

Fidelity Liability

Policy

Lumley, a business division of IAG New Zealand Limited, Lumley Centre, 88 Shortland Street, PO Box 2426, Auckland 1140, New Zealand
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Introduction

In consideration of payment of the premium and in reliance on the statements made in the Proposal (which is made a part of this Policy), Lumley and the Insured agree to abide by the terms of the following contract of insurance.

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

1.1 Discovered or Discovery

'Discovered' or 'Discovery' means when a director, partner, departmental director, senior manager or equivalent of the Insured becomes aware of matters which would cause a reasonable person to assume that a Loss of the sort covered by this Policy has been or will be incurred, even though the exact amount or details of a Loss may not then be known. Such Discovery shall then constitute knowledge possessed or Discovery made by every Insured.

1.2 Discovery Period

'Discovery Period' means the period of time specified in Condition 5.8 (Discovery Period).

1.3 Employee

'Employee' means any person (other than a director) while in the regular service of the Insured (including the first sixty (60) days following termination of service) whom the Insured compensates by salary, wages and/or commissions and whom the Insured has the right to govern and direct in the performance of their duties. The term Employee shall also include:

- (i) part-time or temporary Employees;
- (ii) any person provided to the Insured by an employment agency (or similar contractor) to perform the duties of an Employee;
- (iii) any Employee whom the Insured is unable to identify by name but whose act or acts have caused a Loss covered under this Policy, provided that the evidence submitted by the Insured proves beyond reasonable doubt that the Loss was due to the act of such an Employee.

The term Employee does not mean any broker, partner, investment adviser or investment manager, factor, commission merchant, consignee, contractor or other similar agent or representative.

1.4 Insured

'Insured' means the entity named in the Schedule and includes any:

- (a) Subsidiary existing on or before the inception of the Policy Period;
- (b) Subsidiary that the Insured acquires or creates after the inception date of this Policy provided that the acquired Subsidiary:
 - (i) has gross annual revenue that does not exceed twenty percent (20%) of the Insured's gross annual revenue as declared to Lumley at the inception date of this Policy; and
 - (ii) has not sustained Losses of a type covered by this Policy within the last three (3) years.
- (c) Subsidiary that the Insured acquires or creates after the inception date of this Policy and that does not comply with sections 1.4(a) and 1.4(b) above, provided that the Insured:
 - (i) gives Lumley written notice within sixty (60) days of the effective date of acquisition or creation; and
 - (ii) gives Lumley such other additional information as it may reasonably require, and
 - (iii) pays any reasonable additional premium required by Lumley.

With respect to this Definition cover afforded to the companies described shall only apply for Loss caused while such company is or was a Subsidiary of the Insured.

1.5 Investigative Specialist

'Investigative Specialist' means an independent Investigative Specialist approved by Lumley for use by the Insured to establish proof of Loss under this Policy.

1.6 Loss

'Loss' means the direct financial loss (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other Employee benefits paid by the Insured, which are not deemed direct financial loss), sustained by the Insured in connection with any single

act or series of related, continuous or repeated acts (which shall be treated as a single act) of Theft, fraud, dishonesty or criminal damage committed by any Employee (acting alone or in collusion with any other Employee or others).

1.7 Lumley

'Lumley' means Lumley, a business division of IAG New Zealand Limited.

1.8 Management Control

'Management Control' means that the Insured has the right to control the day-to-day management of the relevant entity and to set security and internal control procedures, whether financial or operational.

1.9 Money

'Money' means currency, coins, bank notes and bullion, cheques, traveller's cheques, registered cheques, postal orders and money orders held for sale to the public.

1.10 Policy Period

'Policy Period' means the period of time from the inception date to the expiry date specified in the Schedule.

1.11 Premises

'Premises' means any building or property owned or occupied by the Insured as a place to conduct their business.

1.12 Securities

'Securities' means all negotiable and non-negotiable instruments or contracts, including any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security, in respect of money or property, but does not include Money.

1.13 Subsidiary

'Subsidiary' means any entity which at the inception of the Policy Period, the Insured holds more than 50% of the voting rights of that entity or has the ability to control decisions made by the board of directors (whether directly or indirectly). It shall also include any joint venture or entity over which the Insured exercises effective Management Control;

1.14 Territorial Limits

'Territorial Limits' means the territory specified in the Schedule.

1.15 Terrorism

'Terrorism' means any act of force, violence or intimidation, or the threat thereof, calculated and intended to influence, disrupt, disturb or overthrow any individual, corporation, association or lawfully constituted authority in the actual or purported furtherance of any political, social, religious, cultural or environmental objective or philosophy.

1.16 Theft

'Theft' means the unlawful taking, including by violence or threat of violence, of Money, Securities or other property to the intended permanent deprivation of the Insured.

