

Contractors plant & machinery policy

Form EN024 07/11



Lumley General Insurance (N.Z.) Limited, Head Office, Lumley Centre, 88 Shortland Street, PO Box 2426, Auckland 1140, New Zealand, Tel 09 308 1100, Fax 09 308 1114

Introduction

Welcome to the Lumley Contractors Plant and Machinery policy. This wording sets out the terms, conditions and exclusions subject to which cover is provided for *Property Insured*.

Please read this *Policy* carefully to ensure that the insurance cover is appropriate for *You*. Words *Capitalised* and in *Italics* have had their meaning defined. These meanings can be found in the Definitions section or within the wording of this *Policy*. Headings in this *Policy* are a guide only and are not to be used for interpretation.

Insurance Contract

In consideration of the premium paid by *You* to *Us*, *We* agree to indemnify *You* as outlined in this *Policy*.

Your insurance contract consists of three parts, this pre-printed document, the *Policy Schedule*, and the information provided by *You* in support of *Your* application, including the proposal.

The cover provided by this *Policy* only attaches to those items of the *Property Insured* listed in the *Policy Schedule* with a *Sum Insured* shown. For items where there is no *Sum Insured* shown, or '0' or 'Nil' is shown, there will be no cover unless specifically endorsed onto the *Policy Schedule* or *Policy*.

Disclosure of Material Information

In addition to any other disclosure obligations under this *Policy*, *You* have a duty to advise *Us* of all material information prior to inception, variation and renewal of this *Policy*. Material information is information that might influence a prudent insurer's decision to insure *You* and if so, on what terms and/or premium.

Failure to disclose all material information may entitle *Us* to avoid *Your Policy*. This means it will be as though the *Policy* never existed and any claims made will not be payable. If *You* are unsure whether to disclose certain information, please tell *Us*.

Operative Clause – What We cover

We will indemnify *You* for *Damage to Property Insured* occurring during the *Period of Insurance* subject always to the terms, conditions and exclusions of this *Policy*.

Basis of Settlement – What We pay

In the event of *Damage to Property Insured*, at *Our* option *We* may indemnify *You* in any one of the following ways:

- (a) repairing or reinstating the *Damaged Property Insured* to a similar condition to that immediately prior to the *Damage*; or
- (b) replacing the *Damaged Property Insured* with an equivalent replacement item of *Plant* similar in type, capacity and condition to the *Property Insured* immediately before the occurrence of *Damage* and paying any costs for ordinary freight and installation; or
- (c) payment of an amount equal to the *Damaged Property Insured*'s:
 - (i) *Market Value*; or
 - (ii) *Sum Insured* shown in the *Policy Schedule*; or
 - (iii) *Agreed Value* (if applicable and shown in the *Policy Schedule*).

Without limiting the options available to *Us* detailed above where *Damage to Property Insured* can be repaired:

- *We* may pay all expenses necessarily incurred to restore the *Property Insured* to its state of serviceability immediately before the occurrence of *Damage*;
- if any parts are required to be replaced in order for the *Damaged Property Insured* to be repaired, *We* will source only new parts;
- if new parts are unable to be sourced for the repairs, at our option *We* may either source second hand parts of the same or better condition to that being replaced immediately before the occurrence of *Damage* or pay you an amount equal to the manufacturer's or supplier's last published price for the parts;

- if the repairs are undertaken by *You*, *We* will pay the cost of materials and wages incurred for the purpose of the repairs, plus a reasonable allowance to cover overhead charges;
- if *Property Insured* is a *Total Loss*, at our option *We* may elect whether to take ownership of the *Damaged Property Insured*. If *We* elect to refuse to take over the ownership, the *Damaged Property Insured* will remain in *Your* ownership and *You* will be liable for any costs or expenses of liability in respect of such.

In no circumstances will *We* be liable to indemnify *You* under this *Policy* for any amount which is:

- in excess of the *Sum Insured* (or, if applicable, the *Agreed Value*) for any item of *Property Insured*;
- the applicable *Excess*.

Automatic Benefits

Subject always to the terms, conditions and exclusions of this *Policy*:

1 Acquisitions

The cover provided by this *Policy* automatically extends to *Plant* with a purchase price of \$250,000 or less, acquired by *You* during the *Period of Insurance* subject to:

- the maximum amount *We* will indemnify *You* for under this Automatic Benefit will be the purchase price of the item of *Plant*; and
- the maximum period of cover provided by this Automatic Benefit is 3 months from the date of acquisition.

Any items of *Plant* acquired by *You* during the *Period of Insurance* which are not covered under this Automatic Benefit will not be covered under this *Policy* unless declared to *Us* and included on the *Policy Schedule*.

2 Additional Costs

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will pay any additional costs incurred due to overtime, night-work, work on public holidays and express freight provided this is required to enable the *Property Insured* to be repaired or replaced.

