

# Contractors plant & machinery policy

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## Introduction

Welcome to Lumley's Contractors Plant and Machinery policy. This wording sets out the terms, conditions and exclusions subject to which cover is provided.

Please read this *Policy* carefully to ensure that the insurance cover is appropriate for *You*. Words *Capitalised* and in *Italics* have had their meaning defined. These meanings can be found in the Definitions Section or within the wording of this *Policy*. Headings in this *Policy* are a guide only and are not to be used for interpretation.

## Insurance Contract

In consideration of the premium paid by *You* to *Us*, *We* agree to indemnify *You* as outlined in this *Policy*.

*Your* insurance contract consists of three parts; this document, the *Policy Schedule* and the information provided by *You* in support of *Your* application, including the proposal.

This *Policy* covers only those items of the *Property Insured* listed in the *Policy Schedule* with a *Sum Insured* shown. For items where there is no *Sum Insured* shown, or "0" or "Nil" is shown, there is no cover.

## Disclosure of Material Information

In addition to any other disclosure obligations under this *Policy*, *You* must, prior to inception, variation and renewal of this *Policy*, advise *Us* of all material information, whether asked for or not. Material information is information that might influence a prudent insurer's decision to insure *You* and if so, on what terms and/or premium.

Failure to disclose all material information may entitle *Us* to avoid *Your Policy*. This means it will be as though the *Policy* never existed and any claims made will not be payable. If *You* are unsure whether to disclose certain information, please tell *Us*.

## Operative Clause – What We Cover

*We* will indemnify *You* for *Damage to Property Insured* occurring during the *Period of Insurance* subject always to the terms, conditions and exclusions of this *Policy*.

## Basis of Settlement – What We Pay

In the event of *Damage to Property Insured* covered under this *Policy*, at *Our* option *We* may indemnify *You* in any one of the following ways:

- (a) by arranging for the repair of the *Damaged Property Insured* to a similar condition to that immediately prior to the *Damage*; or
- (b) by arranging for the replacement of the *Damaged Property Insured* with an equivalent item of *Plant* similar in type, capacity and condition to the *Damaged Property Insured* immediately prior to the *Damage*; or
- (c) by payment of an amount equal to the *Damaged Property Insured's*:
  - (i) *Market Value*; or
  - (ii) *Sum Insured*; or
  - (iii) *Agreed Value* (if optional Benefit 1 is elected for the item of *Property Insured* and it is shown as applying in the *Policy Schedule*).

Without limiting the options available to *Us* detailed above, where *Damage to Property Insured* can be repaired:

- *We* may pay all expenses necessarily incurred to repair the *Property Insured* to its state of serviceability immediately before the occurrence of *Damage*;
- if any parts are required to be replaced in order for the *Damaged Property Insured* to be repaired, *We* will attempt to source new parts;
- if new parts are unable to be sourced for the repairs, at *Our* option *We* may either source second-hand parts or pay *You* an amount equal to the manufacturer's or supplier's last published price for the parts;
- if the repairs are undertaken by *You*, *We* will pay the reasonable cost of materials and wages incurred for the purpose of the repairs, plus a

reasonable allowance to cover overhead charges.

If *Damaged Property Insured* is a *Total Loss*, at *Our* option *We* may elect to take ownership of the *Damaged Property Insured*. If *We* elect not to take ownership, the *Damaged Property Insured* will remain in *Your* ownership and *You* will be liable for all costs, expenses or liability in respect of such.

In no circumstances will *We* be liable to indemnify *You* under this *Policy* for any amount which is:

- (1) in excess of the *Sum Insured* (or, if applicable, the *Agreed Value*) for any item of *Property Insured*; or
- (2) the applicable *Excess*.

## Benefits

Subject always to the terms, conditions and exclusions of this *Policy*:

### 1 Acquisitions

The cover provided by this *Policy* automatically extends to *Plant* with a purchase price of equal to or less than the Acquisitions Benefit Limit set out in the *Policy Schedule*, acquired by *You* during the *Period of Insurance* subject to:

- (a) the maximum amount *We* will indemnify *You* for under this Benefit being the purchase price of the item of *Plant*; and
- (b) the maximum period of cover provided by this Benefit is three months from the date of acquisition.

Any items of *Plant* acquired by *You* during the *Period of Insurance* which are not covered under this Benefit will not be covered under this *Policy* unless declared to *Us* and included on the *Policy Schedule*.

### 2 Additional Costs

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will pay any additional costs incurred due to overtime, night-work, work on public holidays and express freight provided this is required to enable the *Property Insured* to be repaired or replaced.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

### 3 Appreciation

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will pay the appreciation in value of the *Property Insured* above that of the *Sum Insured* (or, if applicable, *Agreed Value*) provided that *You* provide us with a current valuation of the *Property Insured* evidencing such appreciation.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

### 4 Cleaning up Costs

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will pay the cost of cleaning up and disposing of any resulting debris.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

### 5 Consequential Loss

Notwithstanding anything in this *Policy* to the contrary, if *Property Insured* suffers *Damage* covered under this *Policy* and the business carried on by *You* is interrupted or interfered with as a consequence of such *Damage*, *We* will indemnify *You* for:

