

freight forwarders combined liability policy

Form MN037 11/09



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

In consideration of the payment of premium and in reliance upon the written proposal and declaration provided by the Insured which form the basis of this contract and are deemed to be incorporated in it, Lumley General Insurance (N.Z.) Limited will indemnify the Insured in accordance with each of those Sections of this Policy for which the Insured has cover.

Schedule

| | | |
|---|-----------------------------------|--|
| Insured: | | |
| Broker: | | |
| Postal address: | | |
| Policy number: | | |
| Period of Insurance: | From 4pm (NZ time) on: / / | To: / / at 4pm (NZ time) |
| Business of the Insured: | | |
| Note: The Insured has cover for only those sections and Optional Extensions which have an Indemnity Limit shown next to them. A Non-Standard Excess shall not apply unless specified. | | |
| | Indemnity Limit | Excess |
| Section 1: Liability as a carrier under Carriage of Goods Act 1979 | \$ | \$ |
| Non-Standard Excess | | \$ |
| Section 2: Liability as a freight forwarder | \$ | \$ |
| Section 3: General average | \$250,000 | |
| Section 4: Fines and penalties | \$250,000 | |
| Optional Extensions | Indemnity Limit | Excess |
| A. Extensions applicable to Section One | | |
| Extension A1: Removal of Debris | \$ | \$ |
| Extension A2: Declared Value | \$ | \$ |
| Extension A3: Consequential Loss | \$ | \$ |
| Extension A4: Valuable Cargo | \$ | \$ |
| B. Extensions applicable to Section Two | | |
| Extension B1: Valuable Cargo | \$ | \$ |
| C. Extensions applicable to All Sections | | |
| Extension C1: Financial Loss | \$ | \$ |
| Extension C2: Bailees' Liability | \$ | \$ |
| Locations of premises applicable to Optional Extension C2: | | |
| | | |
| | | |

| | | |
|--|------|--------|
| Issued at: | this | day of |
| Lumley General Insurance (N.Z.) Limited: | | |

A. Definitions applicable to All Sections of this Policy

'Compensation'

'Compensation' means money payable by reason of a judgment delivered by a court or Disputes Tribunal in New Zealand; or by a court of record outside New Zealand; or by reason of any award of a competent arbitral tribunal or by reason of any settlement of any claim negotiated with the consent of the Insurer.

'Excess'

'Excess' means the amount specified in the Schedule which is payable by the Insured on each and every claim arising out of one Occurrence under the applicable Policy Section or Optional Extension, as the case may be.

'Health Hazard'

'Health Hazard' means any product, compound, derivation, phenomenon, process or formula including waste, by-product, noise, smell or vibration whether or not processed, produced or manufactured by the Insured which whether by ingestion, inhalation, absorption or in any other manner, causes illness, disease, incapacity or death of any person consequent upon his or her exposure to the aforesaid, over a period of time, whether continuous or intermittent.

'Insured'

'Insured' means:

- a) The party named as the Insured in the Schedule; and
- b) All its subsidiary companies including subsidiaries thereof, all having their places of incorporation within New Zealand and any other organisation under the control of the named Insured and over which it is exercising active management;
- c) Each company and organisation as identified in paragraph (b) above acquired during the Period of Insurance or over which the Insured takes active management control during the Period of Insurance –
PROVIDED THAT in respect of paragraphs (b) and (c) above, the Insurer is advised in writing of the acquisition or assumption of active management control within sixty days of such acquisition or assumption.

'Insurer'

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

'Period of Insurance'

'Period of Insurance' means the period shown in the Schedule and any subsequent period for which the Insurer has agreed to renew this Policy and for which the Insured has paid the premium.

'Policy'

'Policy' means the terms, conditions and exclusions herein, including the Schedule.

'Property Damage'

'Property Damage' means physical loss of, damage to or destruction of tangible property.

'Schedule'

'Schedule' means the Schedule attached to this Policy.

'Valuable Cargo'

'Valuable Cargo' means bullion, precious metal objects, precious stones, precious jewellery, bank notes, coins, bonds, negotiable instruments or securities of any kind, valuable works of art, livestock, bloodstock, spirits, tobacco, tobacco products.

B. Exclusions applicable to All Sections of this Policy

This Policy does not insure:

- 1 Any loss, damage, cost, expense, liability or event directly or indirectly arising out of, resulting as a consequence of, related to, caused by or resulting from:
 - a) War, invasion, act of foreign enemy, warlike operation (whether war be declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power;
 - b) Confiscation, requisition, or destruction of or damage to property by order of Government or Local Authority unless the order is given for the purpose of controlling fire or other peril for which insurance is provided by this Policy;
 - c) Nuclear weapons material;
 - d) Earthquake, geothermal activity, hydrothermal activity, landslip, subterranean fire, tsunami, volcanic eruption, and subsidence or erosion of the land.
- 2 Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause (10/11/2003) CL 370
This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.
Any loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from:
 - a) Ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - b) The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;

