

Carriers liability policy

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Introduction

Welcome to Lumley's Carriers Liability 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 that provided on the proposal.

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 all sums which *You* become legally liable to pay as a *Carrier* under the Carriage of Goods Act 1979 in respect of *Damage to Goods* arising from an *Occurrence* during the *Period of Insurance*, provided that:

- (a) *Our* liability for all sums payable to any claimant or any number of claimants in respect of or arising out of all *Occurrences* which are consequent on or attributable to one source or original cause shall not exceed the *Indemnity Limit* specified in the *Policy Schedule*; and
- (b) *We* will not rely on section 14(d) of the Carriage of Goods Act 1979 to avoid liability under this *Policy* unless specifically requested by *You*.

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

- (1) is in excess of the *Indemnity Limits* for the relevant cover
- (2) is the applicable *Excess*.

Benefits

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

1 Employee / Agent Breach of Driving Licence Requirements

Notwithstanding exclusion 3, *We* will indemnify *You* for *Your* liability arising out of a *Carrying Vehicle* being driven by *Your* employee or *Your* agent (excluding any person who is an owner, director or shareholder of *You*) ("*Driver*"), while the *Driver* is:

- (a) under the influence of intoxicating liquor or any drug; or
- (b) in breach of the driver licensing requirements for the operation of the *Carrying Vehicle* including not having a current and valid motor driver's licence required to drive the *Carrying Vehicle*,

but only if *We* are satisfied that:

- (1) *You* and the *Driver's* management and superiors had no prior knowledge the *Carrying Vehicle* was being or would be driven in such circumstances; and

- (2) the *Driver* had no prior knowledge of the existence of this clause; or
- (3) in the case of Benefit 1(b) only, the *Driver*:
 - (i) has previously held such licence;
 - (ii) is not disqualified from holding or obtaining such licence; and
 - (iii) actually obtains such licence without having to undertake a further driving test; or
- (4) in the case of clause Benefit 1(b) only, the *Carrying Vehicle* is being used for the sole purpose of teaching a learner to drive if all other requirements of the law in that connection are being complied with.

This Benefit is for *Your* sole benefit and does not amount to a waiver of any rights of recovery that *We* may have against the *Driver* or any other person(s) causing *Damage*.

2 Litigation Costs and Expenses

If *You* incur legal liability covered under this *Policy*, *We* will pay:

- (a) all costs and expenses of litigation recovered by any claimant against *You*; and
- (b) all costs and expenses of litigation incurred with *Our* prior written consent.

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 Carriage of Household or Personal Effects

Notwithstanding exclusion 4(a) of this *Policy*, *We* will indemnify *You* for *Your* liability arising out of the *Carriage* of household or personal effects.

2 Consequential Loss

If *You* incur liability covered under this *Policy*:

- (a) *We* will pay any sum *You* become legally liable to pay for consequential loss under section 15 (2)(c) of the Carriage of Goods Act 1979; and
- (b) Exclusion 5 – Damages is deleted and replaced with the following:

“There is no cover under this *Policy*, whatever the cause, for liability to pay punitive damages of any kind”.

Our maximum liability under this Optional Benefit 2 is set out in the *Policy Schedule*.

3 Dangerous Goods or Hazardous Substances

Notwithstanding exclusion 4(c) of this *Policy*, *We* will indemnify *You* for *Your* liability arising out of the *Carriage* of such *Dangerous Goods* or *Hazardous Substances* as are specified in the *Policy Schedule*.

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

4 Declared Value or Declared Terms

We will pay *Your* legal liability incurred pursuant to *Contracts of Carriage* at “Declared Value” or “Declared Terms” pursuant to sections 8 and 9 of the Carriage of Goods Act 1979, provided that before carrying *Goods* under any such contract:

- (a) *You* have first provided *Us* with details of the contract; and
- (b) *You* have agreed with *Us* on the appropriate premium rate payable.

Our maximum liability under this Optional Benefit 4 is set out in the *Policy Schedule*.

