

**Introduction**

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

**Section 1: Definitions**

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

**1.1 Claim**

'Claim' means:

- (a) legal proceedings instituted and served upon the Insured;
- (b) any threat or intimation that legal proceeding will be issued against the Insured;
- (c) any circumstance that a reasonable insured in the position of the Insured would have considered may give rise to a demand for damages.

**1.2 Conduct of the Claim**

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

**1.3 Damages**

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

**1.4 Defence Costs**

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

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

'Defence Costs' does not include charges for time spent by directors, officers, partners or employees of the Insured or reimbursement of any remuneration for such people.

**1.5 Employee**

'Employee' means any person who is employed by the Insured in connection with the Insured's business and in respect of whose remuneration the Insured deducts PAYE tax at source.

**1.6 Insured**

'Insured' means the entity specified in the Schedule and if the Insured is a company it includes its directors and any subsidiaries and their directors.

**1.7 Insured's Business**

'Insured's Business' means the business and undertakings of the Insured, as defined in the Schedule.

**1.8 Lumley**

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

**1.9 Personal Injury**

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

**1.10 Punitive and Exemplary Damages**

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

**1.11 Schedule**

'Schedule' means the most recent Policy Schedule, Revised Policy Schedule or insurance certificate issued by Lumley.

## Section 2: Coverage

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

### 2.1 Insured liability

Lumley will indemnify the Insured against any Claim that the Insured becomes legally liable to pay as:

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

**Provided that** in respect of clauses 2.1 (a) and 2.1 (b) above:

- (i) the Claim against the Insured was first made during the period of insurance; and
- (ii) the Claim was notified to Lumley as soon as practicable by the Insured during the period of insurance or within 30 days of expiry; and
- (iii) the Personal Injury arose out of an event, circumstance or accident that occurred subsequent to the retroactive date and before the expiry of the period of insurance.

There is no indemnity under this Policy for Claims that do not comply with (i), (ii) and (iii) of this clause.

### 2.2 Defence Costs

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

### 2.3 Limits of liability

- (a) The limit of Lumley's liability in respect of any one Claim, inclusive of Defence Costs, shall not exceed the limit of indemnity stated in the Schedule.
- (b) The total aggregate liability of Lumley during any one period of insurance for all Claims and Defence Costs shall not exceed the limit of indemnity stated in the Schedule.

### 2.4 Excess

Where an excess is specified in the Schedule the Insured must pay this amount in respect of each and every Claim inclusive of Defence Costs.

## Section 3: Extensions

### 3.1 Acquisitions and creations

The definition of Insured, if a company, will include any subsidiary acquired or created during the period of insurance. Provided that the Insured shall advise Lumley within 30 days of the acquisition or creation, and Lumley shall have the right to charge any additional premium. However, Lumley will not pay on behalf of the Insured any Claim arising out of Personal Injury occurring before any such entity became a subsidiary of the Insured.

### 3.2 Previous subsidiaries

The definition of Insured, if a company, will include any entity that ceased to be a subsidiary before or during the period of insurance, but Lumley will not pay on behalf of the Insured any Claim arising out of Personal Injury occurring after it ceased to be a subsidiary, nor will Lumley pay on behalf of the Insured any Claim arising out of Personal Injury occurring before it became a subsidiary.

### 3.3 Continuous cover clause

Lumley will indemnify the Insured for any Claim that would be covered under this Policy but is excluded by exclusion 4.1(c) (Known Claims and circumstances), subject to the following additional conditions:

- (a) Lumley was the Insured's Employers Liability Insurer at the primary level under a policy ('the former policy') at the time when the Insured first became aware of the circumstances that subsequently gave rise to the Claim; and
- (b) Lumley continued without interruption as the Insured's Employers Liability Insurer at the primary level from the time when the Insured first became aware of the circumstances up until such time as the Claim was made against the Insured and notified to Lumley; and
- (c) the liability of Lumley is limited to the amount for which Lumley would have been liable at the time referred to in 3.3(a) in accordance with the terms and conditions of the former policy; and
- (d) the liability of Lumley will be reduced by the amount that fairly represents the extent to which liability for the Claim could have been reduced had the circumstances been duly reported under the former policy.

## Section 4: Exclusions

Lumley shall not be liable to indemnify the Insured in respect of any liability arising out of any Claim:

### 4.1 Known Claims and circumstances

- (a) made against, or intimated to, the Insured prior to the commencement of the period of insurance; or
- (b) notified under any previous Policy; or
- (c) arising out of or connected with any facts or circumstances that:
  - (i) the Insured was aware of prior to commencement of the period of insurance; and
  - (ii) a reasonable person in the position of the Insured would have considered may give rise to a Claim.

### 4.2 Intentional torts

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

### 4.3 Other activities

made as a result of the Insured directing an Employee to undertake activities otherwise than in the course of or in connection with the usual activities of the Insured's business.