- c) Any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
 - d) The radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
 - e) Any chemical, biological, bio-chemical or electromagnetic weapon.
- 3 Any loss, damage, liability or expense arising from:
- a) Terrorism; and/or
 - b) Steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived terrorism.
- For the purpose of this clause, 'terrorism' means any act or acts of any person or organisation involving:
- a) The causing, occasioning or threatening of harm of whatever nature and by whatever means;
 - b) Putting the public or any section of the public in fear,
- in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of a political, religious, ideological or similar nature.
- 4 It is hereby understood and agreed that this contract shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos.
- 5 Liability for Property Damage arising whilst any motor vehicle is being driven by any person including the Insured or any employee or agent of the Insured while such person is:
- a) Under the influence of intoxicating liquor or a drug;
 - b) Not the holder of a motor driver's licence if such is required in respect of the said vehicle and which is in full force and effect PROVIDED THAT this exclusion shall have no application if such person has held and is not disqualified from holding or obtaining and actually obtains such a licence without a further driving test NOR if any motor vehicle is being used for the purpose of teaching a learner to drive if all requirements of the law in that connection are being complied with.
- 6 Liability arising out of the management, operation or navigation of any ship or aircraft in which the Insured has an interest as owner, charterer, lessor, lessee or financier or in which the Insured otherwise has a legal or equitable interest.
- 7 Liability arising as a result of the infidelity or dishonest act of the Insured, its agents, subcontractors or employees.
- 8 Liability caused by or medically attributed to a Health Hazard.
- 9 Liability for Loss of or damage to Goods resulting from electrical or mechanical derangement unless caused by an external force which is evidenced by marks and the like on packaging or other similar evidence.
- 10 Liability arising out of ship repairing, ship building, floating dock or dry dock operations.
- 11 Liability arising out of strikes, riots, civil commotions and malicious damage.
- 12 Liability in respect of which the Insured is or would be but for the existence of this Policy indemnified under any other policy of insurance. In such a case the indemnity under this Policy shall not apply until the full amount of the indemnity under such other policy has been applied to the maximum extent in satisfaction of the liability.
- 13 Liability arising from an event occurring during the Period of Insurance and arising from or related to the carrying on of the business of the Insured as described in the Schedule, to pay
- a) Fines or penalties arising from or
 - b) Customs duty, sales or excise tax or similar fiscal charges which would not have been payable but for
 - i) Breach of any legal requirements relating to working conditions;
 - ii) Breach of any security statute, code, rules or regulations imposed by a port, Government, Government agency, local body or other similar authority.
- 14 Seepage and Pollution Exclusion Clause 01/01/89
- 14.1 This Contract excludes claims in respect of liability incurred by any original insured for seepage, pollution or contamination:
- a) On or over land or inland waters unless caused by a sudden event or insured on a sudden and accidental basis;
 - b) Caused by disposal or dumping of waste.
- 14.2 Nevertheless, claims in respect of the following shall not be excluded by this clause:
- a) Control of well policies where such seepage, pollution or contamination follows a well out of control above the surface of the ground or waterbottom;
 - b) Liability
 - i) under the Offshore Pollution Liability Agreement,
 - ii) under the Outer Continental Shelf Lands Act, Federal Water Quality Improvement Act, Arctic Waters Pollution Protection Act,
 - iii) for seepage, pollution or contamination from or caused by vessels, craft or their cargoes,
 - iv) under aviation policies subject to clauses no less restrictive than AVN 46B;
 - c) General average.

C. Conditions applicable to All Sections of this Policy

1 Misrepresentation and Non-Disclosure

If:

- a) The Insured fails to disclose any material fact which it was under a duty to disclose to the Insurer; or
- b) The Insured made a misrepresentation to the Insurer before the contract of insurance was entered into; and
- c) As a consequence the Insurer would not have entered into the contract for the same premium or on the same terms and conditions expressed in this Policy, then:
 - i) The Insured will forfeit all benefit under this Policy; and
 - ii) If the non-disclosure or misrepresentation was fraudulent, the Insurer may avoid this Policy.

2 Reasonable precautions

It shall be a condition precedent to the Insurer's liability to indemnify the Insured under this Policy that the Insured take all reasonable precautions to:

- a) Avoid or minimise loss, damage or liability;
- b) Maintain all business premises, fittings, appliances, machinery, motor vehicles and electronic equipment in safe and sound condition;
- c) Maintain and keep operational security, protective and warning equipment;
- d) Comply with all relevant statutory obligations, by-laws and regulations imposed by any public or local authority, relating to safety or property.

3 Alteration

Unless the Insurer's written consent is obtained and any additional premium required by the Insurer has been paid, the Insurer shall not be liable for loss, damage, expense or liability caused or contributed to by any alteration after the commencement of this Policy:

- a) In the Insured Activity or whereby the nature of the business, occupation or other circumstances affecting any building insured or containing the property insured is changed in such a way as to increase the risk of damage, injury or the likelihood of liability losses;
- b) Whereby the Insured's interest in the business ceases by will or operation of law;
- c) Whereby the business be wound up or carried on by a liquidator or receiver or permanently discontinued.

4 Duties in the event of a Claim

If anything occurs which could give rise to a claim under any Section of this Policy the Insured must:

- a) Promptly take all reasonable steps to prevent further loss, damage, disablement or liability;
- b) Inform the Police within 72 hours if any property is lost or if theft, fraud, dishonesty or malicious damage is suspected.