- (a) the increase in cost of working, directly resulting from such interruption or interference; and
- (b) any loss of *Revenue* suffered by *You*, directly resulting from such interruption or interference, provided that:
  - (i) the amount payable for any increase in the cost of working will be the additional expenditure necessarily and reasonably incurred for the sole purpose of minimising any interruption or interference to *Your* business during the *Period of Insurance* in consequence of *Damage*; and
  - (ii) *You* provide all documentation required to establish and verify any claim under this Benefit; and
  - (iii) *You* take all reasonable steps to avoid or reduce any potential loss of *Revenue* including reorganising work methods and schedules; and
  - (iv) *You* take all reasonable measures to assist with the expedient repair and availability of the *Property Insured*; and
  - (v) no indemnity will be provided under this Benefit if a replacement or alternative item of *Plant* to that *Damaged* is available at no cost, and
  - (vi) no indemnity will be provided under this Benefit for the reimbursement of any *Excess* payable by *You* under this *Policy*.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

The time *Excess* which applies to this Benefit is set out in the *Policy Schedule*.

### 6 Emergency Services

*We* will indemnify you, if *Property Insured* suffers *Damage* covered under this *Policy* due to it being used or operated by any organisation requiring emergency assistance, or by *You* on the request of such organisation, in a hazardous environment for the sole purpose of preventing loss or damage to person or property, provided that *You* have not in any way prejudiced any right of recovery against the organisation.

### 7 Foreign Objects

*We* will indemnify *You* for *Damage* Accidentally caused by the ingestion or entry of any foreign object into any item of *Property Insured*.

### 8 Hired or Borrowed Plant

*We* will indemnify *You* for all amounts *You* are legally liable to pay as direct compensation for *Damage* not otherwise excluded by the *Policy*, to the owner of any item(s) of *Plant* *You* have hired or borrowed, provided that cover is only provided under this Benefit:

(a) in respect of *Plant* which:

- (i) has a *Market Value* of equal to or less than the limit set out in the *Policy Schedule*; and
- (ii) has been hired or borrowed for less than 90 consecutive days; and
- (iii) is not insured under any other policy of insurance, and

(b) if the total combined value of all *Plant* hired or borrowed by *You* at any one time does not exceed the Benefit Limit set out in the *Policy Schedule*.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

## 9 Hoists and Hydraulic Lifting Equipment

Notwithstanding anything to the contrary in this *Policy*, *We* will indemnify *You* for *Accidental* mechanical breakdown or mechanical failure of hoists and hydraulic lifting equipment permanently attached to *Property Insured* provided that such breakdown or failure is not caused by or due to wear and tear.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

Indemnity under this Benefit is subject to the relevant *Excess* set out in the *Policy Schedule*.

## 10 Increased Value

The *Sum Insured* for any *Property Insured* will be deemed to include any increase in the value of such *Property Insured* following any major overhaul, refit or modification which increases its value, provided that:

- (a) the *Sum Insured* will at no time exceed the *Market Value* of the *Property Insured*; and
- (b) the increase in value is not greater than 10% of the item of *Property Insured*; and
- (c) cover under this Benefit automatically terminates for the increase in value at the next renewal of this *Policy*.

## 11 Salvage, Recovery and Re-Siting Costs for Damaged Property Insured

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will indemnify *You* for the reasonable cost:

- (a) incurred in salvaging or recovering the *Property Insured*, including the costs of ensuring its safety and delivery to a place of suitable repair or inspection and re-siting any repaired item;
- (b) of recovery and/or withdrawal in the event of any item of *Property Insured* becoming *Accidentally* immobilised in or about the site of any contract,

provided that:

- (1) the total amount payable both in terms of *Damage* to the *Property Insured* and under this Benefit, does not exceed the *Sum Insured* (or, if applicable, *Agreed Value*) of the *Damaged* item of *Property Insured*; and
- (2) there is no cover under this Benefit in respect of *Damage* which is a *Total Loss* unless *We*, at *Our* option, elect to take ownership of the *Damaged Property Insured* whereby *We* will be responsible for its salvage and/or recovery.

Indemnity under this Benefit is subject to the relevant *Excess* set out in the *Policy Schedule*.

## 12 Salvage, Recovery and Re-Siting Costs for Undamaged Property Insured

*We* will indemnify *You* for the reasonable cost:

- (a) incurred in salvaging or recovering the *Property Insured*, including the costs of ensuring its safety and delivery to a suitable place;
- (b) of recovery and/or withdrawal in the event of any item of *Property Insured* becoming *Accidentally* immobilised in or about the site of any contract,

provided that such is required to avoid *Damage* occurring to any item of *Property Insured*.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

Indemnity under this Benefit is subject to the relevant *Excess* set out in the *Policy Schedule*.

## 13 Temporary Repairs

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will indemnify *You* for the reasonable costs incurred in effecting temporary repair of any *Damage* covered under this *Policy* providing *You* have obtained *Our* prior approval.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

## 14 Third Party Liability – Road Risk Only

Subject to the limitations set out below, *We* will indemnify *You* for all amounts *You* are legally liable to pay to third parties as direct compensation for *Damage* not otherwise excluded by the *Policy* (plus reasonable legal expenses in defending any claim) caused by, arising out of or in any way connected with, the use or operation of *Property Insured* whilst on a *Road*, including while it is being loaded or unloaded.