5 Profit Share

If, at the end of the *Period of Insurance*, *You* agree to renew *Your* insurance with *Us*, *We* will adjust the premium paid for that *Period of Insurance* as follows:

- (a) At the end of the *Period of Insurance* the net premium (gross premium and any additional or return premium adjustments and less commission if applicable) will be totalled together with incurred claims (total amount of claims paid and reasonable estimates of claims yet to be paid, including fees and net of actual and estimated recoveries) during the *Period of Insurance*, and
- (b) A loss ratio will be calculated by comparing the net premium to the total of incurred claims, and
- (c) If the incurred claims ratio is more than 50% then no profit share is payable.
- (d) If the loss ratio is 50% or less, the amount of profit share will be as shown on the *Policy Schedule*.
- (e) If the loss ratio in any one year exceeds 100% then the total of incurred claims shall be carried forward to the ensuing year. In any event no single loss shall be carried forward for more than three years.

6 Removal of Debris

If *You* incur legal liability covered under this *Policy* in respect of any particular *Occurrence*, *We* will pay:

- (a) the costs properly and reasonably incurred for the removal, disposal, salvage sale or destruction of *Goods* being actually carried by *You* at the time of the *Occurrence*, whether or not *You* are liable for such costs under the Carriage of Goods Act 1979; and
- (b) notwithstanding Exclusion 18, any sum *You* become legally liable to pay for seepage, pollution or contamination arising from *Goods* being actually carried by you at the time of the *Occurrence*, provided that the *Occurrence* involves:

- (1) fire on or of *Your Carrying Vehicle*; and/or
- (2) collision or overturning of *Your Carrying Vehicle*.

Our maximum liability under this Optional Benefit 6 is set out in the *Policy Schedule*.

7 Valuable Cargo

Notwithstanding exclusion 4(b) of this Policy, *We* will indemnify *You* against *Your* legal liability as a *Carrier* pursuant to the Carriage of Goods Act 1979 where such liability arises in relation to *Valuable Cargo*, provided that:

- (a) the *Indemnity Limit* for *Valuable Cargo* as set out in the *Policy Schedule* is a sub-limit of the *Policy Indemnity Limit*; and
- (b) under no circumstances shall *Our* liability for any one *Occurrence* in respect of *Valuable Cargo* insured under this Optional Benefit 7 exceed the amount of such sub-limit; and
- (c) any payment made by *Us* up to the amount of the sub-limit referred to above will reduce the amount of *Our* liability under the Coverage Section limit by the amount of that payment, in respect of any one *Occurrence*.

Exclusions – What We Do Not Cover

1 Asbestos

There is no cover under this *Policy* for liability directly or indirectly caused by or in any way connected to asbestos.

2 Assumed Liability

There is no cover under this *Policy* for liability assumed by *You* by agreement, other than:

- (a) an agreement in writing pursuant to section 8 of the Carriage of Goods Act 1979 provided that before carrying *Goods* under any such agreement:
 - (i) *You* have first provided *Us* with a copy of the agreement; and
 - (ii) *We* have agreed in writing to provide cover for such *Carriage*,
- (b) where such assumed liability would have attached to *You* notwithstanding such agreement.

3 Breach of Driver Licensing

There is no cover under this *Policy* for liability directly or indirectly caused by, arising out of or in any way connected to, any *Carrying Vehicle* while it is being driven by any person, including *You* or any of *Your* employees or agents, while such person is:

- (a) under the influence of intoxicating liquor or drug; or
- (b) in breach of the driver licensing requirements for the operation of the *Carrying Vehicle* including not having a current and valid motor driver's licence required to drive the *Carrying Vehicle*,

except to the extent provided by Benefit 1.

4 Carriage

Except as provided by Optional Benefits 1, 3 and 7 (where *You* have cover under those Benefits) there is no cover under this *Policy* for liability caused by or arising out of the *Carriage* of:

- (a) household or personal effects unless *You* did not know and could not reasonably have known that household or personal effects were being or were to be carried;
- (b) *Valuable Cargo*;
- (c) *Dangerous Goods* or *Hazardous Substances* unless *You* did not know and could not reasonably have known that *Dangerous Goods* or *Hazardous Substances* were being or were to be carried;
- (d) *Goods* when being carried by a *Carrying Vehicle* which is overloaded or overweight.