5 Claims by Third Parties

- a) The Insured shall give notice to the Insurer of any Occurrence, claim, impending prosecution or proceedings immediately the same comes to the knowledge of the Insured. In no case shall the Insurer be liable to indemnify the Insured for any Loss or damage not notified to the Insurer within 30 days after the Insured first becoming aware of any such matter.
- b) The Insured shall not, without the Insurer's written consent, negotiate or make any admission, offer, promise or payment in connection with any Occurrence or claim.
- c) The Insurer shall be entitled (but not obliged) to take over and conduct in the name of the Insured the defence of any claim or to prosecute in the name of the Insured at its own expense and for its own benefit any claim for indemnity or damages or otherwise against any persons. Having taken over the defence of any claim the Insurer shall have full discretion in the conduct of any proceedings and in the settlement of any claim, including the discretion to relinquish conduct of the defence. The Insured shall give all such information and assistance as the Insurer may require.
- d) The Insured shall fulfil its obligations as required under Conditions 4(a), 4(b) and 6.

6 Documents

- a) The Insurer shall under no circumstances be under any obligation to indemnify the Insured (whether the Insurer has accepted liability under this Policy or not) until the Insured has first provided the Insurer with (so far as is applicable):
 - (i) Completed and signed claim form;
 - (ii) Copy of statement of claim / letter of claim made by the claimant to the Insured;
 - (iii) Any response made by the Insured;
 - (iv) Original delivery docket signed by the receiver of any Goods delivered by the Insured;
 - (v) Legible copy of consignment note (both sides);
 - (vi) Legible copy of bill of lading (both sides);
 - (vii) Copy of commercial invoice and packing list;
 - (viii) Copies of all pro forma claims issued by the Insured against other parties.

7 Discharge of Liabilities

The Insurer may at any time pay to the Insured in respect of all claims against the Insured arising directly or indirectly from one source or original cause the amount of the Indemnity Limit for the Section of the Policy or Optional Extension under which each claim falls (after

deduction of the Excess and/or Non-Standard Excess and any sum or sums already paid as Compensation), or any lesser sum for which the claim or claims can be settled and upon such payment the Insurer shall relinquish conduct or control of and be under no further liability under the Policy in connection with claims except for costs, charges and expenses:

- a) Recoverable from the Insured for all or part of the period prior to the date of such payment; and/or
- b) Incurred by the Insurer; and/or
- c) Incurred by the Insured with the written consent of the Insurer prior to the date of payment.

8 Inspection

The Insurer shall be permitted but not obligated to inspect the premises, plant, works, machinery, appliances, motor vehicles and electronic equipment used in the Insured's business at any reasonable time.

9 Preservation

- a) The Insured shall use its best endeavours to preserve any damaged, defective, or otherwise deficient premises, plant, works, machinery, appliance, electronic equipment or other item which might prove necessary or useful by way of evidence in connection with any claim whether or not the Insured has any knowledge of the possibility of a claim.
- b) So far as may be reasonably practical no repair or alteration shall be effected until the Insurer has first had the opportunity of inspection.

10 Prejudice

Where breach of or non-compliance with any of the Conditions of this Policy results in prejudice to the Insurer in relation to the handling of any claim which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such claim or claims shall be reduced to such sum as would have been payable by the Insurer in the absence of such prejudice.

11 Premium

The premium for this Policy has been calculated on estimates furnished by the Insured. The Insured shall keep an accurate record of all matters relevant to the calculation of the premium and shall at all times allow the Insurer to inspect such record. The Insured shall within one calendar month from the expiry of each Period of Insurance furnish to the Insurer such particulars and information the Insurer may require. The premium for such period shall thereupon be adjusted and the difference paid by or allowed to the Insured as the case may be.

12 Subrogation

In the event of a payment under this Policy to or on behalf of the Insured, the Insurer shall be subrogated to and/or receive assignment of all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver any and all appropriate instruments and papers and do all that is necessary to assist the Insurer in the exercise of such rights including prosecuting proceedings in the Insured's name at the Insurer's expense. Any such amount so recovered shall first be apportioned to pay the Insured's Excess and secondly to reimburse the Insurer to the extent of the actual payment hereunder.

13 New Zealand Law and jurisdiction

All disputes arising out of or under this Policy shall be subject to New Zealand law and jurisdiction.

14 Fraud

If any claim under this Policy is in any respect fraudulent or if any fraudulent means are used to obtain any benefit under this Policy, or if any loss, destruction or damage be occasioned by wilful act or with the Insured's connivance, all benefit under this Policy shall be forfeited.

15 Changes to the Policy

No change to this Policy will be valid unless agreed in writing by the Insurer nor shall any of the requirements of any part of this Policy be deemed to be waived unless expressly waived by the Insurer in writing.

16 Cancellation

This Policy may be cancelled:

- a) By the Insurer

At any time by giving notice in writing to the Insured of the Insurer's intention to cancel this Policy. The notice may be delivered personally or posted by registered mail to the Insured's last known postal address, or sent by facsimile transmission to any facsimile number used by the Insured which has been advised to the Insurer by the Insured. The cancellation will take effect at 4pm on the 30th day after the notice has been delivered or posted or sent by facsimile transmission, whichever the case may be. In the event of such cancellation, the Insurer will refund to the Insured, or will be entitled to be paid, as the case may be, a pro rata proportion of the premium for the time during which this Policy has been in force.

