversion.

2 This policy does not insure:

- (a) liability incurred by the Insured under an agreement where there would have been no liability without the agreement;
- (b) liability for Bodily Injury which is covered by the Accident Compensation Corporation;
- (c) Loss or liability which is directly or indirectly caused by:
 - (i) confiscation, nationalisation or destruction or damage to property by order of government, public or local authority,
 - (ii) nuclear weapons material,
 - (iii) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel, and for the purpose of this Exclusion 2(c)(iii) combustion includes any self-sustaining process of nuclear fission or fusion.
- (d) liability for exemplary damages.
- (e) Loss or liability arising from any intentional or reckless act or omission.

3 This policy does not insure:

- (a) death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any of the following regardless of any other contributing cause or event:

(b) war, invasion, act of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

(c) acts of terrorism.

For the purpose of this Exclusion, terrorism means an act including but not limited to the use of 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.

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

4 This policy does not insure any Loss or damage of whatsoever kind arising directly or indirectly out of:

(a) the corruption, destruction or alteration of or damage to data, coding program or software; or

(b) the unavailability of data or reduction in the functionality, availability or operation of hardware, software and embedded chips; or

(c) any business interruption losses resulting therefrom.

Provided that this Exclusion shall not apply where such Loss or damage occurs as a direct result of physical damage which is otherwise covered by this policy and any such Loss or damage will be settled in accordance with the policy conditions and sum insured limits.

Claims conditions

A Conditions for Section 1

1 Minimise the Loss

If there is a claim under Section 1, the Insured:

(a) must take prompt steps to minimise the Loss and to prevent further Loss, and:

(i) if the Insured 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, and

(ii) as soon as possible inform Lumley and complete and return a Lumley claim form; and

(b) is responsible for the payment of the Deductible to the repairer;

Note: No repairs should be carried out until Lumley's surveyor/assessor has examined the Insured Vehicle and approved any repair work, unless Lumley has agreed otherwise.

2 Progress payments

If a claim under Section 1 is covered, Lumley will make progress payments to the Insured. The Insured must supply interim statements that are approved by Lumley's assessor.

B Conditions for Section 2

1 Notification and conduct

If there is a claim, or possible claim, under Section 2 the Insured must, as soon as possible, notify Lumley to obtain, complete and return a claim form. The Insured must forward any relevant correspondence and court documents to Lumley as soon as possible.

The Insured must notify Lumley immediately if they or anyone else entitled to cover under this policy is charged with any offence in connection with the use of the Insured Vehicle or another vehicle which resulted in Loss of property or Bodily Injury to another person.

The Insured must not, without the written consent of Lumley:

(a) incur any expense in making good any loss to the property of others or incur any legal expense;

(b) make any statement or take action which may be considered to be an admission of liability;

(c) negotiate, pay, settle, admit or repudiate any claim made by another person.

(d) negotiate, or offer to pay Reparation, including but not limited to, offers made as part of any case management conference or sentencing hearing.

Lumley has the sole right to act in the Insured's name to defend, negotiate or settle the claim as it sees fit, at its expense.

2 Settlement option

Lumley has the option to pay to the Insured the full amount of Lumley's liability under Section 2, or any lesser amount for which the claim can be settled, plus defence costs incurred to date.

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

C Conditions applicable to both sections of the policy

1 Additional information

The Insured, and any other person covered under this policy, must:

(a) agree to be examined under oath by a person named by Lumley whenever reasonably required;

(b) supply any information or documentation that Lumley reasonably requires;

(c) authorise the disclosure to Lumley of any personal information about them held by other parties, which is relevant to the claim or this policy.

2 Notification to authorities

The Insured 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.

3 Subrogation

Once Lumley agrees to indemnify the Insured, it may exercise for its own benefit any legal right of recovery the Insured has in connection with the claim.

Lumley will do this at its own expense, but the Insured must cooperate fully.

4 Waiver of subrogation (group companies)

Where the Insured is a parent or subsidiary in a group of related companies, Lumley waives any right of recovery it may have against any other company in the same group.

A 'subsidiary' means a company with more than half the nominal value of its equity share capital owned by a parent company, either directly or through other subsidiaries. A 'group of related companies' means a group of companies related to one another by virtue of such ownership.

General conditions

1 Alteration

This policy was arranged on the basis of the information supplied to Lumley by the Insured. If any of the information changes during the Period of Insurance which:

- (a) increases the nature of the risk covered; or
- (b) alters the nature of the risk covered

the Insured must tell Lumley as soon as the Insured becomes aware of the change.

Examples of changes are:

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

2 Cancellation

This policy may be cancelled by the Insured at any time by notice in writing to Lumley. Lumley will refund to the Insured any unexpired premium already paid on a pro rata basis.

Lumley may also cancel this policy by letter to the Insured either delivered personally, posted or facsimiled to the address last known to Lumley. Cancellation will be effective from 4.00pm on the 30th day after the day the letter is delivered, posted or faxed.

3 Compliance

It is a condition precedent to Lumley's liability under this policy that:

- (a) the information given by the Insured, and anyone on the Insured's behalf, in connection with this policy and any claim is true and complete; and
- (b) the Insured, and anyone else covered under this policy, has complied with its terms.

4 Diligence

The Insured must take all reasonable steps to protect the Insured Vehicle from Loss and to avoid liability.

There is no cover if the Insured is reckless or grossly irresponsible.

5 Fraud

If the Insured, or anyone else covered under this policy, is dishonest or fraudulent in any way in connection with a claim, Lumley may, at its option:

- (a) decline part or all of the claim; or
- (b) elect to treat the policy as unenforceable by the Insured, and anyone else covered, from the date of the dishonesty or fraud.

6 Goods and Services Tax

The Market Value of any Insured Vehicle is exclusive of GST. For example, Lumley will settle a claim for total Loss up to the maximum amount insured by this policy, plus GST.

However, in respect of any Deductible, policy limit or sub-limit within any policy extension, the amounts shown are inclusive of GST.

7 Governing law

The law of New Zealand governs this policy, and the courts of New Zealand have exclusive jurisdiction.

8 Headings

Headings used in this policy are for reference only. They do not form part of the policy and are not to be used as an aid to interpretation.

9 One contract

This policy and the Schedule are one contract. The proposal or written submission by the Insured is incorporated in it.

10 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 Vehicle which has been notified to Lumley, Lumley may, at its option, pay any claim under Section 1 of this policy to the interested parties in the order of their legal priorities, and to the extent of their financial interest.

However, Lumley's total liability will not exceed the amount it would have paid to the Insured.

11 Other insurance

If at the time any claim arises under this policy there is any other insurance covering the Loss or liability, this policy will only apply in excess of the other insurance, even if there is a similar insurance condition in the other insurance policy.

12 Several insurance

If more than one person or entity is insured under this policy, they are insured separately as though a separate policy has been issued to each.

However, this will not increase Lumley's total liability under this policy.

13 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 Lumley may require the Insured to provide schedules of Insured Vehicles showing their book value, depreciated cost, written down value or residual value in the Insured's business records.

14 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.

The Insured Vehicle then becomes the property of Lumley unless otherwise agreed.