The maximum amount *We* will indemnify *You* for under this Automatic Benefit is \$10,000 for any one claim unless stated otherwise in the *Policy Schedule*.

3 Appreciation

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will pay the appreciation in value of the *Property Insured* above that of the *Sum Insured* (or, if applicable, *Agreed Value*) provided that *You* provide *Us* with a current valuation of the *Property Insured* evidencing such appreciation.

The maximum amount *We* will indemnify *You* for under this Automatic Benefit is 25% of the *Sum Insured* unless stated otherwise in the *Policy Schedule*.

4 Cleaning up Costs

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will pay the cost of cleaning up and disposing of any resulting debris, including any load carried thereon.

The maximum amount *We* will indemnify *You* for under this Automatic Benefit is \$10,000 for any one claim unless stated otherwise in the *Policy Schedule*.

5 Consequential Loss

Notwithstanding anything in this *Policy* to the contrary, if *Property Insured* suffers *Damage* covered under this *Policy* and the business carried on by *You* is interrupted or interfered with as a consequence of such *Damage*, *We* will indemnify *You* for:

- the increase in cost of working, directly resulting from such interruption or interference; and
- any loss of *Revenue* suffered by *You*, directly resulting from such interruption or interference,

provided that:

- the amount payable for any increase in the cost of working will be the additional expenditure necessarily and reasonably incurred for the sole purpose of minimising any interruption to the business during the *Period of Insurance* in consequence of *Damage*; and
- You* provide all documentation required to establish and verify any claim for loss of *Revenue* directly related to *Damage*; and
- You* take all reasonable steps to avoid or reduce any potential loss of *Revenue* including reorganising work methods and schedules; and
- You* take all reasonable measures to assist with the expedient repair and availability of the *Property Insured*; and
- no indemnity will be provided by this extension if replacement or alternative *Plant* is available at no cost, and
- no indemnity will be provided by this extension for the reimbursement of any *Excess* applying under any other section or extension of this *Policy*.

The maximum amount *We* will indemnify *You* for under this clause is \$5,000 per week subject to *Our* total liability in any one *Period of Insurance* not exceeding \$50,000, unless stated otherwise in the *Policy Schedule*.

The time *Excess* applying to this Automatic Benefit will be 5 working days for each and every claim.

Where any amount has been paid to *You* under this extension then, at *Your* option, *You* may reinstate cover to the maximum amount. Any such reinstatement will require the payment of an additional premium.

6 Emergency Services

We will indemnify You under this Policy, if *Property Insured* suffers *Damage*, not otherwise excluded from cover under this Policy, due to it being used or operated by any organisation requiring emergency assistance, or by You on the request of such organisation, in a hazardous environment for the sole purpose of preventing loss or damage to person or property, provided that You have not in any way prejudiced any right of recovery against the organisation.

7 Foreign Objects

We will indemnify You for *Damage* caused by the ingestion or entry of any foreign object into *Property Insured*.

8 Hired or Borrowed Plant

We will indemnify You for all amounts You are legally liable to pay as direct compensation for *Damage* not otherwise excluded by the Policy, to the owner of any item(s) of *Plant* that You have hired or borrowed:

- (a) for *Damage* to the hired or borrowed *Plant* subject to a maximum amount of \$350,000 for any one item of *Plant*;
- (b) for consequential losses directly caused by *Damage* for which a claim is payable under (a) above, subject to a maximum amount of \$25,000 any one claim,

provided that cover is only provided under this Automatic Benefit:

- (i) in respect of *Plant* which:
 - (1) has a *Market Value* of \$350,000 or less; and
 - (2) has been hired or borrowed for less than 90 consecutive days; and
 - (3) is not insured under any other policy of insurance, and
- (ii) if the total combined value of all *Plant* hired or borrowed by You does not exceed \$500,000 at any one time.

9 Hoists and Hydraulic Lifting Equipment

Notwithstanding anything else to the contrary in this Policy, We will indemnify You for mechanical breakdown or mechanical failure of hoists and hydraulic lifting equipment permanently attached to *Property Insured* provided that such breakdown or failure is not caused by or due to wear and tear.

The maximum amount We will indemnify You for under this clause is \$5,000 for any one claim unless stated otherwise in the *Policy Schedule*.

Indemnity under this Automatic Benefit is subject to an *Excess* of \$1,000.

10 Increased Value

The *Sum Insured* for any *Property Insured* will be adjusted to include any increase in the value of such *Property Insured* following any major overhaul, refit or modification which increases its value, provided that:

- (a) the *Sum Insured* will at no time exceed the *Market Value* of the *Property Insured*; and
- (b) should the increase in value be greater than 10% You declare such to Us immediately; and
- (c) cover under this Automatic Benefit automatically terminates for the increase in value at the next renewal of this Policy.