- b) By the Insured

At any time by giving notice in writing to the Insurer stating when the cancellation shall be effective. In the event of such cancellation, the Insurer will refund to the Insured, or will be entitled to be paid, as the case may be, a pro rata proportion of the premium for the time during which this Policy has been in force.

17 Goods and Services Tax

Every Indemnity Limit stated in the Schedule shall be deemed to be inclusive of Goods and Services Tax, at the prevailing rate, to the extent that Goods and Services Tax is applicable.

18 Joint Insureds

The inclusion of more than one person or organisation as an Insured under this Policy shall not in any way affect the rights of any such person or organisation, either in respect of any claim, demand, suit or judgment made or in favour of any employee of such other Insured

or otherwise, it being the intent of this policy to protect such person or organisation covered as insured in the same manner as though a separate policy had been issued to each person or organisation PROVIDED THAT this clause shall only apply where the Insured is a separate legal entity.

Where claims are made against more than one person or organisation in respect of the same Occurrence, the amount of any Excess and the Limit of Liability for any one Occurrence will not exceed the amount specified in the Schedule regardless of the number of persons indemnified. Where the Limit of Liability is insufficient to fully indemnify all persons and organisations entitled to indemnity under this Policy, it will apply in priority to the first-named Insured.

19 Validity

Should any Section or clause of this Policy be declared or held invalid for any reason, such invalidity shall not affect the validity of the remainder of the Policy which shall continue in full force and effect.

Section One

1 Liability as a carrier under the Carriage of Goods Act 1979

The Insurer will indemnify the Insured against:

- a) All sums which the Insured shall become legally liable to pay as a Carrier under the Carriage of Goods Act 1979 in respect of Loss of or damage to Goods arising from an Occurrence during the Period of Insurance PROVIDED THAT the liability of the Insurer for all sums payable to any claimant or any number of claimants in respect of or arising out of all Occurrences which are consequent on or attributable to one source or original cause shall not exceed the Indemnity Limit specified in the Schedule;
- b) All costs and expenses of litigation recovered by any claimant against the Insured;
- c) All costs and expenses of litigation incurred with the prior written consent of the Insurer;

PROVIDED THAT the indemnity provided by clauses (b) and (c) above shall apply only where the Insurer has accepted an obligation to indemnify the Insured under clause (a) above.

Where the Insured is a natural person, in the event of the death of the Insured the Insurer will, in respect of any insured liability incurred by the Insured prior to death, indemnify the Insured's personal representatives against such liability on the terms of and subject to the limitations of this Policy. It is however a condition of such indemnity that such personal representatives shall, so far as is practicable, comply with all terms, exceptions and conditions of the Policy.

2 Definitions applicable to Section One (including Optional Extensions to Section One)

'Actual Carrier', 'Carriage', 'Carrier', 'Contracting Carrier', 'Contracting Party', 'Contract of Carriage', 'Goods' and 'Loss' where used in this Section One shall, except where the context clearly requires otherwise, have the same meaning as is given to each of them in the Carriage of Goods Act 1979.

'Claim'

'Claim' means a claim against the Insured by a third party which arises from the Insured's legal liability as a Carrier under the Carriage of Goods Act 1979.

'Carrying Vehicle'

'Carrying Vehicle' includes any trailer, B-Train or similar in which goods are being carried.

'Dangerous Goods'

'Dangerous Goods' has the same meaning as in the Land Transport Rule: Dangerous Goods 1999.

'Hazardous Substances'

'Hazardous Substances' has the same meaning as in the Hazardous Substances and New Organisms Act 1996.

'Left Unattended'

'Left Unattended' means that neither the driver nor any person accompanying the driver of any vehicle (whether any of those persons is the Insured or not) is in the vehicle and the vehicle is either out of the direct line of sight of all such persons, or is at such a distance from such persons that they are unable to intervene to prevent interference with the vehicle or any Goods in it.

'Non-Standard Excess'

'Non-Standard Excess' means the amount specified in the Schedule which is payable by the Insured on each and every claim where:

- a) The Insured's liability for loss of or damage to goods has arisen as the result of an accident or incident involving the Insured's carrying vehicle; and
- b) The accident or incident has been caused or contributed to by the driver of that vehicle; and
- c) The claim is not otherwise excluded by the terms of this policy.

In any case where the Non-Standard Excess applies, the Excess (except where applicable to cover under an Optional Extension) shall not also apply.

'Occurrence'

'Occurrence' for the purposes of this Section One, means an event during the Period of Insurance which results in Property Damage to property in any circumstances which could give rise to liability of the Insured under the Carriage of Goods Act 1979, whether as a Contracting Carrier or an Actual Carrier or otherwise.

3 Excess

In respect of any Claim where the Insured's liability to meet such Claim or costs exceeds the Excess, the Insurer shall not be obliged to indemnify the Insured until the Insured has first paid the amount of the Excess to the Insurer.

