

Licensed building practitioners (LBP)

Professional indemnity employee protection liability

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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This is a claims made Policy and no Claim can be made after expiry of the Period of Insurance specified in the Schedule (which is deemed to form part of this Policy). The Policy does not cover acts, errors or omissions prior to any Retroactive Date specified in the Schedule.

Section 1: Definitions

1.1 Claim

"Claim" means:

- (a) any complaint to, or investigation by, the statutory registration board or similar regulatory authority under the Building Act 2004;
- (b) legal proceedings instituted and served upon the Insured; or
- (c) any threat or intimation that legal proceedings will be issued against the Insured.

1.2 Costs and Expenses

"Costs and Expenses" means:

- (a) any legal costs, disbursements, witnesses' costs, assessors' costs or experts' costs incurred by Lumley in investigating, defending or settling any Claim made against the Insured in respect of which the Insured is entitled to be indemnified by Lumley in terms of the indemnity granted by the Policy.
- (b) all reasonable expenses (other than loss of earnings or profits) that are incurred by the Insured with the prior written consent of Lumley in assisting Lumley or its solicitors in the investigation, defence or settlement of any Claim.
- (c) any costs ordered to be paid by the statutory registration board or similar regulatory authority under the Building Act 2004.
- (d) any interest accruing after the date of entry of judgment against the Insured and until the date Lumley pays, tenders or deposits in court the judgment sum or such part of that judgment sum as is required to satisfy Lumley's liability to the Insured in terms of the Limit of Liability.

1.3 Employee

"Employee" means any person employed under a contract of service or apprenticeship during or prior to the commencement of the Period of Insurance who at the time of the Wrongful Act had no financial interest in the entity for which they were employed.

1.4 Family Member

"Family Member" means:

- (a) any spouse or de facto partner;
 - (b) any parent, or parent of the spouse or de facto partner;
 - (c) any sibling or child;
- of the Insured.

1.5 Insured

"Insured" means:

- (a) any Licensed Building Practitioner specified on the Policy schedule; and
- (b) was an Employee at the time of the act, error or omission.

1.6 Licensed Building Practitioner

"Licensed Building Practitioner" means a building practitioner whose name is at the time of the act, error or omission entered in the register established and maintained under the Building Act 2004 or any amendments, enactments or statutory regulations of such Act.

1.7 Lumley

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

1.8 Professional Business

"Professional Business" means the business conducted by the Insured as specified in the Schedule.

1.9 Policy

"Policy" means this Policy wording including the Schedule, any additional endorsements and the Proposal form and underwriting information provided to Lumley prior to the Period of Insurance.

1.10 Proposal

"Proposal" means the written Proposal form made by the Insured to Lumley and any other underwriting information provided to Lumley prior to the Period of Insurance.

1.11 Record of Building Work

"Record of Building Work" means:

- (a) a memorandum, in the prescribed form, stating what Restricted Building Work the Licensed Building Practitioner carried out or supervised; and
- (b) if applicable, a certificate, in the prescribed form, stating that any specified systems in the building to which the Restricted Building Work relates are capable of performing to the performance standards set out in the building consent.

1.12 Restricted Building Work

"Restricted Building Work" means building work that must be carried out or supervised by a Licensed Building Practitioner who is licensed to carry out or supervise that work.

1.13 Subsidiary

"Subsidiary" means any organisation in which the Insured holds more than 50% of the voting rights of that organisation or has the ability to control decisions made by the board of directors (whether directly, or indirectly).

1.14 Valid Claim

"Valid Claim" means any Claim that is:

- (a) first made against the Insured during the Period of Insurance; and
- (b) notified in writing to Lumley by the Insured during the Period of Insurance or within 28 days after its expiry; and
- (c) arising out of any act, error or omission in connection with the Insured's Professional Business that occurred subsequent to the Retroactive Date.

Claims that do not accord with all of (a), (b) and (c) of this Definition shall not be covered under this Policy.

Section 2: insuring agreement

In consideration of payment of the premium, Lumley agrees to indemnify the Insured for Valid Claims in accordance with, and subject to, all of the terms and conditions of this Policy.