### 4.4 Retroactive Date

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

### 4.5 War

for Personal Injury arising out of or in consequence of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority.

### 4.6 Nuclear fuel/weapons

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

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

### 4.7 Defamation

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

### 4.8 Punitive and Exemplary Damages, fines, wages and contractual obligations

- (a) for Punitive or Exemplary Damages except by way of a Claim for Punitive or Exemplary Damages in respect of Personal Injury pursuant to clause 2.1 (b) of this Policy;
- (b) for fines, penalties, reparation, court costs, prosecution witness expenses or solicitors' costs ordered to be paid by the Insured upon conviction of an offence;
- (c) for unpaid wages or other benefits due to any Employee;
- (d) for any contractual obligation in the nature of a performance warranty or claim for liquidated damages.

### 4.9 Legal jurisdiction

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

### 4.10 Date recognition

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

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

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

- (i) anything referred to in 4.10 (a) or 4.10 (b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or

- (ii) the operation of any command or logic that has been programmed or incorporated into anything referred to in 4.10 (a) or 4.10 (b) above.

#### **4.11 Dishonesty and fraud**

resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of the Insured or any officer in control of the Insured.

#### **4.12 Health and Safety in Employment Act**

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

#### **4.13 Terrorism**

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

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

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

#### **4.14 Asbestos**

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

### **Section 5: Conditions**

#### **5.1 Reporting of Claims**

Irrespective of the quantum, the Insured must give Lumley immediate notice in writing of:

- (a) any Claim made against them; or
- (b) the receipt of notice from, or information as to any intention by any party, to make a Claim against them; or
- (c) any circumstance that a reasonable insured in the position of the Insured would have considered may give rise to a Claim. Where such notice is given to Lumley by the Insured, any claim that may subsequently be made shall be deemed to be a Claim made against the Insured during the period of the insurance.

**Provided that** in order to qualify as a Claim capable of being covered by this Policy the Insured's notice in writing must:

- (i) relate to a Claim that occurred during the period of insurance; and
- (ii) be given during the period of insurance or within 30 days after its expiry.

#### **5.2 Conduct of Claims**

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

Lumley is entitled at any time to nominate a solicitor to act as the Insured's solicitor and shall have total discretion as to the Conduct of a Claim, in the name of the Insured. The solicitor shall at all times be at liberty to disclose to Lumley any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and Lumley in respect of such information.

If Lumley believes that the Claim will not exceed the excess, Lumley may instruct the Insured to assume responsibility for the Conduct of the Claim at the Insured's expense. Should the Claim subsequently exceed the excess, Lumley agrees to reimburse the reasonable costs and expenses incurred by the Insured that exceed the excess. The Insured must advise Lumley as soon as the total costs of the Claim exceed the excess or it becomes apparent that they are likely to do so.

#### **5.3 Defence of legal proceedings**

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

In formulating such advice, appointed counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion will be treated as part of the Defence Costs of any Claim.

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

**Provided always** that if the Insured does not agree with a decision by Lumley to settle a Claim, the Insured can elect to contest the Claim at its own expense but the liability of Lumley will not exceed the amount for which the Claim could have been settled in the opinion of the counsel appointed.

#### **5.4 Allocation of costs**

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

#### **5.5 Reasonable precautions**

The Insured shall take all reasonable precautions to:

- (a) prevent Personal Injury; and
- (b) comply, and ensure that the Insured's employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.

#### **5.6 Change of facts or circumstances**

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

#### **5.7 Other insurance**

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

In the event that the Insured holds other insurance cover with another insurer in respect of any Claim then the indemnity under this Policy shall not be available until the limit of indemnity under any other policy has been exhausted.

#### **5.8 Subrogation**

In the event of payment under the Policy Lumley is entitled to all of the Insured's rights of recovery (before a Claim has been paid and whether or not the Insured has been fully compensated for its actual loss) and the Insured will do everything necessary to secure and preserve such rights. This will include but not be limited to the execution of documents necessary to allow Lumley to take any legal action in the name of the Insured. However, Lumley shall not exercise any subrogated rights of recovery against any Employee of the Insured unless the Claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee. In the event that a recovery is made, the amount recovered shall be applied first to the costs of effecting the recovery, then the balance shall be paid to Lumley and the Insured pro rata in proportion to the insured and the uninsured losses (excluding the excess) of Lumley and the Insured respectively. Any balance shall be paid to the Insured in respect of its excess.

#### **5.9 Cancellation**

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

#### **5.10 GST**

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

#### **5.11 Policy disputes**

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

#### **5.12 Insured's warranty**

It is agreed between the Insured and Lumley that the written Proposal provided by the Insured forms the basis of the Policy and the Insured warrants the truth of all statements made therein.