4 Conditions applicable to Section One

a) It is a condition precedent to the Insurer's liability to indemnify the Insured under this Section One that:

- (i) In any case where a Claim has been made against the Insured; and
- (ii) The Insured is or may be entitled to claim contribution or indemnity from another Carrier,

the Insured must comply in all respects with the provisions of section 18 of the Carriage of Goods Act 1979, either as they appear in that section or, where such other Carrier has either wholly or partly contracted out of section 18, in the manner provided for in that Carrier's terms and conditions of trade.

b) The Insured will take all reasonable steps to protect Goods which are the responsibility of the Insured, from Loss or damage. For the avoidance of doubt, in relation to any vehicle which has been Left Unattended or Goods on or in any such vehicle, the taking of all reasonable steps includes (without limitation):

- i) Removing the keys from and locking any such vehicle;
- ii) Where a vehicle alarm or vehicle immobiliser is fitted, ensuring that the same is activated.

c) The Insured will ensure that any vehicle is suitable for the purpose for which the Insured is to use it. The Insurer shall at all reasonable times have free access to examine any vehicle as aforesaid.

d) The Insured agrees that the benefit of this insurance shall in no circumstances whatsoever pass to subcontractors and/or actual carriers.

5 Exclusions applicable to Section One

This Section One does not insure:

- 1 The Excess or the Non-Standard Excess (as the case may be) stated in the Schedule.
- 2 Liability arising out of:
 - a) The Carriage of household or personal effects, or office removals except to the extent that:
 - (i) The Insurer has first agreed in writing to the Carriage of household or personal effects; or
 - (ii) The Insured did not know and could not reasonably have known that household or personal effects were being or were to be carried;
 - b) The Carriage of Valuable Cargo;
 - c) Loss of or damage to Goods at any time while the Goods are in any store, holding yard, pen or the like which is owned or occupied by or under the control of the Insured, unless such storage is incidental to the Contract of Carriage;
 - d) The insolvency of the Insured;
 - e) The terms of a Contract of Carriage for damages other than for the loss of or damage to Goods;
 - f) Damage caused by vermin;
 - g) Acts of suspected theft, pilferage or dishonesty not notified to the Police within 72 hours of the Insured becoming aware of the event;
 - h) Loss of market, delay or consequential or punitive losses or damages of any kind;
 - i) Loss of or damage to Goods when being carried by a vehicle which is overloaded or overweight.
- 3 Liability in respect of Loss of or damage to any Goods when the Loss or damage is caused intentionally by the Insured PROVIDED THAT this exclusion shall not apply where the Loss of or damage to the Goods was intentionally caused by an employee of the Insured or was intentionally caused by any other Carrier, agent or subcontractor who performed or was intended to perform any part of the Contract of Carriage AND PROVIDED ALSO that such loss or damage to the Goods was not caused with the prior knowledge or consent of the Insured. In any case where this exclusion does not apply the Insurer's liability shall be calculated in the same manner and to the same extent as would apply if the loss or damage had not been intentionally caused; and shall not in any event exceed the limits of liability specified in the Schedule.
- 4 Liability assumed by the Insured by agreement, other than agreement pursuant to section 8(1)(b) of the Carriage of Goods Act 1979, except to the extent that such liability would have attached to the Insured notwithstanding such agreement.
- 5 The Carriage of Dangerous Goods or Hazardous Substances, except to the extent that:
 - a) The Insurer has first agreed in writing to the Carriage of specified Dangerous Goods or Hazardous Substances; or
 - b) The Insured did not know and could not reasonably have known that Dangerous Goods or Hazardous Substances were being or were to be carried.
- 6 Any liability arising from a Contract of Carriage where the Insured, after being advised by the other contracting party of any matter breaching either of the implied warranties in section 17(1)(a) of the Carriage of Goods Act 1979, has nevertheless accepted Goods for carriage.
- 7 Any liability arising from a breach by the Insured of either of the implied warranties in section 17(1)(a) of the Carriage of Goods Act 1979.
- 8 Liability which falls within the scope of any other Section of this Policy or would but for any deductible applicable thereto, whether or not the Insured is entitled to indemnity under such other Section.
- 9 Any amount for which liability is incurred or increased by an incorrect statement in or omission from the Insured's consignment note, bill of lading or other document evidencing the Contract of Carriage.

Section Two

1 Liability as a Freight Forwarder

- a) The Insurer will indemnify the Insured against its legal liabilities as set out in clause 7 of this Section Two caused solely by an Occurrence during the Period of Insurance which arises from the carrying on by the Insured of the Insured Activities.
- b) In any case where the Insured is entitled to indemnity in terms of paragraph (a) above, the Insurer will also indemnify the Insured in respect of:
 - i) all charges, expenses and legal costs incurred by the Insured with the written consent of the Insurer
 - to avoid or minimise a claim;
 - in the settlement or defence of any claim for Compensation;
 - ii) all charges, expenses and legal costs recoverable from the Insured by any claimant for Compensation;
 - iii) costs incurred by the Insured with the prior written consent of the Insurer in disposing of the remains of any Cargo or item or property of any Customer (other than a Ship or the wreck of any Ship);
 - iv) costs incurred by the Insured for quarantine, fumigation or disinfection other than in the normal course of business.

2 Definitions applicable to Section Two

'Customer'

'Customer' means a customer of the Insured.

'Conditions of contract'

'Conditions of contract' means such bills of lading and terms and conditions of trade as have been approved by the Insurer in writing.

'Ship'

'Ship' means any vessel, boat, hovercraft or other description of vessel or structure used or intended to be used for navigation on, under, over or in water.