2.1 Complaint Board Costs and Expenses

Lumley shall indemnify the Insured for:

- 2.1.1 any fine imposed, arising from a Claim in relation to any actual or alleged act, error or omission, that the statutory registration board or similar regulatory authority, or insofar as any statutory or professional body imposes under the provisions of the Building Act 2004.
- 2.1.2 and all reasonable Costs and Expenses incurred in the investigation and defence of the Insured arising from a Claim in relation to any actual or alleged act, error or omission made with the statutory registration board or similar regulatory authority, or insofar as any statutory or professional body claims jurisdiction to enquire into or adjudicate any such matter under the Building Act 2004.

Provided that:

- (a) the Licensed Building Practitioner is the holder of a current licence of the relevant class at the time the work giving rise to the complaint was supervised and signed off; and
- (b) any Costs and Expenses incurred must be with the prior written consent of Lumley; and
- (c) Lumley shall be entitled to appoint a solicitor or counsel or any other appropriate expert to represent the Insured.

2.2 Claims for Compensation – Record of Building Work

2.2.1 Lumley shall indemnify the Insured for a Claim made arising from any actual or alleged act, error or omission in the signing of the Record of Building Work for Restricted Building Work that resulted in a direct or indirect financial loss.

2.2.2 Lumley shall pay the Costs and Expenses incurred with the prior written consent of Lumley in the defence, investigation or settlement of any Claim covered by Section 2.2.1 of this Policy.

2.3 Claims for Compensation – Independent Supervision of Non Licensed Building Practitioners

2.3.1 Lumley shall indemnify the Insured for a Claim made arising from any actual or alleged act, error or omission in the supervision of Restricted Building Work undertaken by Non Licensed Building Practitioners provided that:

- (a) the Insured was engaged only for the supervision of Restricted Building Work and in no other capacity; and
- (b) the Non-Licensed Building Practitioners that undertook the Restricted Building Work were appointed by the same entity that engaged the Insured in the Supervision only role; and
- (c) the supervision of the Insured's own employees or construction workers appointed by the Insured is expressly excluded from this Insuring Clause; and
- (d) the act, error or omission has resulted in a direct or indirect financial loss.

2.3.2 Lumley shall pay the Costs and Expenses incurred with the prior written consent of Lumley in the defence, investigation or settlement of any Claim covered by Section 2.3.1 of this Policy.

Section 3: Exclusions

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

3.1 Current Licence

where at the time of the actual or alleged act, error or omission the Insured did not hold a necessary licence of the relevant class as required by the Building Act 2003.

This Exclusion shall not apply if the actual or alleged act, error or omission relates to work that was supervised by a Licensed Building Practitioner and the Record of Building Work was signed by a Licensed Building Practitioner.

3.2 Known Claims and Circumstances

- (a) made against or intimated to the Insured prior to the commencement of the Period of Insurance;
- (b) notified under any previous Policy; or
- (c) arising out of or connected with any facts or circumstances which:
 - (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 against the Insured.

3.3 Retroactive Date

arising out of or connected with the Insured's activities carried out prior to the Retroactive Date, if any, specified in the Schedule, provided that nothing contained within this Exclusion is interpreted as releasing the Insured from their obligation to disclose as a material fact all details of Claims made or outstanding or events likely to give rise to a Claim.

3.4 Dishonesty

- (a) arising out of or connected with any actual or alleged dishonest, fraudulent, criminal or malicious act or omission of any Insured; or
- (b) arising out of or connected with a wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted with a reckless disregard for the consequences by the Insured.

3.5 Contractual Liability

arising out of or connected with any contractual liability, warranty or guarantee assumed or provided by the Insured except if the Insured would have been liable in the absence of the contractual liability, warranty or guarantee.

3.6 Associated Entities

brought or maintained by or on behalf of any person, firm, company or entity:

- (a) who is an Insured, entitled to benefit under this Policy, or any Subsidiary of the Insured; or
- (b) who, at the time of the act, error or omission giving rise to the Claim, is a Family Member; or
- (c) operated or controlled by any Insured; or
- (d) operated or controlled by any employee, partner, nominee or trustee of any Insured; or
- (e) in which any Insured has a direct or indirect financial interest (a shareholding of less than 5% in a publicly listed company shall not constitute a financial interest); or
- (f) advised or induced by the Insured to invest in or lend money to any person, firm, company or entity referred to in any of (a) – (e) above or to the Insured.