This Benefit extends to any person who is driving the *Property Insured* with *Your* permission. There is no cover however if the *Property Insured* has been let out on hire without a driver unless liability was directly caused by the physical failure of the *Property Insured* and outside the control of the hirer or driver.

### The Limitations:

There is no cover under this Benefit for liability arising out of or in any way connected with:

- (a) *Damage* to property which belongs to, or is in the care, custody or control of any person, who at the time of such *Damage* occurring, was in charge of and/or driving the *Property Insured*;

- (b) the *Property Insured* or any component on the *Property Insured* being used or operated in accordance with the purpose for which it was designed (e.g. operation of crane, log skidder, backhoe and the like);
- (c) *Damage* to property which:
  - (i) belongs to, or is in the care, custody or control of any *Insured* (other than personal baggage and wearing apparel of any passenger who is not an *Insured*);
  - (ii) is a building leased or rented by the *Insured*; or
  - (iii) is a machine (not being the property of the *Insured* or the *Property Insured*) which is being towed by the *Property Insured*.  
However, this limitation (c) (iii) does not apply to liability for machines which are towed or recovered for reward where the *Insured's* business ordinarily includes a machine recovery service.
- (d) the discharge, dispersal, release or escape of, including the cost of removing, nullifying or cleaning up of, *Pollutants*, unless such arises from a sudden identifiable *Accidental* happening which takes place in its entirety at a specific time and place and is not indemnified under more than one annual *Period of Insurance*.
- (e) any fines, penalties or punitive or exemplary damages arising directly or indirectly out of (d) above.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*. If the maximum amount payable is insufficient to cover both *You* and any other party entitled to cover under this Benefit, it will apply in priority to *You*.

## 15 Tyres

Notwithstanding anything to the contrary in this *Policy*, *We* will pay the replacement value of any *Damaged* tyre, less an allowance for depreciation to account for wear and tear, attached to *Property Insured* which is, in its ordinary use or operation, an off-road vehicle.

The maximum amount payable for any one tyre under this Benefit is set out in the *Policy Schedule*.

## 16 Uninsured Third Party Protection

If *Property Insured* suffers *Damage* covered under this *Policy* which is caused by any third party who has no valid or collectable insurance, notwithstanding anything to the contrary in this *Policy* *We* will indemnify *You* for:

- (a) any uninsured loss *You* incur; and
- (b) *Your Excess*, provided:
  - (i) the third party driver was at fault; and
  - (ii) the identity of the third party and the driver is established; and
  - (iii) *You* are unable to make any recovery from the third party or the driver.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

## 17 Windscreens

If *Property Insured* suffers only windscreen or window glass *Damage* not otherwise excluded under this *Policy*, *We* will pay the cost of replacement of the *Damaged* windscreen or window glass provided the *Property Insured* is not used by *You* at any time, for, or in connection with, forestry work or quarry work.

*We* will only indemnify *You* under this Benefit in respect of the replacement of the actual glass *Damaged* and not any superior alternative or temporary repair involving additional expense, unless otherwise agreed to by *Us*.

Indemnity under this Benefit is subject to the relevant *Excess* set out in the *Policy Schedule*.

The maximum amount *We* will indemnify *You* for under this Benefit is set out in the *Policy Schedule*.

## Optional Benefits

Subject always to the terms, conditions and exclusions of this *Policy*, if with *Our* agreement *You* elect to include one or more of the Optional Benefits below, in the cover under this *Policy* and it is noted in the *Policy Schedule*:

### 1 Agreed Value

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will indemnify *You* on an *Agreed Value* basis for the *Damaged Property Insured* provided that:

- (a) prior to the inception or each renewal (as applicable) of this *Policy* *You* evidence the *Agreed Value* of the item of *Property Insured* by way of a valuation; and
- (b) *We* accept the valuation and agree to cover the item of *Property Insured* on an *Agreed Value* basis; and
- (c) the *Agreed Value* is shown in the *Policy Schedule* as the *Sum Insured* for the item of *Property Insured*.

If the item of *Property Insured* has been newly purchased during the *Period of Insurance* the *Agreed Value* will be the purchase price. An *Agreed Value* will only be valid until the end of the current the *Period of Insurance*.

### 2 Employee Death By Accident – Funeral Expenses Cover

If *Property Insured* causes the *Accidental Death* of *You*, or any person employed by *You*, whilst *At Work*, *We* will pay the reasonable funeral expenses of that person, including reasonable travel costs within New Zealand for any *Immediate Family* member of the deceased.

'**Accidental Death**' means bodily injury caused solely and directly by violent, accidental, external and visible means, which injury, independently of any other cause, is the sole and direct cause of death occurring within 12 calendar months of the *Accident*.

'At Work' has the same meaning as that provided by the Accident Insurance Act 1998.

'Immediate Family' means father, mother, brother, sister, spouse, partner or children of the deceased.

There is no cover under this Optional Benefit in respect of any death of a person who is under the influence of an intoxicating liquor or drug.

The maximum amount *We* will indemnify *You* for under this Optional Benefit is set out in the *Policy Schedule*.