'Cargo'

'Cargo' means goods, including anything (other than a Container supplied by or on behalf of the Insured) used or intended to be used to pack or secure goods carried or intended to be carried from one place to another place and for loss of or damage to which the Insured is legally liable.

'Container'

'Container' means any unit load transport device designed for the carriage of Cargo and includes flat racks and tank containers.

'Insured Activities'

'Insured Activities' means the usual activities and services of the Insured as a freight forwarder, air carrier, non vessel owning cargo carrier, warehouse operator or depot operator and includes:

- a) The owning, leasing, or otherwise having an insurable interest in Containers;
- b) The performing or arranging the performance of, the carriage of Cargo or Containers;
- c) The loading, unloading, movement, storage, handling, forwarding, packing or unpacking of Cargo or Containers;
- d) The maintenance, repair or refurbishing of Containers.

'Occurrence'

'Occurrence' for the purposes of this Section Two, means an event which results in accidental Property Damage neither expected nor intended from the standpoint of a reasonable person in the position of the Insured.

3 Indemnity Limit

The liability of the Insurer to indemnify the Insured in respect of any Claim or Claims arising under this Section Two (whether in respect of the Insured's liability arising from the Insured Activities or in respect of investigation/defence costs, or both) and arising also from a single Occurrence shall not exceed the Section Two Indemnity Limit specified in the Schedule.

4 Claim Extension

Subject to the payment of any additional premium which may be required by the Insurer, cover under this Section Two shall continue in force after the expiry of the Period of Insurance in respect of goods which are the subject of contracts of carriage made within the Period of Insurance, until arrival of those goods at destination.

5 Geographical Limits

Cover under this Section Two shall apply only in respect of contracts entered into by the Insured in New Zealand.

6 Excess

The Insurer shall not be liable to indemnify the Insured in respect of any Claim or any investigation/defence costs where the Insured's liability to meet such claim or costs does not exceed the Section Two Excess.

In respect of any Claim or any investigation/defence costs where the Insured's liability to meet such Claim or costs exceeds the Excess, the Insurer shall not be obliged to indemnify the Insured until the Insured has first paid the amount of the Excess to the Insurer.

7 Insured Liabilities

Liability arising from the Insured Activities to pay Compensation in respect of the following, all of which constitute or are agreed by the Insurer to constitute Property Damage:

- a) Physical loss of or damage to Cargo;
- b) Physical loss of or damage to Customers' Ships, aircraft or other property;
- c) The unintentional sending of Cargo to the wrong destination;
- d) Delay in handling Cargo, but only if such delay is fortuitous;
- e) The delivery of Cargo contrary to instructions to withhold delivery or without taking in exchange any relevant bill of lading or other document of title;
- f) Physical loss of or damage to any Container.

8 Conditions applicable to Section two

It is a condition precedent to the Insurer's liability to indemnify the Insured under this Section Two that:

- a) In any case where a claim has been or is expected to be made against the Insured; and
- b) The Insured is or may be entitled to a claim contribution or indemnity from another person or entity, the Insured must, immediately upon becoming aware of the matters in paragraph (a) above, issue written pro forma notice of claim to such other person or entity.

9 Exclusions applicable to Section Two

The Insurer will not be liable to indemnify the Insured for:

- a) Contractual liability arising out of Insured Activities where the contract between the Insured and the Customer for the undertaking of the Insured Activities is on terms other than the Conditions of Contract;
- b) Liability arising out of any breach by the Insured of any obligation, whether imposed by contract or by statute or otherwise, which requires performance by the Insured of that obligation within a specified period of time;
- c) Liability arising under any arrangement, contract or statutory obligation to the extent to which the Insured's liability for physical loss of or damage to Cargo may be increased by reason of any declaration of value or special instructions given by a Customer;
- d) Liability arising from physical loss of or damage to Valuable Cargo unless:
 - i) The Insured did not know and could not reasonably have known that any Cargo being handled by the Insured consisted of Valuable Cargo; or
 - ii) The total value of any Valuable Cargo does not exceed NZ \$50,000.00 any one Container or vehicle or location.
- e) Liability for loss evidenced only by stocktake or comparison of records unless such stocktake or comparison took place within 72 hours of the suspected loss or the arrival of the Cargo at destination (or due date in the case of non-arrival), whichever first occurred;
- f) Liability for delay or wrongful delivery except where such delay or wrongful delivery was the result of a fortuitous event;
- g) Liability which falls within the scope of any other Section of this Policy or would so fall but for any Excess applicable thereto, whether or not the Insured is entitled to indemnity under such other Section;
- h) The extent to which liability is incurred or increased by an incorrect statement in or omission from the Insured's consignment note, bill of lading or other document evidencing the Contract of Carriage;
- i) Liability for loss of market, delay or consequential or punitive losses or damages of any kind.

Section Three

1 General Average

The Insurer will indemnify the Insured against its legal liability in respect of:

- a) Contribution to general average or salvage in respect of Cargo where the Insured is unable to recover such contribution from its Customer;
- b) Extra costs incurred by the Insured with the prior written consent of the Insurer, in delivering Cargo that has been misdirected as a consequence of an event giving rise to general average or using the same means of transport as was originally intended;

PROVIDED THAT such liability arises during the Period of Insurance.

Notwithstanding the Excess specified in the Schedule for claims arising under this Section Three, no Excess shall apply to any claim for indemnity arising under clause (a) hereof.