11 Salvage, Recovery and Re-Siting Costs for Damaged Property Insured

If *Property Insured* suffers *Damage* covered under this Policy, We will indemnify You for the reasonable cost:

- (a) incurred in salvaging or recovering of the *Property Insured*, including the costs of ensuring its safety and delivery to a place of suitable repair or inspection and re-siting any repaired item;
- (b) of recovery and/or withdrawal in the event of any item of *Property Insured* becoming unintentionally immobilised in or about the site of any contract, (such cost will be deemed to be '*Damage*' within the meaning of this Policy),

provided that:

- (i) the total amount payable under this Policy for costs both in terms of *Damage* to the *Property Insured* and under this Automatic Benefit does not exceed the *Sum Insured* (or, if applicable, *Agreed Value*) of the *Damaged* item of *Property Insured*; and
- (ii) there is no cover under this Automatic Benefit in respect of *Damage* which is a *Total Loss*; however, We may, at Our sole discretion, upon indemnification for Your loss, elect to take ownership of the *Damaged Property Insured* whereby We will be responsible for its salvage and/or recovery.

The *Excess* applying to this Automatic Benefit is subject to a minimum of \$2,500 of each and every claim.

12 Salvage, Recovery and Re-Siting Costs for undamaged Property Insured

We will indemnify You for the reasonable cost:

- (a) incurred in salvaging or recovering of the *Property Insured*, including the costs of ensuring its safety and delivery to a place of suitable repair or inspection and re-siting any repaired item;
- (b) of recovery and/or withdrawal in the event of any item of *Property Insured* becoming unintentionally immobilised in or about the site of any contract, (such cost will be deemed to be '*Damage*' within the meaning of this Policy),

provided that such is required to avoid *Damage* occurring to the item of *Property Insured*.

The maximum amount We will indemnify You for under this clause is \$100,000 any one claim unless stated otherwise in the *Policy Schedule*.

The *Excess* applying to this Automatic Benefit is subject to a minimum of \$2,500 of each and every claim.

13 Temporary Repairs

If *Property Insured* suffers *Damage* covered under this *Policy*, We will indemnify *You* for the reasonable costs incurred in effecting temporary repair of any *Damage* covered under this *Policy* providing *You* have obtained *Our* prior approval.

The maximum amount We will indemnify *You* for under this clause is \$10,000 any one claim unless stated otherwise in the *Policy Schedule*.

14 Third Party Liability – Road Risk Only

Subject to the limitations set out below We will indemnify *You* for all amounts *You* are legally liable to pay to third parties as direct compensation for property *Damage* which is not otherwise excluded by the *Policy* (including legal expense in defending any claim), caused by, or in connection with, the use or operation of *Property Insured* whilst on a road, including while it is being loaded or unloaded.

This Automatic Benefit extends to any person who is driving the *Property Insured* with *Your* permission, provided there is no cover during and in connection with the letting out on hire of the *Property Insured* without a driver unless liability was completely and directly attributable to the failure of the *Property Insured* and outside the control of the hirer or other contracting party.

The Limitations:

There is no cover under this Automatic Benefit for liability arising out of or in connection with:

- (a) *Damage* to property which belongs to, or is in the care, custody or control of any person, who at the time of such *Damage* occurring, was in charge of and/or driving the *Property Insured*;
- (b) the *Property Insured* or any component on the *Property Insured* being used or operated for the purpose for which it has been designed, other than as a vehicle;
- (c) *Damage* to property which:
 - (i) belongs to, or is in the care, custody or control of any Insured (other than personal baggage and wearing apparel of any passenger who is not an *Insured*);
 - (ii) is a building leased or rented by the *Insured*; or
 - (iii) is a machine (not being the property of the *Insured* or the *Property Insured*) which is being towed by the *Property Insured*. However, this does not apply to machines which are towed or recovered for reward where the *Insured's* business includes a machine recovery service.

For the purposes of this extension only, 'Road' means any place which the public have access to, whether as of right or not (e.g. service lane, street, motorway, or closed roads such as off-highway service roads and the like).

The maximum amount We will indemnify *You* for under this Automatic Benefit is \$10,000,000 any one claim (inclusive of all costs and expenses) unless stated otherwise in the *Policy Schedule*. If *Our* total liability is insufficient to cover both *You* and any other party entitled to cover under this Automatic Benefit it will apply in priority to *You*.

15 Tyres

Notwithstanding anything to the contrary in this *Policy*, We will pay the replacement value of any *Damaged* tyre, less an allowance for depreciation to account for wear and tear, attached to *Property Insured* which is, in its ordinary use or operation, an off-road vehicle.

The maximum payable for any one tyre under this Automatic Benefit will not exceed the amount stated in the *Policy Schedule*.

16 Uninsured Third Party Protection

If *Property Insured* suffers *Damage* covered under this *Policy* which is caused by any third party (and/or their operator/driver) who has no valid or collectable insurance, notwithstanding anything in this *Policy* to the contrary, We will indemnify *You* for:

- (i) any uninsured loss *You* incur; and
 - (ii) *Your Excess*,
- provided:
- (a) the third party driver was at fault; and
 - (b) the identity of the third party and the driver is established; and
 - (c) *You* are unable to make any recovery from the third party or the driver.