### 3 Finance Payment Protection

If *Property Insured* suffers *Damage* covered under this *Policy*, *We* will indemnify *You* for *Your* obligation to meet payments on such *Property Insured* under any finance or lease agreement provided that:

- (a) the period required to repair or replace the *Damaged Property Insured* is greater than 14 consecutive days; and
- (b) the amount payable under this Optional Benefit is based on the annual loan repayment amount and calculated on a daily pro-rata basis, limited to the period as described in (d) below; and
- (c) *We* will not be liable for any balloon or residual value payment that may be due during a repair or replacement period; and
- (d) the indemnity period provided by this Optional Benefit will cease six consecutive calendar months from the date of the *Damage* or when the *Property Insured* is repaired or replaced, whichever is the earlier.

The maximum amount *We* will indemnify *You* for under this Optional Benefit is set out in the *Policy Schedule*.

Indemnity under this Optional Benefit is subject to the relevant *Excess* set out in the *Policy Schedule*.

### 4 Machinery Breakdown

Notwithstanding anything to the contrary in this *Policy*, *We* will indemnify *You* for *Machinery Breakdown* (as defined below) of any *Property Insured*.

'Machinery Breakdown' means *Accidental Damage* causing the actual breaking or burning out of any part of a machine necessitating repair or replacement before normal working can be resumed including (but not limited to) *Damage* directly resulting from:

- (a) defects in material, design, construction, erection or assembly;
- (b) fortuitous working *Accidents* such as vibration, maladjustment, loosening of parts, molecular fatigue, centrifugal force, abnormal stresses, defective or *Accidental* lack of lubrication, water hammer or local overheating, electronic, electrical or mechanical defects or failure of protection devices;
- (c) excessive electrical pressure from any cause, failure of insulation, short circuits, open circuits or arcing or the effects of static electricity causing sudden stoppage of the machinery,

provided that *We* will not be liable under this Optional Benefit for any more than the manufacturer's or supplier's last published price for any part of any item of *Property Insured* that is no longer available to effect repair.

The maximum amount *We* will indemnify *You* for under this Optional Benefit will not exceed the *Sum Insured* for any item of *Property Insured Damaged*.

### 5 Objects Being Handled

Notwithstanding anything to the contrary in this *Policy*, *We* will indemnify *You* for *Accidental Damage* to property belonging to *You* or in *Your* care, custody or control while being handled by *Property Insured*, provided that *Damage* caused by or arising from a fault in or fragility of the property or its container being handled is not covered.

The maximum amount *We* will indemnify *You* for under this Optional Benefit is set out in the *Policy Schedule*.

### 6 Tools and Sundry Equipment

Notwithstanding anything to the contrary in this *Policy*, *We* will indemnify *You* for *Damage* to tools (including employees' tools and other personal effects), equipment, motor machine parts and accessories, tyres, stores of petrol, diesel and oil, mobile and radio telephones including base and hands-free units, office equipment including computers, owned by *You* or for which *You* are responsible, provided that:

- (a) such items are not insured under any other policy of insurance; and
- (b) this Optional Benefit does not cover buildings, structures or caravans, whether fixed to the ground or not unless otherwise specified; and
- (c) cover in respect of burglary and/or theft only applies where *Damage* results from violent and forcible entry or exit from any enclosed building and/or enclosed vehicle/machine.

The maximum amount *We* will indemnify *You* for under this Optional Benefit for, is set out in the *Policy Schedule*.

### 7 Windscreen Cover Extra

If the *Property Insured* is, in its usual operation, used by *You* for, or in connection with, any forestry work or quarry work and it suffers only windscreen or window glass *Damage*, *We* will pay the cost of replacement of the *Damaged* windscreen or window glass.

*We* will only indemnify *You* under this Optional Benefit, in respect of the replacement of the actual glass *Damaged* and not any superior alternative or temporary repair involving additional expense, unless otherwise agreed to by *Us*.

The maximum amount *We* will indemnify *You* for under this Optional Benefit is set out in the *Policy Schedule*.

## Exclusions – What We Do Not Cover

### 1 Consequential Loss

There is no cover under this *Policy* for any consequential loss whatsoever, including but not limited to, loss of use, loss due to delay, loss due to non-compliance or lack of performance, penalties, fines, liquidated damages or aggravated, punitive or exemplary damages.

### 2 Contractor's Plant, Machinery and Tools

There is no cover under this *Policy* for any *Damage* to *Your* tools (including employees' tools and other personal effects), equipment, motor machine parts and accessories, tyres, stores of petrol, diesel and oil, mobile and radio telephones including base and hands-free units, office equipment including computers unless Optional Benefit 6 is shown as applying in the *Policy Schedule* and then only to the extent provided by Optional Extension 5.

### 3 Electronic Data

There is no cover under this *Policy* in respect of *Damage*, liability, cost or expense of any nature directly or indirectly caused by, arising out of or in any way connected with:

- (a) the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of *Electronic Data*; or
- (b) error in creating, amending, entering, deleting or using *Electronic Data*; or
- (c) the total or partial reduction in the functionality, availability or operation of hardware, software and embedded chips; or
- (d) the total or partial inability or failure to receive, send, access or use *Electronic Data* for any time or at all; or
- (e) any business interruption losses resulting therefrom,

regardless of any other contributing cause or event whenever it may occur, unless such *Damage* is a direct consequence of otherwise insured *Damage* and any such *Damage* will be settled in accordance with this *Policy*.