Section Four

1 Fines and penalties

Notwithstanding exclusion 14 of this Policy:

- a) The Insurer will indemnify the Insured against its liability to pay:
 - (i) Fines or other penalties;
 - (ii) Customs duty, sales tax, New Zealand Goods and Services Tax or other similar fiscal charges;
- b) The Insurer will also indemnify the Insured against the loss of property, including the Insured's own equipment, if any, which is confiscated;

PROVIDED THAT the indemnity provided in this clause 1 shall apply only where the liability/confiscation of property is a direct result of action taken by a Government authority due to the Insured's breach of import or export statutes or regulations.

2 Exclusions applicable to Section Four

The Insurer will not be liable to indemnify the Insured for:

- a) Any liability/confiscation where the Insurer considers that the breach of import or export regulations was caused intentionally or recklessly by the Insured or any of the Insured's employees;
- b) Any liability where the liability/confiscation arises as a result of the Insured making its Customs bond or guarantee available to a third party unless such liability/confiscation arises in relation to assistance provided by that operator to the Insured in the insured services or out of the insured services provided by the Insured to that third party;
- c) Any liability where the breach of import or export regulations relates to Valuable Cargo;
- d) Any liability for breach of any statute, regulation or order enforced by the Federal Maritime Commission, Department of Justice or Federal Trade Commission of the United States of America.

Optional Extension A1

Removal of debris

Where it is:

- a) Noted in the Schedule that the Insured has cover under this Optional Extension A1; and
- b) The Insurer has accepted an obligation to indemnify the Insured under Section One of this Policy in respect of any particular Occurrence; and
- c) Such Occurrence involves fire on or of the carrying vehicle, or collision or overturning of the carrying vehicle,

then this Policy is extended to include costs properly and reasonably incurred for the removal, disposal or destruction of debris of Goods being actually carried by the Insured at the time of the Occurrence, whether or not the Insured is liable for such costs under the Carriage of Goods Act 1979.

The cover provided in this Optional Extension A1 is subject to all the terms, conditions, limits of liability, exclusions and definitions of this Policy and to the payment of any additional premium required by the Insurer.

The Insurer's maximum liability under this Optional Extension A1 is set out in the Schedule.

Optional Extension A2

Declared Value

Where it is noted in the Schedule that the Insured has cover under this Optional Extension A2, liability arising pursuant to Contracts of Carriage at declared value pursuant to sections 8 and 9 of the Carriage of Goods Act 1979 is covered under this Policy if:

- 1 The Insured, before carrying Goods under any such contract has first provided to the Insurer details of the contract and the value of the Goods (which shall under no circumstances whatsoever exceed the invoice value); and
- 2 The Insured has paid or agreed to pay any additional premium required by the Insurer.

The Insurer's maximum liability under this Optional Extension A2 is set out in the Schedule.

Optional Extension A3

Consequential Loss

Where it is noted in the Schedule that the Insured has cover under this Optional Extension A3, the Insurer will indemnify the Insured in respect of sums that the Insured becomes legally liable to pay for consequential loss resulting from Loss of or damage to Goods entrusted to the Insured for carriage as a Carrier under the Carriage of Goods Act 1979.

This extension is subject to all other Policy terms, conditions and exclusions, with the exception of exclusions 2(e) and 2(h) of Section One which, where this Extension applies, are hereby deleted and replaced with the following:

'Punitive losses or damages of any kind'

The Insurer's maximum liability under this Optional Extension A3 is set out in the Schedule.

Optional Extension A4

Valuable Cargo – Section One

- 1 Where the Insurer has agreed to provide cover under this Optional Extension A4, this Optional Extension A4 shall be read as part of and deemed to be incorporated in Section One of this Policy.
- 2 Notwithstanding exclusion 2(b) of Section One of this Policy, the Insurer will indemnify the Insured against its legal liability as a Carrier pursuant to the Carriage of Goods Act 1979 where such liability arises in relation to Valuable Cargo.

- 3 The cover provided in clause 2 above is subject to all the terms, conditions, limits of liability, exclusions (except exclusion 2(b) of Section One) and definitions of this Policy and of the payment of any additional premium required by the Insurer.
- 4 The Limit of Liability for Valuable Cargo – Optional Extension A4 set out in the Schedule is a sub-limit of the Limit of Liability for Section One. Under no circumstances shall the Insurer's liability for any one Occurrence in respect of Valuable Cargo insured under this Optional Extension A4 exceed the amount of such sub-limit.
- 5 Any payment made by the Insurer up to the amount of the sub-limit referred to in clause 4 above will reduce the amount of the Insurer's liability under the Section One limit by the amount of that payment, in respect of any one Occurrence.