The maximum amount We will indemnify *You* for under this Automatic Benefit is \$3,000 any one claim unless stated otherwise in the *Policy Schedule*.

17 Windscreens

If *Property Insured* suffers only windscreen or window glass *Damage* not otherwise excluded under this *Policy*, We will pay the cost of replacement of the *Damaged* glass subject to a \$250 Excess (or as otherwise agreed and specified in the *Policy Schedule*), provided:

- (a) the *Property Insured* is specified in the *Policy Schedule*;
- (b) the *Property Insured* is not used by *You* at any time, for, or in connection with, forestry work or quarry work; and
- (c) the *Damage* is reported to *Us* within 90 days of the *Damage* occurring.

This Automatic Benefit will only indemnify *You* in respect of the replacement of the actual glass *Damaged* and not any superior alternative or temporary repair involving additional expense unless otherwise agreed by *Us*.

The maximum amount We will indemnify *You* for under this Automatic Benefit is \$5,000 any one claim unless stated otherwise in the *Policy Schedule*.

Optional Extensions (only applicable if shown in the Policy Schedule)

Subject always to the terms, conditions and exclusions of this *Policy*, if *Your* cover under this *Policy* includes the applicable Optional Extension as shown in the *Policy Schedule*:

1 Employee Death By Accident – Funeral Expenses Cover

If *Property Insured* causes the *Accidental Death* of *You*, or any person employed by *You*, whilst *At Work*, *We* will pay the reasonable funeral expenses, including reasonable travel costs within New Zealand for any *Immediate Family* member of the deceased.

Accidental Death

'Accidental Death' means bodily injury caused solely and directly by violent, accidental, external and visible means, which injury, independently of any other cause, is the sole and direct cause of death occurring within 12 calendar months of the *Accident*.

At Work

'At Work' has the same meaning as that provided by the Accident Insurance Act 1998.

Immediate Family

'Immediate Family' means father, mother, brother, sister, spouse, partner or children of the deceased.

There is no cover under this Optional Extension in respect of any death of a person who is under the influence of an intoxicating liquor or drug.

The maximum amount *We* will indemnify *You* for under this Optional Extension is \$5,000 any one claim unless stated otherwise in the *Policy Schedule*.

2 Finance Payment Protection

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will indemnify *You* (calculated on a daily pro-rata basis) for *Your* obligation to meet payments on such *Property Insured* under any finance or lease agreement provided that:

- (a) the period required to repair or replace the *Damaged Property Insured* is greater than 14 consecutive days; and
- (b) the amount payable under this Optional Extension is based on the annual loan repayment amount and calculated on a daily pro-rata basis, limited to the period as described in (d) below; and
- (c) *We* will not be liable for any balloon or residual value payment that may be due during a repair or replacement period; and
- (d) the indemnity period provided by this extension will cease on the date 6 consecutive calendar months from the date of the *Damage* or when the *Property Insured* is repaired or replaced, whichever is the earlier; and

The maximum amount *We* will indemnify *You* for under this Optional Extension is the limit shown for this Optional Extension in the *Policy Schedule*.

The *Excess* applying to this Optional Benefit is \$2,500, each and every claim.

3 Machinery Breakdown

Notwithstanding any other provision of this *Policy* to the contrary, *We* will indemnify *You* for *Machinery Breakdown* (as defined below) of any *Property Insured* specified in the *Policy Schedule*.

Machinery Breakdown

'Machinery Breakdown' means sudden and unforeseen *Damage* causing the actual breaking or burning out of any part of a machine necessitating repair or replacement before normal working can be resumed including (but not limited to) *Damage* resulting from:

- (a) defects in material design, construction, erection or assembly;
 - (b) fortuitous working *Accidents* such as vibration, maladjustment, loosening of parts, molecular fatigue, centrifugal force, abnormal stresses, defective or *Accidental* lack of lubrication, water hammer or local overheating, electronic, electrical or mechanical defects or failure of protection devices;
 - (c) excessive electrical pressure from any cause, failure of insulation, short circuits, open circuits or arcing or the effects of static electricity in any case causing sudden stoppage of the machinery and necessitating repair or replacement before normal operation can be resumed,
- provided that *We* will not be liable under this Optional Extension for any more than the manufacturer's or supplier's last published price for any part of any *Property Insured* that is no longer available to effect repair.

The maximum amount *We* will indemnify *You* for under this clause will not exceed the *Sum Insured* for each item of *Property Insured* stated in the *Policy Schedule* for any one occurrence of *Machinery Breakdown*.