5 Damages

There is no cover under this *Policy*, whatever the cause, for liability arising (whether directly or indirectly) out of:

- (a) the terms of a *Contract of Carriage* for damages other than for the *Loss* of or damage to *Goods*; and
- (b) *Loss* of market, delay or consequential or punitive losses or damages of any kind.

6 Goods in Storage

There is no cover under this *Policy* in respect of liability arising out of *Damage* to *Goods* at any time while the *Goods* are in any store, holding yard, pen or the like which is owned or occupied by *You* or under *Your* control, unless such storage is incidental to the *Carriage* of *Goods*.

7 Governmental Actions

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 *Governmental Action*. However, if the *Governmental Action* was undertaken to prevent any peril for which *You* would have incurred liability and which would otherwise have been covered under this *Policy*, *We* will cover *You* to the extent this *Policy* would have provided cover for such liability.

8 Gradual Damage

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

9 Health Hazard

There is no cover under this *Policy* for liability directly or indirectly caused by or medically attributed to a *Health Hazard*.

10 Implied Warranties Breach

There is no cover under this *Policy* for liability arising from a:

- (a) breach by *You* of either of the implied warranties in section 17(1)(a) of the Carriage of Goods Act 1979; or
- (b) *Contract of Carriage* where *You*, after being advised by the other contracting party of any matter breaching either of the implied warranties in section 17(1)(a) of the Carriage of Goods Act 1979, have nevertheless accepted *Goods for Carriage*.

11 Incorrect Statements or Omissions

There is no cover under this *Policy* for liability incurred or increased by an incorrect statement in or omission from *Your* consignment note, bill of lading or other document evidencing the *Contract of Carriage*.

12 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.

13 Insolvency

There is no cover under this *Policy*, whatever the cause, for liability arising out of *Your* insolvency, liquidation or receivership or where *You* are deemed by law to be unable to pay *Your* debts, or *You* make any arrangement or compromise with *Your* creditors, or members, or with any class of creditors or members.

14 Intentional, Dishonest and Reckless Acts

There is no cover under this *Policy* in respect of *Damage*, liability, cost or expense directly or indirectly caused by or in any way connected with an intentional, dishonest or reckless act, or failure to act, by *You* or *Your* agents, employees or representatives, provided that this Exclusion does not apply to an intentional, dishonest or reckless act, or failure to act:

- (a) by *Your* employee or by any other *Carrier*, agent or subcontractor who performed or was intended to perform any part of the *Contract of Carriage*; and
- (b) of which *You* had no prior knowledge nor had provided consent.

15 Mechanical Failure

There is no cover under this *Policy* for liability directly or indirectly arising out of or in any way connected to mechanical and/or electrical breakdown or mechanical and/or electrical derangement of *Goods* unless caused by an external force which is clearly evidenced by marks and the like on packaging or other similar evidence.

16 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.

17 Sanctions

We will not be deemed to provide cover nor will *We* be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose us to any sanction, prohibition or restriction under any United Nations resolution or the trade or economic sanctions, laws or regulations of New Zealand, the European Union, United Kingdom or United States of America or any other sanction, prohibition or restriction with which *We* are obligated to comply with.

18 Seepage and Pollution

There is no cover under this *Policy* for liability incurred by *You* arising out of or in any way connected to seepage, pollution or contamination.

19 Ship Navigation or Operation

There is no cover under this *Policy* for liability arising out of the management, operation or navigation of any ship or aircraft in which *You* have an interest as owner, charterer, lessor, lessee or financier or in which *You* otherwise have a legal or equitable interest.

20 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.

21 Vermin and Other Pests

There is no cover under this *Policy* in respect of *Damage*, liability, cost or expense directly or indirectly caused by vermin, insects or any other pest of any kind.