### 4 General

There is no cover under this *Policy* for *Damage*, liability, cost or expense of any nature directly or indirectly caused by, or in any way connected with any action taken in controlling, preventing or suppressing any perils referred to in any of the exclusions in this *Policy*.

### 5 Governmental Actions

There is no cover under this *Policy* for any *Damage*, liability, cost or expense of any nature directly or indirectly caused by or in any way connected with confiscation, nationalisation, commandeering or requisition by the order of Government or any lawfully constituted authority including but not limited to, permanent or temporary dispossession resulting therefrom. However, if the *Governmental Action* was undertaken to prevent *Damage* from occurring which would otherwise have been covered under this *Policy*, *We* will cover *You* to the extent this *Policy* would have provided cover for such *Damage*.

### 6 Gradual Damage

There is no cover under this *Policy* for *Damage*, liability cost or expense of any nature directly or indirectly caused by or in any way connected with corrosion, rust, rot, mould, mildew, fungi, deterioration due to lack of use, aesthetic defects, scratching, atmospheric conditions, the action of light or any other gradually operating cause or gradual deterioration.

### 7 Infectious Disease

There is no cover under this *Policy* for *Damage*, liability cost or expense directly or indirectly caused by, arising out of or in any way connected with a notifiable organism under the Biosecurity Act 1993 or an infectious disease notifiable under the Health Act 1956 or any subsequent amendments or replacing acts.

### 8 Inventory Shortages

*We* will not indemnify *You* for *Damage* where the only proof of loss is unexplained or mysterious disappearance or shortage which is only discovered at the time of taking an inventory or periodic stocktaking.

### 9 Mechanical Failure

*We* will not indemnify *You* for mechanical and/or electrical breakdown *Damage* or mechanical and/or electrical derangement *Damage*.

### 10 Nuclear

There is no cover under this *Policy* in respect of *Damage*, liability, cost or expense of any nature directly or indirectly caused by, arising out of or in any way connected with *Nuclear Activity*, *Nuclear Property* or *Nuclear Material*.

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

### 11 Operation of Property Insured

There is no cover under this *Policy* for *Damage*, liability, cost or expense of any nature if any item of *Property Insured* is:

- (a) used in an unsafe or unroadworthy condition and such condition caused or contributed to the *Damage* or liability. This Exclusion 10(a) will not apply if *You* can prove that *You* could not have reasonably detected the unsafe or unroadworthy condition;
- (b) undergoing a test of any kind other than as required to comply with any statute or regulation. This Exclusion 10(b) will not apply to *Damage* to items of the *Property Insured* not undergoing the test;
- (c) being used in a manner not in accordance with the manufacturer's instructions, guidelines or recommended parameters of use or in a manner or purpose other than that for which it was designed or intended to be used;
- (d) used or operated by *You*, or by any person with *Your* consent, when *You* or that person is not licensed to operate the item of *Property Insured* under any relevant law;
- (e) being used in any race, trial or contest;

- (f) being operated or used outside New Zealand;
- (g) being used, operated or stored underground;
- (h) being used or operated for any illegal purpose with *Your* knowledge and/or consent;
- (i) is operated by any person who:
  - (i) is under the influence of alcohol or any intoxicating substance or drug; or
  - (ii) fails to supply a blood or breath sample as required by law; or
  - (iii) fails to stop, or remain at the scene of an accident, as required by law;
 provided this exception 10 (i) does not apply:
  - (A) to *Damage* which results from the theft or conversion of any item of *Property Insured*; and/or
  - (B) to *You* (but not the driver) if *You* can evidence that *You* did not know or could not reasonably have known that the operator of the *Property Insured* was adversely affected by any intoxicating substance, drug or alcohol so as to exceed the legal limit.

## 12 Pressure Vessel

There is no cover under this *Policy for Damage*, liability, cost or expense of any nature directly or indirectly caused by or in any way connected to the explosion or collapse of any pressure vessel which does not have a current certificate as required by any statute or regulation.

## 13 Recklessness

There is no cover under this *Policy for Damage*, liability, cost or expense of any nature directly or indirectly caused by or in any way connected with a reckless act or failure to act by *You* or *Your* agents or representatives.

## 14 Sanctions

*We* will not indemnify *You* for *Damage* and *We* will not pay any claim or provide any benefit hereunder to the extent that provision of such cover, payment of such claim or provision of such benefit would contravene any sanction, prohibition or restriction under any United Nations resolution, or the trade or economic sanctions, laws or regulations of New Zealand, Australia, the European Union, the United Kingdom and the United States of America.

## 15 Transmission and Distribution Lines

There is no cover under this *Policy for Damage*, liability cost or expense directly or indirectly caused by, arising out of or in any way connected with overhead transmission and distribution lines, and their supporting structures, of power generating authorities or entities, or telecommunication entities. This exclusion does not apply in respect of the above-mentioned lines and their supporting structures that extend from any public highway to *Your* premises if they are *Your* responsibility.

## 16 Tyres

*We* will not indemnify *You* for *Damage* to the tyres of any *Property Insured* directly or indirectly caused by or in any way connected with the application of brakes, road punctures, valve leakage, inherent failure due to manufacturing fault or error, road staking or spiking.