4 Objects Being Handled

Notwithstanding any other provision of this *Policy* to the contrary, *We* will indemnify *You* for *Damage* to property belonging to *You* or in *Your* care, custody or control while being handled by *Property Insured* provided that *Damage* caused by or arising from a fault in or fragility of such *Property Insured* or its container is not covered.

The maximum amount *We* will indemnify *You* for under this clause will not exceed the amount stated in the *Policy Schedule* for any one claim.

5 Tools and Sundry Equipment

Notwithstanding anything to the contrary in this *Policy*, *We* will indemnify *You* for *Damage* to tools (including employees' tools and other personal effects), equipment, motor machine parts and accessories, tyres, stores of petrol, diesel and oil, mobile and radio telephones including base and hands-free units, office equipment including computers, owned by *You* or for which *You* are responsible, provided these are not insured under any other policy of insurance, provided that:

- (a) this Optional Extension does not cover buildings, structures or caravans, whether fixed to the ground or not unless otherwise specified; and
- (b) cover in respect of burglary and/or theft only applies where *Damage* results from violent and forcible entry or exit from any enclosed building and/or enclosed vehicle/machine.

The maximum amount *We* will indemnify *You* for under this clause will not exceed the amount stated in the *Policy Schedule* for any one event.

6 Windscreen Cover Extra

If the *Property Insured* is, in its usual operation, used for or in connection with any forestry work or quarry work and it suffers only windscreen or window glass *Damage*, We will pay the cost of replacement of the *Damaged* glass subject to a \$250 Excess (or as otherwise agreed and specified in the *Policy Schedule*), provided:

- (a) the *Property Insured* is specified in the *Policy Schedule*; and
- (b) the *Damage* is reported to Us within 90 days of the damage occurring.

This Optional Extension will only indemnify You in respect of the replacement of the actual glass *Damaged* and not any superior alternative or temporary repair involving additional expense unless otherwise agreed by Us.

The maximum amount We will indemnify You for under this Optional Extension is \$5,000 any one claim unless stated otherwise in the *Policy Schedule*.

Conditions

1 Alteration of Risk

You must immediately notify Us in writing, if at any time during the *Period of Insurance* there is any material change in any risk insured under this Policy ('Material Alteration').

Upon Our receipt of any *Material Alteration* notification, at Our sole discretion, We may:

- (a) discontinue cover for the relevant *Property Insured* under this Policy; and/or
- (b) (including retrospectively to the date of *Material Alteration*) amend the terms, conditions and/or exclusions of this Policy, including by way of special provisions or endorsement for the relevant *Property Insured*, and charge an additional premium.

At Your own expense You must take all reasonable precautions to prevent *Damage to Property Insured* as a result of any *Material Alteration*. If, prior to Our receipt of the *Material Alteration* notification, *Damage* occurs to *Property Insured* as a result of, or in connection with, such *Material Alteration*, at Our sole discretion, We may:

- (a) decline any claim made under this Policy for such *Damage*; and/or
- (b) discontinue cover for the relevant *Property Insured* under this Policy; and/or
- (c) (including retrospectively to the date of *Material Alteration*) amend the terms, conditions and/or exclusions of this Policy, including by way of special provisions for the relevant *Property Insured*, and charge an additional premium.

2 Assignment

You must not assign this Policy or Your interest in this Policy to any other person or entity without Our prior agreement in writing.

3 Breach of Warranty

The indemnity provided by this Policy will not be invalidated by reason of any breach of warranty or condition of this Policy which occurs without Your knowledge provided You have not waived any right of recovery.

4 Cancellation

You may cancel this Policy at any time by giving Us written notice.

If there is no interested party noted on Your Policy cancellation will take place immediately upon receipt of such notification and We will refund You the unused premium pro-rated for the actual period of cover subject to a maximum refund payment of 50% of the premium.

If there is an interested party noted on Your Policy, We will give them 30 days' written notice of cancellation at the end of which time the Policy will cancel and We will refund You the unused premium pro-rated for the actual period of cover subject to a maximum refund payment of 50% of the premium.

We may cancel this Policy at any time by giving You 30 days' written notice. The notice may be delivered personally or by registered mail to Your last known postal address. Cancellation will take effect at 4.00pm on the 30th day following the date of the cancellation notice. If We cancel this Policy, We will refund You all the unused part of the premium subject to any adjustment required by the terms of this Policy.

5 Entitlement

Any person entitled to cover under the Policy is bound by the terms of the Policy.

6 Fraud and Misstatements

If any claim:

- (a) is fraudulent in any respect, or
- (b) is supported by any incorrect or incomplete statements made by You, or someone on Your behalf,

We will not pay Your claim and all benefits under this Policy will be immediately forfeited.

7 GST

All monetary amounts described in this Policy, including the *Sums Insured*, are exclusive of Goods and Services Tax ('GST'). Provided any GST is recoverable by Us, in the event of a claim We will pay the current prescribed rate of GST in addition to the *Sum Insured* noted against *Property Insured* in the *Policy Schedule*.