1.17 Transaction

'Transaction' means any one of the following events:

- (a) the Insured consolidates with, merges with, or sells all or substantially all of its assets to any other person, entity or group of persons, and/or entities acting in concert; or
- (b) the Insured becomes a subsidiary of another entity by virtue of any applicable law.

Section 2: Insuring clause

Lumley shall indemnify the Insured for their direct financial Loss sustained at any time consequent upon a single act or series of related acts of Theft, fraud, dishonesty or criminal damage committed by any Employee (acting alone or in collusion with others), that is:

- (i) committed with the clear intent to cause the Insured a Loss, and
- (ii) Discovered by the Insured during the Policy Period, and
- (iii) committed within the Territorial Limits, and
- (iv) not excluded under this Policy.

Section 3: Exclusions

Lumley shall not be liable to make any payment for:

3.1 Consequential Loss

Indirect or consequential Loss of any nature, including any loss of income (including but not limited to interest and dividends) not realised by the Insured or any other person or organisation because of a Loss covered under this Policy.

3.2 Costs, Fees and Expenses

Costs, fees or other expenses incurred in establishing the existence or amount of Loss covered under this Policy, or in prosecuting or defending any legal proceeding.

3.3 Credit Risks

Loss resulting from the complete or partial non-payment of or default under any:

- (i) credit agreement, extension of credit or hire purchase agreement;
- (ii) loan or transaction in the nature of a loan;
- (iii) lease or rental agreement;
- (iv) invoice, account, agreement or other evidence of debt, or
- (v) payments made or withdrawals from any customer's accounts involving items which are not finally paid for any reason.

3.4 Fines, Penalties or Damages

Fines, penalties or damages of any type for which the Insured is legally liable, except direct restitution arising out of a Loss covered under this Policy.

3.5 Loss Sustained After Knowledge

Loss caused by any Employee or by any other person after Discovery that that Employee or other person had committed or was suspected of having committed, an act of Theft, fraud, dishonesty, or criminal damage.

3.6 Non-violent Crime by any Third Party

Loss of and/or damage to any property on the Premises by any person other than an Employee.

3.7 Premises Damage

Damage or destruction to any Premises, however caused.

3.8 Prior Discovery of Losses

Loss the Insured Discovered:

- (i) prior to the inception date of the Policy Period, or
- (ii) subsequent to the expiry of the Policy Period.

3.9 Profit, Loss or Inventory Computation

Loss, the proof of which is dependent solely upon a:

- (i) profit and loss computation or comparison; or
- (ii) comparison of inventory records with an actual physical count.

However, where an Employee is involved in, or suspected of, causing Loss and has been identified, inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of Loss.

3.10 Proprietary Information, Trade Secrets and Intellectual Property

Loss of, or arising from the accessing and dissemination of, any confidential information (including but not limited to trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods), except in the sense that access to any such confidential information may enable or assist the commission of an act that results in Loss covered by this Policy.

3.11 Radioactivity and Nuclear

Loss, expense, liability or consequential loss of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

3.12 Voluntary Exchange or Purchase

Loss arising out of the voluntary giving or surrendering of Money, Securities or other property in any exchange or purchase unless such Loss is caused by an Employee.

3.13 War and Terrorism

Loss that arises directly or indirectly out 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 proportion of or amounting to a popular uprising, military or usurped power, martial law, riot, the act of any lawfully constituted authority or Terrorism.

3.14 Failure of Checks and Precaution

Loss arising out of the failure of any check or precaution described in the proposal or otherwise in writing, including but not limited to the following: failure of the Insured to rely on the advice of external auditors; breakdown in internal records which a reasonable auditor would have identified; failure of the Insured to maintain controlled or password access to any of its locations or computer terminals, or; failure by the Insured to conduct regular physical checks of stock, raw materials and finished goods against inventory records.

3.15 Dual Custody and Control

Loss arising from or in any way related to:

- (a) the operation of the Insured's bank accounts, by way of cheque, reconciliation, funds transfer or other means; or
- (b) investments in, or custody of securities and other valuables; or
- (c) any refunds of money or any return of goods;

which do not require authorisation of at least two authorised officers or Employees.

Section 4: Extensions

Subject otherwise to all of the terms and conditions of this Policy, cover is extended as follows:

4.1 Disposal of Subsidiary Company

This Policy covers any Subsidiary Company sold or wound up during the Policy Period, which were previously insured under this Policy, for any Loss covered by this Policy and Discovered subsequent to the date of sale or winding up, which arises from any act or acts committed prior to the date of sale or winding up but prior to the expiry of the Discovery Period.