## 17 War and Terrorism

There is no cover under this *Policy* in respect of *Damage*, liability, cost or expense of any nature directly or indirectly caused by, arising out of or in any way connected with *War* or *Terrorism* or steps taken to prevent, suppress, control, retaliate against, respond to, or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived *Terrorism*, regardless of any other contributing cause or event.

## 18 Watercourses

There is no cover under this *Policy for Damage*, liability, cost or expense of any nature directly or indirectly caused by or in any way connected with the *Property Insured* being left unattended in any watercourse or body of water.

## 19 Workmanship and Design

There is no cover under this *Policy for Damage* to *Property Insured* caused by any error or defect in design, plan, specification, materials or workmanship.

This Exclusion 16 does not apply to *Damage* to other separate property which is free of the error or defect but is *Damaged* as a consequence of the error or defect.

For the sake of clarity, *Property Insured* is not *Damaged* solely by virtue of the existence of any error or defect in design, plan, specification, materials or workmanship within any item of *Property Insured*.

## Conditions

### 1 Alteration of Risk

*You* must immediately notify *Us* in writing, if at any time during the *Period of Insurance* there is any material change in any risk insured under this *Policy* ("*Material Alteration*").

Upon *Our* receipt of any *Material Alteration* notification, at *Our* sole discretion, *We* may:

- (a) discontinue cover under this *Policy* in full or in part; and/or
- (b) (including retrospectively to the date of *Material Alteration*) amend the terms, conditions and/or exclusions of this *Policy*, including by way of special provisions or endorsement, and charge an additional premium.

At *Your* own expense *You* must take all reasonable precautions to prevent *Damage* to *Property Insured* as a result of any *Material Alteration*. If, prior to *Our* receipt of the *Material Alteration* notification, *Damage* occurs to *Property Insured* as a result of, or in connection with, such *Material Alteration*,

at *Our* sole discretion, *We* may:

- (1) decline any claim made under this *Policy*; and/or
- (2) discontinue cover under this *Policy* in full or in part; and/or
- (3) (including retrospectively to the date of *Material Alteration*) amend the terms, conditions and/or exclusions of this *Policy*, including by way of special provisions or endorsement, and charge an additional premium.

## **2 Assignment**

*You* must not assign this *Policy* or *Your* interest in this *Policy* to any other person or entity without *Our* prior express agreement in writing.

## **3 Cancellation**

This *Policy* may be cancelled:

- (a) By *Us*: At any time by giving *You* notice in writing of *Our* intention to cancel this *Policy*. The notice may be delivered by any method of communication previously used between us. The cancellation will take effect at 4pm on the 30th day after the day of posting or sending the notice.
- (b) By *You*: At any time by giving *Us* notice in writing stating when the cancellation will be effective.

In the event of cancellation, *We* will refund, or as the case may be, be entitled to be paid, a pro rata proportion of the premium for the time during which this *Policy* was in force. Any premium refund is subject to a maximum refund payment of 50% of the annual premium.

Notwithstanding 3 (b) above, if there is an interested party noted on *Your Policy* *We* will give them 30 days written notice of cancellation at the end of which time the *Policy* will cancel.

## **4 Entitlement**

Any person entitled to cover under the *Policy* is severally bound by the terms, conditions and exclusions of the *Policy*.

## **5 Excess**

*Your Policy Schedule* sets out the relevant *Excesses* for different types of claims. An *Excess* will apply to each claim *You* make, but if a single incident gives rise to different types of claim, only one *Excess* will apply (the highest). However, if there is also an admissible claim under any Coverage of this *Policy* then the *Excess* for that additional cover will be cumulative with the highest *Excess*.

For the purposes of applying the *Excess*, any *Damage* caused by the same event during any period of 72 consecutive hours will be treated as one event and only one *Excess* shall apply.

## **6 Fraud and Misstatements**

If any claim:

- (a) is fraudulent in any respect; or
- (b) is supported by any incorrect or incomplete statements made by *You*, or someone on *Your* behalf,

*We* will not pay *Your* claim, all benefits under this *Policy* will be forfeited and notwithstanding Condition 3 above, *Your Policy* will be immediately cancelled and *You* will not be entitled to any premium refund.

## **7 GST**

All monetary amounts described in this *Policy*, including the *Sums Insured*, are exclusive of Goods and Services Tax ("GST"). Provided any GST is recoverable by *Us*, in the event of a claim *We* will pay the current prescribed rate of GST in addition to the *Sum Insured* noted against the relevant *Property Insured* in the *Policy Schedule*.

## **8 Inspection**

*We* are entitled to inspect and examine any *Property Insured* at any time subject to *Us* providing *You* with reasonable notice of such inspection.

If required by *Us*, *You* must provide *Us* with any reasonable information relating to any *Property Insured*.

## **9 Jurisdiction Clause**

This *Policy*, including all disputes arising out of or under it, is governed exclusively by the laws of New Zealand.

## **10 Misrepresentation**

This *Policy* is based on the information *You* have provided being both correct and complete. *We* will not indemnify *You* for any claim relating to any risk misdescribed or misrepresented and may avoid *Your Policy*.

## **11 Observance of Conditions**

The due observance and fulfilment of the terms of this *Policy* insofar as they relate to anything to be done or complied with by *You*, and the correctness of the statements and answers in the quote, submission, and proposal made by *You*, are a condition precedent to *Our* liability under this *Policy*.