8 Inspection

We are entitled to inspect and examine any *Property Insured* at any time subject to Us providing You with reasonable notice of such inspection.

If required by Us, You must provide Us with any reasonable information relating to *Property Insured*.

9 Jurisdiction Clause

This *Policy*, including all disputes arising out of or under it, is governed exclusively by the laws of New Zealand.

10 Misdescription

This *Policy* is based on the correct and complete descriptions you have provided. *We* will not indemnify *You* for any claim relating to any risk arising out of any misdescription or misrepresentation and may avoid *Your Policy*.

11 Observance of Conditions

The due observance and fulfilment of the terms of this *Policy* insofar as they relate to anything to be done or complied with by *You*, and the correctness of the statements and answers in the quote, submission, and proposal made by *You*, are a condition precedent to *Our* liability under this *Policy*.

12 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 *Damage*, this *Policy* will apply only to the amount of any *Damage* in excess of that recoverable under the other insurance.

13 Precautions

You will at *Your* own expense take all reasonable precautions to protect *Property Insured* and comply with all of *Our* reasonable requirements to prevent loss, damage or liability and comply with statutory requirements and manufacturers' recommendations.

14 Premium Payment

All premiums, including appropriate levies and GST, must be paid to *Us* within 120 days of inception of this *Policy*. If after 120 days the premium has not been paid to *Us* then this *Policy* will be avoided from inception.

Following 90 days of non-payment of premium *We* agree to provide *You* with 30 days' written notification of *Our* intention to avoid this *Policy*.

15 Reinstatement of Sum Insured

When *We* indemnify *You* for any claim under this *Policy*, *We* agree to reinstate cover for the applicable *Property Insured* by the value of the claim paid, provided that *You* pay any additional premium for such reinstatement.

16 Subrogation

You must at *Our* expense do and concur in doing and permit to be done all such acts and things as may be necessary or required by *Us* in the interest of any rights or remedies, or of obtaining relief or indemnity from parties (other than those insured under this *Policy*), to which *We* become, or would become, entitled or subrogated upon paying for or making good any *Damage* under this *Policy*, whether such acts and things are or become necessary or required before or after *Your* indemnification by *Us*.

Exclusions – What We do not cover

1 Contractor's Plant, Machinery and Tools

There is no cover under this *Policy* for any *Damage* to *Your* tools (including employees' tools and other personal effects), equipment, motor machine parts and accessories, tyres, stores of petrol, diesel and oil, mobile and radio telephones including base and hands-free units, office equipment including computers unless Optional Extension 4 is shown as applying in the *Policy Schedule*.

2 Consequential Loss

There is no cover under this *Policy* for any consequential loss, loss of use, loss due to delay, loss due to non-compliance, lack of performance, penalties, fines, liquidated damages or aggravated, punitive or exemplary damages.

3 Recklessness

There is no cover under this *Policy* for *Damage*, liability, cost or expense of any nature directly or indirectly caused by or in any way connected with a reckless act or failure to act by *You* or *Your* agents or representatives.

4 Electronic Data

Notwithstanding any provision to the contrary contained within this *Policy* or any endorsement attached thereto, there is no cover under this *Policy* for any *Damage* or liability directly or indirectly caused by or in any way connected to:

- (a) the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of *Electronic Data*; and/or
- (b) the error in creating, amending, entering, deleting or using *Electronic Data*; and/or
- (c) the total or partial inability or failure to receive, send, access or use *Electronic Data* for any time or at all.

5 General

There is no cover under this *Policy* for *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 perils excluded in any of the exclusions in this *Policy*.

6 Governmental Actions

There is no cover under this *Policy* for any *Damage* or liability directly or indirectly caused by or in any way connected with confiscation, nationalisation or requisition by the order of the Government or local authority. However, *We* will pay for *Damage* as a result of such an order if it is to prevent *Damage* which would otherwise have been covered under this *Policy*.

7 Gradual Damage

There is no cover under this *Policy* for *Damage* or liability directly or indirectly caused by or in any way connected with corrosion, rust, rot,

mould, mildew, fungi, deterioration due to lack of use, aesthetic defects, scratching, atmospheric conditions, the action of light or any other gradually operating cause or gradual deterioration.

8 Inventory Shortages

We will not indemnify *You* for loss which is only discovered at the time of taking an inventory, periodic stocktaking or routine servicing/maintenance.

9 Mechanical Failure

We will not indemnify *You* for mechanical and/or electrical breakdown *Damage* or mechanical and/or electrical derangement *Damage*.

10 Nuclear Materials

There is no cover under this *Policy* for *Damage*, liability, cost or expense of any nature directly or indirectly caused by or in any way connected with nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel (for the purpose of this exclusion, combustion includes any self-sustaining process of nuclear fission or fusion).

11 Pressure Vessel

There is no cover under this *Policy* for *Damage* or liability caused by or in any way connected to the explosion or collapse of any pressure vessel which does not have a current certificate as required by any statute or regulation.