Section 5: Conditions

5.1 Limit of Lumley's Liability

Lumley's maximum liability on account of all Losses Discovered during the same Policy Period will be the Limit of Indemnity for the Policy Period set forth in the Schedule.

5.2 Limit of Liability Under this Policy and Prior Insurance

Loss which is covered partly by this Policy and partly by any other Policy (including policies of which this is a renewal) issued by the Insurer or by any other member company of the Wesfarmers Group of Companies to the Insured, for which the Discovery Period has not expired, shall be limited to the larger of the claim entitlement under the previous Policy or the entitlement under this Policy.

5.3 Non Accumulation of Liability

Regardless of the number of years this Policy is in force and irrespective that it is or may be renewed and regardless of the number of premiums paid, the Limit of Indemnity as specified in the Schedule shall not accumulate from year to year or from period to period.

5.4 Excess

For each and every Loss, coverage under this Policy will be excess of the greater of:

- (i) the excess specified in the Schedule; or
- (ii) the amount of any other valid and collectible insurance or indemnity, contractual or otherwise, available to the Insured.

If a Loss is covered partly under this Policy and partly under a prior policy written by another Insurer, the excess under this Policy applicable to the Loss will be reduced by the excess actually applied to the Loss under such other Policy.

5.5 Change in Control of Insured

If during the Policy Period a Transaction takes place, then the cover provided under this Policy is amended to apply only to Losses occurring prior to the effective date of the Transaction. The Insured shall give Lumley written notice of the Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

5.6 Knowledge or Discovery of Loss

Upon knowledge or Discovery of Loss the Insured shall:

- (i) give written notice to Lumley as soon as practicable after such knowledge or Discovery; and
- (ii) provide all requested information and documents and co-operate with Lumley in all matters pertaining to the Loss.

5.7 Loss Mitigation

As soon as evidence of Loss involving an identified Employee is Discovered the Insured must immediately take all necessary steps to prevent any additional Loss arising from the same identified Employee. Any further Losses caused by the same Employee after the date of Discovery will not be covered by this Policy.

5.8 Discovery Period

If the Insured or Lumley chooses not to renew this Policy, or the Policy is cancelled, then the Insured shall have the right to a Discovery Period of thirty (30) days following the effective date of non-renewal or cancellation.

5.9 Use of Investigative Specialists

- (i) An Investigative Specialist will be nominated by the Insured and approved by Lumley in respect of any Loss notified under this Policy. The Investigative Specialist shall not be any entity or person with a clear conflict of interest.
- (ii) The Investigative Specialist shall:
 - (a) investigate the facts behind the Loss; and
 - (b) determine the quantum of the Loss; and
 - (c) advise when and how the Insured's controls were or may have been breached; and
 - (d) summarise recommendations that may prevent future similar Losses; and
 - (e) issue their report, in a format approved by Lumley, in duplicate to the Insured and Lumley.
- (iii) Lumley will pay the expense of the Investigative Specialist unless the Loss is not covered and in that event the expense will be shared equally between Lumley and the Insured.

The excess amount is not applicable to the expense of the Investigative Specialist and such expense paid by Lumley will be in addition to the Limit of Indemnity specified in the Schedule.

(iv) Lumley may amend the listing of Investigative Specialists.

(v) The report issued by the Investigative Specialist will be binding and definitive in respect of the facts and quantum of the Loss only.

5.10 Arbitration

After a joint review of the Investigative Specialist's report, if the Insured and Lumley cannot agree upon the settlement of Loss, Lumley, at the Insured's request, will submit the dispute to arbitration. Lumley and the Insured shall agree upon an arbitrator. If no agreement can be reached then the arbitrator will be selected by the President of the Auckland District Law Society. The cost of arbitration will be paid by Lumley and will be in addition to the Limit of Indemnity. The arbitration shall be conducted according to the legal rules governing commercial arbitration in New Zealand. The Insured and Lumley shall enter into an appropriate form of arbitration contract to this effect. The outcome of the arbitration shall be binding with no right of appeal.

5.11 Loss settlement

Lumley may, with the Insured's consent, settle any claim for Loss of property with the owner. Any property for which Lumley has made indemnification shall become the property of Lumley. At its discretion, Lumley may pay the indemnity value or make applicable repairs or replacements.