## **12 Other Insurance**

If *You* have any other valid and collectable insurance under which *You* are or would be, but for the existence of this *Policy*, indemnified, this *Policy* will not apply until the full amount of the indemnity under such other policy has been applied to the maximum extent.

## **13 Premium Payment**

All premiums, including appropriate levies and GST, must be paid to *Us* within 120 days of inception of this *Policy*. If after 120 days the premium has not been paid to *Us* then this *Policy* will be automatically avoided from inception without notice having to be given by *Us* to *You*.

## **14 Reasonable Care**

It is a condition precedent to any cover under this *Policy* that at *Your* own expense *You* take all reasonable actions and/or precautions, and comply with all of *Our* reasonable requirements, to:

- (a) protect *Your* property and prevent or minimise *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; and
- (e) comply with any manufacturers' recommendations.

#### **15 Reinstatement of Sum Insured**

When *We* indemnify *You* for any claim under this *Policy* *We* agree to reinstate cover for the applicable *Property Insured* by the value of the claim paid, provided that *You* pay any additional premium required by *Us* for such reinstatement.

#### **16 Severability**

If any section or clause of this *Policy* is 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.

#### **17 Subrogation**

In the event of payment by *Us* in accordance with the cover provided by this *Policy*, *We* will be subrogated to and/or receive assignment of all of *Your* rights (including that of recovery) against all persons and organisations and *You* will execute and deliver any and all appropriate instruments and papers and do all that is necessary to assist *Us* in the exercise of such rights including prosecuting proceedings in *Your* name at *Our* expense. Any such amount so recovered will first be apportioned to pay the *Excess* and secondly to reimburse *Us* to the extent of the actual payment hereunder.

#### **18 Unknown Breach of Condition**

The indemnity provided by this *Policy* will not be invalidated by reason of any breach of condition of this *Policy* (not including any of the exclusions in this *Policy*) which occurs without *Your* knowledge provided *You* have not waived any right of recovery. For the purposes of this Condition 18, *You* need to evidence that *You* did not or could not reasonably have known of the breach of the condition at the time when the breach occurred.

#### **19 Variation and Waiver**

No amendments or additions to this *Policy* will be valid, nor will any of the requirements of any part of this *Policy* be deemed to be waived unless *We* expressly agree to such in writing.

## **Claims Conditions**

### **Claims Obligations**

- 1** In the event of any *Damage* which might give rise to a claim under this *Policy*, *You* must:
  - (a) immediately notify *Us* by either telephone or electronic mail, giving an indication as to the nature and extent of *Damage*;
  - (b) take all reasonable steps to minimise the extent of the *Damage*;
  - (c) take all reasonable steps to protect the *Property Insured* from further *Damage* including but not limited to theft;
  - (d) preserve the *Property Insured* and/or the parts affected and make it (them) available for inspection by *Our* representative;
  - (e) at *Your* expense provide *Us* with all such information and documentary evidence as *We* may require;
  - (f) inform the Police in case of *Damage* due to theft, burglary, suspected arson or any other criminal act.
- 2** Once *You* have provided *Us* with notice of *Damage*:
  - (a) *We*, or *Our* representative, will advise *You* to either repair the *Damage* (if only minor *Damage*) or allow for inspection of the *Damage*;
  - (b) If *You* are advised to repair the *Damage*, *You* may appoint an apparently qualified repairer of *Your* choice and the repairs must be carried out without delay;
  - (c) If *You* are advised to allow for inspection of the *Damage*:
    - (i) *You* must allow *Us* or *Our* representative an opportunity to inspect the *Damage* before any repairs are effected. If *We*, or *Our* representative, do/does not carry out an inspection within a period of time which could be considered reasonable under the circumstances, *You* will be entitled to proceed with such repairs as are reasonably required; and
    - (ii) Following *Our* inspection of the *Damage*, *We* will arrange such repairs as are reasonably required without delay.
  - (d) *We* will not indemnify *You* for *Damage* which is not repaired without delay in accordance with this clause.
  - (e) *We* reserve the right to invite, accept, adjust or decline repair estimates or to arrange at *Our* expense for the removal of the *Damaged Property Insured* to other repairers for quotation and repair purposes.
- 3** In respect of each claim or potential claim, *You* must:
  - (a) not make any admission of liability or offer of payment without first obtaining *Our* written consent;
  - (b) allow *Us* to have the sole conduct of all negotiations and proceedings;
  - (c) give *Us* all reasonable assistance and co-operation;
  - (d) notify *Us* of any other insurance that may also provide cover for the *Damage* whether in whole or in part.

#### **4 Financial Interests**

If the *Damaged Property Insured* is subject to any lease, hire or other financial agreement and *You* have noted such interests on *Your Policy*, any amount payable under this *Policy* may be paid by *Us* at *Our* option to the party noted on *Your Policy*.

#### **5 Progress Payments**

Once liability for any *Damage* is admitted to *Us*, *You* may be entitled to progress payments provided that an interim statement of *Damage* is supplied by *You* and approved by *Our* representative.

## Definitions

Where any of the following words, or their derivatives, appear *Capitalised* and *Italicised* anywhere in this document they will mean:

### **Accident and Accidental**

An unexpected and unintended event which occurs in New Zealand.