For the purposes of this Exclusion, the term "Insured" shall include Family Member.

3.7 Obligations to Employees

- (a) arising out of or alleging breach of any obligation owed by the Insured as an employer.
- (b) arising out of or alleging sexual harassment or sexual or racial discrimination.

3.8 Fines and Penalties

for punitive, aggravated, liquidated, multiple or exemplary damages, or fines or penalties imposed by law except to the extent to which cover is provided under Insuring Clause 2.1.

3.9 Nuclear

arising out of or connected with:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive assembly or its nuclear components.

3.10 War

arising out of or connected with:

- (a) war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) confiscation, nationalisation or damage to property by or under the order of any government or public or local authority.

3.11 Territorial Limits

arising from any act, error or omission that occurred outside the Territorial Limits specified in the Schedule.

3.12 Jurisdiction

- (a) in respect of legal action or litigation first brought in a court outside the Jurisdiction of the countries stated in the Schedule; or
- (b) in respect of any legal action or litigation brought in a court within the Jurisdiction of the countries stated in the Schedule to enforce a judgment handed down in a court outside the Jurisdiction of the countries stated in the Schedule 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 the Jurisdiction stated in the Schedule.

3.13 Refund of Fees

for a refund, by way of damages or otherwise, of professional fees or in respect of any Claim that the Insured is not entitled to professional fees.

3.14 Financial Condition

arising as a result of the insolvency, bankruptcy, receivership, statutory management or liquidation of the Insured.

3.15 Directors Liability

arising solely from the duties of the Insured or principal acting as a director or legal officer of any company.

3.16 Supply of Goods, Service or Advice

- (a) only in relation to Insuring Clause 2.2 (Claims for Compensation – Record of Building Work) and 2.3 (Claims for Compensation – Independent Supervision of Non Licensed Building Practitioners) arising from the sale, supply, installation or manufacture of goods by or on behalf of the Insured; and/or
- (b) a guarantee or warranty in respect of any service or advice provided by or on behalf of the Insured, including but not limited to the agreed time in which work will be performed or any agreed standard of workmanship.

For the purposes of this Exclusion Lumley will not indemnify the Insured for any costs or expenses incurred to perform, complete, correct or improve any property damaged due to an allegation of any act, error or omission in relation to Insuring Clause 2.2 (Claims for Compensation – Record of Building Work) and 2.3 (Claims for Compensation – Independent Supervision of Non Licensed Building Practitioners).

3.17 Occupiers Liability

arising directly or indirectly from the ownership, possession or use by or on behalf of the Insured of any land, buildings, aircraft, watercraft or mechanically propelled vehicle.

3.18 Pollution

attributable to seepage, pollution or contamination howsoever occurring.

3.19 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 purposes 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, suppressing or in any way relating to the above Exclusions.

3.20 Asbestos

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

Section 4: Claims conditions

4.1 Reporting of Claims

Irrespective of the quantum, the Insured shall give to 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 claim against them.

4.2 Notification of Circumstances

If, during the Period of Insurance, the Insured becomes aware of any circumstances that may in the opinion of a reasonable practitioner of the Professional Business give rise to a Claim and gives written notice to Lumley of such circumstances during the Period of Insurance, then any Claim subsequently arising from such circumstances is deemed to have been made during the Period of Insurance in which the circumstances were first reported to Lumley.

4.3 Defence and Settlement of Claims

The Insured shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without the prior written consent of Lumley.

Lumley is entitled at any time to conduct, in the name of the Insured, the investigation, defence or settlement of any Claim.

4.4 Legal Counsel

Lumley shall not require the Insured to defend any legal proceedings in respect of any Claim against the Insured, nor shall 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) shall advise that such proceedings should be defended.

In formulating such advice, 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 shall be regarded as part of the Costs and Expenses 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.