22 War & 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.

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 to any circumstances affecting 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 part; and/or
- (b) (including retrospectively to the date of 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*, liability, cost or expense as a result of any *Material Alteration*. If, prior to Our receipt of the *Material Alteration* notification, *Damage*, liability, cost or expense arises 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 part; and/or
- (3) (including retrospectively to the date of alteration) amend the terms, conditions and/or exclusions of this *Policy*, including by way of special provisions, 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, including without limitation any subcontractors and/or actual carriers, 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* has been in force.

4 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.

5 GST

All monetary amounts described in this *Policy*, including the *Limits of Liability*, are inclusive of Goods and Services Tax ("GST").

6 Inspection

We are entitled to inspect any premises, plant, works, machinery, appliances, *Carrying Vehicles* and electronic equipment used in Your business 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 *Carrying Vehicle*.

7 Joint Insureds

The inclusion of more than one person or organisation as an *Insured* under this *Policy* will not in any way affect the rights of any such person or organisation, either in respect of any claim, demand, suit or judgment made or in favour of any employee of such other *Insured* or otherwise, it being the intent of this *Policy* to protect such person or organisation covered as *Insured* in the same manner as though a separate policy had been issued to each person or organisation provided that this clause will only apply where each *Insured* is a separate legal entity.

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

8 Jurisdiction Clause

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

9 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*.

10 Non-standard Excess

Where:

- (a) *Your* liability for *Damage to Goods* has arisen as the result of an accident or incident involving *Your Carrying Vehicle*; and
- (b) the accident or incident has been caused or contributed to by the driver of that *Carrying Vehicle*; and
- (c) the claim is not otherwise excluded by the terms of this *Policy*,

We will apply the Non-Standard *Excess* stated in the *Policy Schedule* (except where applicable to cover under an Optional Benefit) as the *Excess* which is payable by *You* on each and every claim.

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

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

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) 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.

For the avoidance of doubt, in relation to any *Carrying Vehicle*:

- (1) *You* will ensure that such *Carrying Vehicle* is suitable for the purpose for which it is, or will be, used; and
- (2) which has been *Left Unattended* the taking of all reasonable steps includes (without limitation) removing the keys from and locking any such *Carrying Vehicle* and where a vehicle alarm or vehicle immobiliser is fitted, ensuring that this is activated.

15 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.

16 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.

17 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

Condition Precedent

1 It is a condition precedent to *Our* liability to indemnify *You* under this *Policy* that:

- (a) in any case where a claim has been made against *You* and *You* are, or may be, entitled to claim contribution or indemnity from another *Carrier*, *You* comply in all respects with the provisions of section 18 of the Carriage of Goods Act 1979, either as they appear in that section or, where such other *Carrier* has either wholly or partly contracted out of section 18, in the manner provided for in that *Carrier's* terms and conditions of trade;
- (b) if any property is lost or if theft, pilferage, fraud, dishonesty or malicious damage is suspected, the police are notified within 72 hours of *You* becoming aware of the event; and
- (c) *You* promptly take all reasonable steps to prevent further *Damage*, disablement or liability.

Claims by Third Parties

- 2 You must provide *Us* with notice of any *Occurrence*, claim, impending prosecution or proceedings immediately upon *You* becoming aware of such. *We* will not be liable to indemnify *You* for any liability arising out of *Damage* not notified to *Us* within 30 days of *You* first becoming aware of the same.
- 4 *You* must not, without *Our* written consent, negotiate or make any admission, offer, promise or payment in connection with any *Occurrence* or claim.
- 5 *We* will be entitled (but not obliged) to take over and conduct in *Your* name the defence of any claim or to prosecute in *Your* name at *Our* own expense and for *Our* own benefit any claim for indemnity or damages or otherwise against any persons. Having taken over the defence of any claim *We* will have full discretion in the conduct of any proceedings and in the settlement of any claim, including the discretion to relinquish conduct of the defence. *You* will give all such information and assistance as *We* may require.

