

# Bailees liability policy

Form LB042 09/11



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

## Insuring clause

Subject to the Limit of Liability, Exclusions and Conditions hereinafter contained, Lumley General Insurance (NZ) Ltd (hereinafter referred to as Lumley) agree to indemnify the Insured for such amounts as the Insured shall become legally liable to pay for damage, occurring during the period of this Policy, to property of others stored in the warehouse or warehouses in New Zealand operated by the Insured located as specified in the Policy Schedule.

In addition, Lumley agree to pay the costs and expenses incurred with the written consent of Lumley in the defence of any such claim, provided always that, if a payment in excess of the amount of indemnity available under this Policy has to be made to dispose of a claim, the Lumley liability for such costs and expenses shall be such proportion thereof as the amount of indemnity available under this Policy in respect of that claim bears to the amount paid to dispose of that claim.

Notwithstanding anything contained in the Policy to the contrary, it is agreed that the indemnity expressed in this clause is in respect of the Insured's legal liability as a Bailee for Reward. Provided that cover shall only apply to the property or goods which are subject to the contract of Bailment for Reward and only whilst the property or goods are in the Insured's custody and control at the situation/s for the limit/s of indemnity as specified in the Policy Schedule.

## Limit of liability

Lumley Limit of Liability under this Policy shall not exceed that amount stated in the Policy Schedule.

## Excess

Each loss shall be adjusted separately and from the amount of each adjusted loss the excess stated in the Policy Schedule shall be deducted.

## Exclusions

This policy does not insure against:

- 1 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, cleaning, restoration or retouching process.
- 2 Loss of or damage to goods where such goods constitute bullion, cash, securities, precious stones, precious metals, jewellery or works of art.
- 3 Loss, damage or destruction of accounts, bills, currency, deeds, evidences of debt, money, notes or securities.
- 4 Loss caused by the infidelity of the Insured's employees or persons to whom the insured property is entrusted.
- 5 Claims for wilful illegal sale of property by the Insured.
- 6 Loss by wilful conversion and/or wilful or wrongful secretion by the Insured.
- 7 Loss due to forged warehouse receipts or resulting from any fraudulent scheme or device or false pretence practised on the Insured or on any other person having care of the insured property.
- 8 Liability of others assumed by the Insured under any agreement, oral or written, unless coverage is specifically agreed hereunder.
- 9 Loss or damage caused by change of temperature resulting from the total or partial destruction of any refrigerating or cooling apparatus from any cause.
- 10 Shortages revealed only by the taking of an inventory or due to clerical or accounting errors, or disappearance due to unknown causes or circumstances.
- 11 Liability resulting directly or indirectly from or caused by your deliberate, intentional, dishonest, criminal, malicious or reckless acts or omissions.
- 12 Liability in respect of fines, penalties, or aggravated, punitive or exemplary damages, loss of use, delay or loss of market or any consequential losses whatsoever.
- 13 Loss arising from the co-mingling of seeds, grain or rice.
- 14 Death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any of the following regardless of any other contributing cause or event:

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

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

- 15 Any actual or alleged liability whatsoever in respect of Personal Injury or Property Damage (including loss of use of property) directly or indirectly caused by or arising from, in consequence of, contributed to or aggravated by, asbestos in whatever form or quantity.
- 16 Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss directly or indirectly caused by or contributed to by or arising from ionising radiations or contaminations by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

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

## Conditions

### 1 Notice of loss

The Insured shall give Lumley immediate notice in writing, with full particulars, of any claims or claims made against the Insured on account of loss or damage to property likely to give rise to a claim under this Policy.

### 2 Claims co-operation

The Insured shall co-operate with Lumley in the defence of claims or suits and upon Lumley's request shall attend hearings and trials, and shall assist in effecting settlements securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation, nor incur any expense.

### 3 Inspection

Any authorised representative of Lumley shall have the right and opportunity, whenever Lumley so desire, to inspect any reasonable time the premises covered hereunder and all the works, ways, machinery and appliances thereof, but Lumley assume no responsibility by reason of such inspection or the omission thereof.

### 4 Non-contribution

This insurance does not cover any loss which, at the time of the happening of such loss, is insured by any other policy or policies except in respect of any excess beyond the amount which would have been payable under each other policy or policies had this insurance not been effected.

### 5 Subrogation

In the event of any payment under the Policy Lumley shall be subrogated to all the Insured's rights of recovery therefore against any person or organisation and the Insured shall execute and deliver instruments and papers and do whatever necessary to insure such rights. The Insured shall do nothing after a loss to prejudice such rights.

### 6 Cancellation

This Policy may be cancelled by or on behalf of Lumley by a registered letter, sent to the Insured's last known address, giving not less than 30 days notice of the Lumley intention to cancel this Policy, such notice to run from midnight of the day following that upon which the letter is posted.

### 7 Fraudulent claims

If the Insured shall make any claim knowing the same to be false or fraudulent, as regards the amount or otherwise, this policy shall become void and all claims hereunder shall be forfeited.

### 8 Refrigerated risks

It is understood that where coverage afforded by this Policy is in respect of Refrigerated or Cold Storage Warehouse Exclusion No. 9 is deemed to be deleted and the following additional exclusions and warranties shall apply to such warehouses.

#### Exclusions

- 1 Loss or damage in excess of \$5,000 to temperature controlled goods of others unless specified otherwise in the Coverage Summary.
- 2 Loss of damage emanating from loss of power from outside sources, provided that this Exclusion shall not apply;
  - (a) if loss of power is as a result of a sudden and unexpected event; or
  - (b) if the Insured has not received notification of power shutdown 24 hours before the shutdown of power.
- 3 Loss of use, delay or loss of market.

#### Warranties

It is warranted by the Insured that during the period of this Policy, the refrigeration systems will be:

Inspected and serviced at regular intervals by a reputable engineering company and in the event of loss proof of such inspection and servicing to be made available to Lumley.