4.5 Insured's Right to Contest Claims

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 counsel appointed under Claims Condition 4.4 (Legal Counsel). Lumley shall pay all Costs and Expenses incurred up to the date the Insured notifies Lumley in writing of its election under this clause, and shall pay the Insured (subject to the Excess) the amount for which the Claim could have been so settled. The Insured expressly agrees that Lumley's liability in respect of such Claim shall then be at an end.

If Lumley believes that the Claim will not exceed the Excess, Lumley may instruct the Insured to conduct the investigation, defence and settlement 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 or pay on behalf of the Insured any additional Costs and Expenses.

4.6 Claims Co-operation

The Insured agrees to use its best endeavours to avoid or diminish a Claim and will provide at their own cost all information and assistance to Lumley as is required to determine liability under the Policy and investigate, defend and settle a Claim.

Upon receipt of notice from the Insured of any request for indemnity under this Policy, Lumley may take whatever action it considers appropriate to protect the Insured's position in respect of the Claim against the Insured. Such action by Lumley shall not be regarded in any way as prejudicing its position under the Policy and shall not be an admission of the Insured's entitlement to indemnity under the Policy.

Solicitors retained by Lumley to act on behalf of the Insured in relation to any Claim against the Insured 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.

4.7 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.

4.8 Subrogation

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 their 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.

4.9 Payment of Sum Insured

Lumley may at any time pay the Limit of Indemnity applying to any one Claim or series of Claims (after deduction of sums already paid) or any lesser amount for which such Claims can be settled and shall then be under no further liability in connection with such Claims except for its proportion of Costs and Expenses incurred prior to the date of payment.

Section 5: General conditions

5.1 Limit of Liability – Claims

The total liability of Lumley under this Policy shall not exceed the Limit of Indemnity for any one Claim and in the aggregate of all Insuring Clauses specified in the Schedule.

5.2 Limit of Liability – Costs and Expenses

Lumley's total liability in respect of Costs and Expenses under all the Insuring Agreements shall not exceed the Limit of Indemnity in the aggregate and are included in and are not in addition to the Limit of Indemnity specified in the Schedule.

5.3 Claim in Excess of the Limit

If any payment, settlement or judgment in excess of the Limit of Indemnity has to be made to settle or dispose of any Claim, Lumley's liability

for Costs and Expenses is limited to such proportion as the Limit of Indemnity bears to the amount payable to dispose of the Claim.

Where Lumley has paid or incurred Costs and Expenses in excess of its proportionate liability, the Insured shall upon demand from Lumley pay to Lumley the amount of that excess. Lumley may set off against any amount payable by Lumley to or on behalf of the Insured, any amount that is payable by the Insured to Lumley pursuant to this General Condition.

5.4 Excess

In respect of each and every Claim against the Insured the amount of the Excess specified in the Schedule must be paid by the Insured. Where a Claim does not exceed the Excess the Insured must also pay the Costs and Expenses incurred in investigating, defending and settling that Claim.

The Excess does apply to any Costs and Expenses incurred with the prior written consent of Lumley in the defence or settlement of any Claim, or by Lumley to determine indemnity under the Policy.

Where more than one Claim arises out of the same act or omission or is causally connected or arises from interrelated acts or omissions, all of those Claims will together constitute one Claim for the purposes of determining the Excess.

5.5 Alteration to Risk

The Insured must give notice in writing to Lumley as soon as practicable of any material change to the risk. A material change to the risk includes without limitation:

- (a) activities that are materially different from those declared in the Proposal or that are outside the normal activities of the Professional Business specified in the Schedule; or
- (b) a material change to the Professional Business specified in the Schedule; or
- (c) the cancellation, suspension or termination of an Insured's statutory registration.

5.6 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.

5.7 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.

5.8 GST

Where the Insured is liable to pay tax under section 5(13) of the Goods and Services 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.

5.9 Policy Disputes

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

5.10 Insured's Warranty

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

5.11 Notice

All notices, including notification of Claims, shall be sent to Lumley in writing at the address or to the facsimile number stated on this Policy.

5.12 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.

5.13 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 Claim, which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Claim shall be reduced to such sum as would have been payable by Lumley in the absence of such prejudice.