12 Tyres

We will not indemnify *You* for *Damage* to the tyres of any *Property Insured* caused by the application of brakes, road punctures, valve leakage, inherent failure due to manufacture fault or error, staking or spiking.

13 Operation of Property Insured

There is no cover under this *Policy* for *Damage* or liability if *Property Insured* is:

- (a) used in an unsafe or unroadworthy condition and such condition caused or contributed to the *Damage* or liability. This exclusion will not apply if *You* can prove that *You* could not have reasonably detected the unsafe or unroadworthy condition;
- (b) undergoing a test of any kind other than as required to comply with any statute or regulation. This exclusion will not apply to *Damage* to parts of the *Property Insured* not undergoing the test;
- (c) being used in a manner not in accordance with the manufacturer's instructions or guidelines, or in a manner or purpose other than that for which it was designed;
- (d) used or operated by *You*, or by any person with *Your* consent, when not licensed to operate the *Property Insured* under any relevant law;
- (e) being used in any race, trial, contest;
- (f) being operated or used outside New Zealand;
- (g) being used, operated or stored underground;
- (h) being used or operated for any illegal purpose with *Your* knowledge and/or consent;
- (i) being operated by any person who:
 - (i) is under the influence of any intoxicating substance or drug; or
 - (ii) has a portion of alcohol in the blood which exceeds the legal limit. This exception will apply notwithstanding the operator dying as a result of the *Accident*; or
 - (iii) has a proportion of alcohol in the breath which exceeds the legal limit; or
 - (iv) fails to supply a blood or breath sample as required by law; or
 - (v) fails to stop, or remain at the scene of an *Accident* as required by law;provided this exception does not apply:
 - (a) to *Damage* which results from fire, theft or conversion; and/or
 - (b) to *You* (but not the driver) if *You* can evidence that *You* did not know or could not reasonably have known that the operator of the *Property Insured* was so affected.

14 Watercourses

There is no cover under this *Policy* for *Damage*, liability, cost or expense of any nature directly or indirectly caused by the *Property Insured* being left unattended in any watercourse or body of water.

15 War and Terrorism

There is no cover under this *Policy* for *Damage*, liability, cost or expense of any nature directly or indirectly caused by or in any way connected with any of the following regardless of any other contributing cause or event:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) confiscation, commandeering, requisition or destruction or *Damage* by order of any government de jure or de facto or by any public authority; or
- (c) any act of terrorism.

For the purpose of this exclusion, terrorism means an act including but not limited to the use or threat of force or violence by any person or group(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.

16 Workmanship and Design

There is no cover under this *Policy* for *Damage to Property Insured* caused by any error or defect in design, plan, specification, materials or workmanship. This exclusion does not apply to *Damage* to other property which is free of the error or defect but is *Damaged* as a consequence of it. For the sake of clarity, *Property Insured* is not *Damaged* solely by virtue of the existence of any error or defect in design, plan, specification, materials or workmanship.

Claims

Claims Obligations

- 1 In the event of any *Damage* which might give rise to a claim under this *Policy*, *You* must:
 - (a) immediately notify *Us* by either telephone or electronic mail, giving an indication as to the nature and extent of *Damage*;
 - (b) take all reasonable steps to minimise the extent of the *Damage*;
 - (c) take all reasonable steps to protect the *Property Insured* from further *Damage* including but not limited to theft;
 - (d) preserve the *Property Insured* and/or the parts affected and make it (them) available for inspection by *Our* representative or surveyor;
 - (e) at *Your* expense provide *Us* with all such information and documentary evidence as *We* may require;
 - (f) inform the Police in case of *Damage* due to theft, burglary, suspected arson or any other criminal act.
- 2 Once *You* have provided *Us* with notice of *Damage*:
 - (a) *We*, or *Our* representative will advise *You* to either complete the repairs or reinstatement (if only minor *Damage*) or allow for inspection of the *Damage*;
 - (b) If *You* are advised to complete the repairs or reinstatement, *You* may appoint a licensed repairer of *Your* choice and must carry out the repairs without delay;
 - (c) If *You* are advised to allow for inspection of the *Damage*:
 - (i) *You* must allow *Us* or *Our* representative an opportunity to inspect the *Damage* before any repairs or reinstatement is effected. If *We* or *Our* representative do not carry out the inspection within a period of time which could be considered reasonable under the circumstances, *You* will be entitled to proceed with such repairs or reinstatement as is required; and
 - (ii) Following *Our* inspection of the *Damage*, complete such repairs or reinstatement as is necessary in the circumstances without delay.
 - (d) *We* will not indemnify *You* for *Damage* which is not repaired or reinstated without delay in accordance with this clause.
 - (e) *We* reserve the right to invite, accept, adjust or decline estimates or to arrange at *Our* expense for the removal of the *Damaged Property Insured* to other repairers for quotation purposes.
- 3 In respect of each claim or potential claim, *You* must:
 - (a) not make any admission of guilt or offer of payment without *Our* written consent;
 - (b) allow *Us* to have the sole conduct of all negotiations and proceedings;
 - (c) give *Us* all reasonable assistance and cooperation;
 - (d) notify *Us* of any other insurance that also provides cover, whether in whole or in part.