5.12 Basis of valuation

In no event shall Lumley be liable for more than:

- (i) the indemnity value of Securities at the close of business on the day the Loss was Discovered, or for more than the actual cost of replacing the Securities, whichever is less, plus the cost to post any required lost instruments bond (such cost shall be paid by Lumley on behalf of the Insured);
- (ii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the Insured in order to reproduce books of accounts and records;
- (iii) the cost of labour for the actual transcription or copying of electronic data furnished by the Insured, in order to reproduce such electronic data;
- (iv) the cost of books of account and hard copies of business records. Lumley's liability for such records is limited to ten percent (10%) of the amount of the covered Loss, which amount is part of and not in addition to the Limit of Indemnity specified in the Schedule;
- (v) the reasonable cost of rewriting or amending the software programs or systems where such rewriting or amending is necessary to correct the programs or amend the security codes following a covered Loss under this Policy. Lumley's liability for such rewriting or amending is limited to ten percent (10%) of the amount of the covered Loss, which amount is part of and not in addition to the Limit of Indemnity specified in the Schedule;
- (vi) the indemnity value of other property at the time of Loss or the actual cost of repairing or replacing the property with property or material of like quality or value, whichever is less. The indemnity value of other property if held by the Insured as a pledge, or as collateral for an advance or a loan, shall be considered not to exceed the value of the property as determined and recorded by the Insured when make the advance or loan, or in the absence of a record, the unpaid portion or the advance it made or loan plus accrued interest at legal rates.
- (vii) the value of a foreign currency (a currency other than the New Zealand Dollar) which is involved in a Loss the Insured sustained. The value will be determined by applying the rate of exchange as published in the National Business Review on the date, or date nearest to the date, of when the Loss was Discovered.

5.13 Recoveries

Recoveries (except from insurance, reinsurance, sureties or indemnity), less the actual cost of Loss, made after Discovery will be distributed as follows:

- (i) first, the Insured will be reimbursed for any Loss exceeding the Limit of Indemnity or settlement (whichever is less) and any other loss not covered under this Policy, not including the excess amount;
- (ii) secondly, Lumley shall be reimbursed for the settlement made; and
- (iii) thirdly, the Insured shall be reimbursed for Loss equal to the excess amount.

5.14 Subrogation

In the event of any payment under this Policy, Lumley shall be subrogated to the extent of such payment to all of the Insured's rights of recovery in respect of the Loss. The Insured shall execute all papers required and shall do everything necessary to secure any rights, including the execution of any documents necessary to enable Lumley effectively to bring suit in the name of the Insured, whether such acts shall be or become necessary before or after payment by Lumley.

5.15 Changes and Assignment

No changes, modifications or assignments of interest of this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorised representative of Lumley. Additionally, notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or stop Lumley from asserting any right under the terms of this Policy.

5.16 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.

5.17 Policy Disputes

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

5.18 Single Policy

This Policy is a single contract of insurance and if more than one Insured is covered, this Policy shall nevertheless be and remain a single contract of insurance for the benefit of the Insured as joint Insureds and accordingly, without limitation:

- (i) the Insured shall act for itself and for all Insureds for all purposes under this Policy, including but not limited to the giving and receiving of notice, the give of notice of Loss, the payment of premiums that may become due and the receipt and acceptance of any endorsements issued to form a part of this Policy;
- (ii) payment of any Loss under this Policy to the Insured shall fully release Lumley from any further liability in respect of such Loss;
- (iii) if the Insured is more than one entity and any such entity ceases for any reason to be covered under this Policy, then the remaining entities shall be considered to be the Insured for all purposes under this Policy;
- (iv) knowledge possessed or Discovery made by any Insured, or by any partner, director or officer thereof, shall for all purposes constitute knowledge possessed or Discovery made by every Insured, unless it can be proved otherwise;
- (v) Lumley's liability for Loss sustained by more than one Insured shall not exceed the amount for which Lumley would be liable had all such Loss been sustained by only one of the Insured.

5.19 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 payment under this Policy, Lumley will pay the Insured for the costs of that tax. The indemnity under this clause is payable by Lumley in addition to the Limit of Indemnity.

5.20 Agreement and Representations

By acceptance of this Policy, the Insured agrees that the Policy embodies all agreements and representations existing between the Insured and Lumley or any of its agents relating to this insurance.

5.21 Fraudulent Claims

If the Insured or any person who is entitled to indemnity under this Policy makes any application for indemnity under this Policy, knowing that such application for indemnity is false or fraudulent, this Policy shall be void ab initio.

5.22 Notice

All notices, including notification of Loss, shall be sent to Lumley, a business division of IAG New Zealand Limited, Lumley Centre, 88 Shortland Street, Auckland 1140, New Zealand.

5.23 Interpretation of Words

Words referring to persons shall include companies and other legal entities. The singular includes references to the plural and vice versa and any gender includes reference to all other genders.

5.24 Breach of Conditions

Where the Insured's breach of any Condition of this Policy has resulted in prejudice to the handling and/or settlement of any Loss, which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Loss, shall be reduced to such sum as would have been payable by Lumley in the absence of such prejudice.