### **Agreed Value**

The amount shown on *Your Policy Schedule* as the agreed value of any item of *Property Insured*.

### **Damage / Damaged**

*Accidental* sudden, unforeseen and unintended physical:

- (a) loss; or
- (b) damage.

For the purpose of this *Policy*, *Property Insured* will not be regarded as *Damaged* solely by virtue of the existence of any error or defect in design, plan, specification, materials or workmanship in the *Property Insured* or any part thereof.

### **Electronic Data**

Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment, and includes programmes, software and other coded instructions for such equipment.

### **Excess**

The amount specified in the *Policy Schedule* which is payable by *You* in respect of each and every claim under this *Policy*.

### **Governmental Action**

Includes the confiscation, commandeering, nationalisation, requisition or destruction of, or *Damage* to, property by any order of government, whether de jure or de facto, or by any local, public or lawfully constituted authority.

### **Market Value**

The reasonable value of the *Property Insured* immediately prior to any *Damage*.

### **Nuclear Property**

Includes:

- (a) all nuclear installations including nuclear power stations, nuclear reactors and reactor buildings;
- (b) all sites, including building and structures, used or having been used for the generation of nuclear energy or production, use or storage of *Nuclear Material*; and
- (c) all other tangible property, including but not limited to vehicles, plant and equipment, stored or used on, or carried to or from, any of the situations described in (a) or (b) above.

### **Nuclear Activity**

Includes:

- (a) ionising radiations from or contamination by radioactivity from any *Nuclear Material* or from the combustion of *Nuclear Material* (for the purpose of this exclusion, combustion includes any self-sustaining process of nuclear fission or fusion);
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any *Nuclear Property* or *Nuclear Material*.

### **Nuclear Material**

Includes:

- (a) nuclear fuel and nuclear waste;
- (b) radioactive material and radioactive waste;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; and
- (d) any chemical, biological, bio-chemical, or electromagnetic weapon.

This does not extend to radioactive isotopes, other than nuclear fuel or nuclear waste, when such isotopes are in or on *Property Insured* and are being prepared, transported, stored, or used in the normal course of operations by *You* for the commercial, agricultural, medical, scientific or other similar peaceful purposes for which they were intended.

### **Period of Insurance**

The period shown in the *Policy Schedule* during which this *Policy* is in force.

### **Plant**

Items of plant, machinery and equipment (including self-propelled items) including:

- (a) any ancillary equipment normally used with the item (interchangeable attachments that are normally used with an item of *Plant* e.g. buckets, scoops, blades, pneumatic heads) which in total do not exceed 25% of the total value of the item of *Plant*; and
- (b) accessories (supplementary items that have been added to *Plant* after manufacture) and spare parts whilst in or on any item of *Plant*.

**Policy**

This policy document, which together with the *Policy Schedule* and the information provided by *You* in support of *Your* application, forms the basis of *Your* insurance contract with *Us*.

**Policy Schedule**

The most recent policy schedule issued by *Us* to *You* forming part of *Your* Policy.

**Pollutants**

Any solid liquid gaseous or thermal irritant or contaminant, including but not limited to smoke vapour, soot, fumes, acid, alkalis, chemicals and waste (which includes material to be recycled, reconditioned or reclaimed).

**Property Insured**

The items of *Plant* described in the *Policy Schedule* as being insured under this *Policy*.

**Regulations**

Regulations made under or framed in pursuance of any Act of Parliament or regulation or by-law of any local authority.

**Revenue**

Money received or receivable by *You* for services performed in the course of *Your* business.

**Road**

Any access way which is on terra firma, commonly used by vehicles which the public has access to whether as of right or not (e.g. service lane, street, motorway, or closed roads such as off highway service roads and the like). It does not include any access way which requires the vehicle to travel on rails.

**Sum Insured**

The maximum amount of cover provided by the *Policy* for any item of *Property Insured* as shown on *Your* *Policy Schedule*.

**Terrorism**

An act or acts, or preparation in respect of action, or threat of action, 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) de jure or de facto, which from its nature or context is committed for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including but not limited to the intention to influence any government, de jure or de facto of any nation or any political division thereof, and/or to put the public, or any section of the public, in fear.

**Total Loss**

*Damage* which in *Our* opinion cannot be economically repaired or in respect of which the cost of repair will equal or exceed the lesser of the current *Market Value*, or *Sum Insured* (or, if applicable, *Agreed Value*) of the *Property Insured*, immediately prior to the *Damage* occurring.

**War**

War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege or any events or causes which determine the proclamation or maintenance of martial law or state of siege.

**We, Us & Our**

Lumley, a business division of IAG New Zealand Limited.

**You & Your & Insured**

Includes:

- (a) the party named as the insured in the *Policy Schedule*; and
- (b) all subsidiary companies of the party in (a) above, including subsidiaries thereof, all having their places of incorporation within New Zealand and any other organisation under the control of such party and over which it is exercising active management; and
- (c) each company and organisation as identified in paragraph (b) above acquired during the *Period of Insurance* or over which the party in (a) above takes active management control during the *Period of Insurance*,  
provided that in respect of paragraphs (b) and (c) above, *We* are advised in writing of the acquisition or assumption of active management control within sixty days of such acquisition or assumption.