Optional Extension B1

Valuable Cargo

- 1 Where the Insurer has agreed to provide cover under this Optional Extension B1, this Optional Extension B1 shall be read as part of and deemed to be incorporated in Section Two of this Policy.
- 2 Notwithstanding exclusion 8(d) of Section Two of this Policy, the Insurer will indemnify the Insured against its legal liability for Property Damage as set out in clause 7 of Section Two where such liability arises in relation to Valuable Cargo.
- 3 The cover provided in clause 2 above is subject to all the terms, conditions, limits of liability, exclusions and definitions of this Policy (except exclusion 8(d) of Section Two) and of the payment of any additional premium required by the Insurer.
- 4 The Limit of Liability for Valuable Cargo – Optional Extension B1 set out in the Schedule is a sub-limit for Section Two. Under no circumstances shall the Insurer's liability for any one Occurrence in respect of Valuable Cargo insured under this Optional Extension B1 exceed the amount of such sub-limit.
- 5 Any payment made by the Insurer up to the amount of the sub-limit referred to in clause 4 above will reduce the amount of the Insurer's liability under the Section Two limit by the amount of that payment, in respect of any one Occurrence.

Optional Extension C1

Financial Loss

- 1 Notwithstanding any provision to the contrary in any Section of this Policy, the Insurer will indemnify the Insured against its legal liability for:
 - a) Physical loss of or damage to Cargo to the extent that such legal liability is incurred or increased by an incorrect statement in, or omission from, the Insured's bill of lading or other contract of carriage or handling documentation;
 - b) Financial loss incurred by the Insured's Customer as a result of breach by the Insured of obligations imposed upon it pursuant to the Consumer Guarantees Act 1993 or the Fair Trading Act 1986;
 - c) Financial loss incurred by any person to whom the Insured has supplied advice or information in the course of the Insured Activities where such liability is incurred in consequence of the negligent provision of such advice or information during the Period of Insurance.
- 2 The Insurer will also indemnify the Insured against legal and other costs incurred with the written consent of the Insurer in relation to any of the matters described in paragraphs (a) to (c) above.
- 3 The Insurer will not Indemnify the Insured against:
 - a) Liability to pay aggravated, punitive or exemplary damages;
 - b) Fines and/or penalties, except where specifically covered by this Policy;
 - c) Liability arising under clause 1(c) above, where the Insured has charged or intends or did intend to charge a fee in respect of the provision of the advice or information.
- 4 Where one act, error or omission results in more than one claim against the Insured then all such claims as are the subject of indemnity under this Optional Extension C1 shall jointly constitute one claim.
- 5 For claims arising under this Optional Extension C1 the liability of the Insurer in respect of:
 - a) Any one claim, as described above; and
 - b) All such claims in any one Period of Insurance,
 shall not exceed the Optional Extension C1 Indemnity Limit amount specified in the Schedule.

Optional Extension C2

Bailees' Liability

- 1 Subject to the terms, conditions and exclusions of this Policy:
 - a) The Insurer will indemnify the Insured against its legal liability to pay damages for accidental direct physical loss or damage, arising during the Policy Period, to property of others stored in premises operated by the Insured, such premises being specified in the Schedule;
 - b) In any case where the Insured is entitled to indemnity in terms of paragraph (a) above, the Insurer will also indemnify the Insured in respect of:

- i) all charges, expenses and legal costs incurred by the Insured with the written consent of the Insurer
 - to avoid or minimise a claim;
 - in the settlement or defence of any claim for Compensation;
 - ii) all charges, expenses and legal costs recoverable from the Insured by any claimant for damages for accidental direct physical loss or damage;
 - iii) costs incurred by the Insured with the prior written consent of the Insurer in disposing of the remains of any property of others as described in paragraph (a) above.
- 2 Every claim paid under this Optional Extension C2 reduces the amount of insurance by the amount paid by the Insurer, but in the event of loss the Insured agrees to reinstate the full Limit of Liability by payment to the Insurer of pro rata additional premium on the amount of such loss;
- 3 Where this Optional Extension C2 applies in respect of refrigerated or cold storage warehouses, exclusion (h) in clause 4 of this Optional Extension C2 shall be deemed to be deleted and the following additional exclusions and warranties shall apply to such warehouses:

Exclusions

'This Policy does not insure against:

- a) Loss or damage resulting from loss of power from outside sources; or
- b) Loss of use, delay or loss of market.'

Warranties

'It is warranted by the Insured that during the Policy Period the refrigeration system will be inspected and serviced at regular intervals by a reputable refrigeration engineer and in the event of loss proof of such inspection and servicing shall be made available to the Insurer.'

- c) Where this Optional Extension C2 applies in respect of grain and/or rice warehouses the following additional exclusions shall apply to such warehouses:

Exclusions

'This Policy does not insure against:

- a) Loss caused by the natural shrinkage or moisture content of grain and/or rice;
- b) Delay or loss of markets.'

- 4 This Optional Extension C2 does not insure liability arising from:
- a) Loss or damage caused by rust, wear and tear, gradual deterioration, moths, vermin, inherent vice, or damage sustained due to or resulting from any repairing, restoration or retouching process;
 - b) Loss, damage or destruction of Valuable Cargo;
 - c) Loss caused by the infidelity of the Insured's employees or persons to whom the property of others is entrusted;
 - d) The wilful illegal sale of property by the Insured;
 - e) The wilful conversion and/or wilful or wrongful secretion of property;
 - f) Loss due to forged or falsified warehouse receipts;
 - g) Liability assumed by the Insured by agreement, except to the extent that such liability would have attached to the Insured in the absence of such agreement;
 - h) Loss or damage caused by change of temperature resulting from the total or partial destruction of any refrigerating or cooling apparatus from any cause.
 - i) Indirect or consequential losses of any kind, howsoever arising.