Financial Interests

If the *Damaged Property Insured* is subject to any lease, hire or other financial agreement and *You* have noted such interests on *Your Policy* any amount payable under this *Policy* may be payable to the lessor or unpaid vendor whose receipt shall be a full discharge of such amount.

Mutually Acceptable Loss Adjustors

The appointment of any Loss Adjuster to any claim under this *Policy* will be mutually acceptable and agreeable to both *You* and *Us*.

Progress Payments

Once liability for any *Damage* is admitted to *Us*, *You* may be entitled to progress payments provided that an interim statement of *Damage* is supplied by *You* and approved by the assessor.

Definitions

Where any of the following words, or their derivatives, appear *Capitalised* and *Italicised* anywhere in this document they will mean:

Accident and Accidental

'Accident and Accidental' means An unexpected and unintended event which occurs in New Zealand.

Agreed Value

'Agreed Value' means The amount as declared by *You* which is agreed by *You* and *Us* as being the value of the item of *Property Insured* and shown in the *Policy Schedule* as the *Sum Insured* provided that:

- (a) the *Agreed Value* of an item of *Property Insured* is only valid until the end of the current *Period of Insurance*;
- (b) *Our* agreement is subject to *You* evidencing the value by way of a valuation accepted by *Us* at the latest occurring of the inception or renewal of this *Policy*; and

(c) if the item of *Property Insured* has been newly purchased during the *Period of Insurance* the *Agreed Value* will be the purchase price.

Damage / Damaged

'Damage / Damaged' means sudden, unforeseen and unintended physical:

- (a) loss; or
- (b) damage.

For the purpose of this *Policy*, *Property Insured* will not be regarded as *Damaged* solely by virtue of the existence of any error or defect in design, plan, specification, materials or workmanship in the *Property Insured* or any part thereof.

Electronic Data

'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.

Excess

'Excess' means the amount applied to each event, as stated in this *Policy* or the *Policy Schedule*, which *You* must contribute.

Where there is more than one insured item involved with one single event being the subject of a claim under the *Policy*, then only one Excess shall apply. This Excess will be the highest Excess of any one of the insured items. However if there is also an admissible claim under any extension to this *Policy* then the Excess for that additional cover will be cumulative with the highest machine Excess. Where a claim has been admitted under a *Policy* extension an additional Excess may apply.

For the purposes of applying the *Excess* any *Damage* caused by the same event during any period of 72 consecutive hours will be treated as one event and only one *Excess* shall apply.

Market Value

'Market Value' means the actual value of the *Property Insured* immediately prior to any *Damage* occurring as evidenced by a valuation not more than three months old completed by a registered valuer.

Period of Insurance

'Period of Insurance' means the period shown in the *Policy Schedule* during which this *Policy* is in force.

Plant

'Plant' means items of plant, machinery and equipment (including self-propelled items) and will also include:

- (a) any ancillary equipment (interchangeable attachments that are normally used with an item of *Plant* (e.g. buckets, scoops, blades, pneumatic heads) which in total do not exceed 25% of the total value of the item of *Plant*) normally used with the item; and
- (b) accessories (supplementary items that have been added to *Plant* after manufacture, which do not alter the performance or characteristics of the item) and spare parts whilst in or on the item.

Policy

'Policy' means this pre-printed policy document, which together with the *Policy Schedule* and the information provided by *You* in support of *Your* application, forms the basis of *Your* insurance contract with *Us*.

Policy Schedule

'Policy Schedule' means the most recent schedule to *Your Policy* issued by *Us* to *You* which forms part of *Your Policy* and shows *Your Policy* number and important details of *Your* cover.

Property Insured

'Property Insured' means the items of *Plant* described in the *Policy Schedule* as being insured under this *Policy*.

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.

Revenue

'Revenue' means money received or receivable by *You* for services performed in the course of *Your* business.

Sum Insured

'Sum Insured' means the amount shown in the *Policy Schedule* that any one item of *Property Insured* is insured for.

Total Loss

'Total Loss' means *Damage* which in *Our* opinion cannot be repaired or in respect of which the cost of repair will equal or exceed the lesser of the current *Market Value*, or *Sum Insured* (or, if applicable, *Agreed Value*), of the *Property Insured*, immediately prior to the *Damage* occurring.

We, Us & Our

'We, Us & Our' means Lumley General Insurance (N.Z.) Ltd.

You & Your

'You & Your' means the insured parties as shown in the *Policy Schedule* which includes any applicable subsidiary companies, directors or principals.