Documents

- 6 *We* will under no circumstances be under any obligation to indemnify *You* (whether or not *We* have accepted liability under this *Policy*) until *You* have first provided *Us* with (so far as applicable):
 - (i) a completed and signed claim form;
 - (ii) a copy of statement of claim / letter of claim made by the claimant to *You*;
 - (iii) any response made by *You*;
 - (iv) an original delivery docket signed by the receiver of any *Goods* delivered by *You*;
 - (v) a legible copy of consignment note (both sides);
 - (vi) a legible copy of bill of lading (both sides), if applicable;
 - (vii) a copy of commercial invoice and packing list.

Discharge of Liabilities

- 7 *We* may at any time pay to *You*, in respect of all claims against *You* arising directly or indirectly from one source or original cause, the amount of the *Indemnity Limit* for the Section or Optional Benefit of the *Policy* under which each claim falls (after deduction of the *Excess*, as shown in the *Policy Schedule*, and any sum or sums already paid as compensation), or any lesser sum for which the claim or claims can be settled, and upon such payment *We* will relinquish conduct or control of and be under no further liability under the *Policy* in connection with claims except for costs, charges and expenses:
 - (a) recoverable from *You* for all or part of the period prior to the date of such payment; and/or
 - (b) incurred by *Us*; and/or
 - (c) incurred by *You* with *Our* written consent prior to the date of payment.

Preservation

- 8 *You* will use *Your* best endeavours to preserve any damaged, defective, or otherwise deficient premises, plant, works, machinery, appliance, electronic equipment or other item which might prove necessary or useful by way of evidence in connection with any claim whether or not *You* have any knowledge of the possibility of a claim.
- 9 So far as may be reasonably practical and where not inconsistent with *Your* duty to mitigate the loss, no repair or alteration is to be effected to any items described in paragraph 9 above until *We* have first had the opportunity of inspection.

Prejudice

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

Definitions

In this *Policy*, unless otherwise required where any of the following words, or their derivatives, appear *Capitalised* and *Italicised* they will mean:

'Actual Carrier', 'Carriage', 'Carrier', 'Contracting Carrier', 'Contracting Party', 'Contract of Carriage', 'Goods' and 'Loss'

All have the same meaning as is given to each of them in the Carriage of Goods Act 1979.

Carrying Vehicle

Any vehicle *You* use or operate for the purpose of fulfilling a *Contract of Carriage* and includes any trailer, B-Train or similar in which *Goods* are being carried.

Claim

A claim against *You* by a third party which arises from *Your* legal liability as a *Carrier* under the Carriage of Goods Act 1979.

Compensation

Money payable by reason of a judgment delivered by a Court or Disputes Tribunal in New Zealand; or by reason of any settlement of any claim negotiated with *Our* consent.

Damage / Damaged

Sudden, unforeseen and unintended physical:

- (a) loss, including *Loss*; or
- (b) damage.

For the purpose of the *Policy*, *Goods* 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 *Goods* or any part thereof.

Dangerous Goods

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

Excess

The amount specified in the *Policy Schedule* which is payable by *You* on each and every claim arising out of one *Occurrence* as stated in the *Policy Schedule*.

Hazardous Substances

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

Health Hazard

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

Indemnity Limit

The amount specified in the *Policy Schedule* that is the maximum amount *We* will pay under this *Policy* for each and every claim arising out of one *Occurrence*.

Left Unattended

Means that neither the driver nor any person accompanying the driver of any *Carrying Vehicle* (whether any of those persons is *You* or not) is in the *Carrying Vehicle* and the *Carrying Vehicle* is either out of the direct line of sight of all such persons, or is at such a distance from such persons that they are unable to intervene to prevent interference with the *Carrying Vehicle* or any *Goods* in it.

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

Occurrence

An event during the *Period of Insurance* which results in *Damage* to *Goods* in any circumstances which could give rise to liability of *You* under the Carriage of Goods Act 1979, whether as a Contracting Carrier or an Actual Carrier or otherwise.

Period of Insurance

The period shown in the *Policy Schedule* and any subsequent period for which *We* have agreed to renew this *Policy* and for which *You* have paid the premium.

Policy

This pre-printed 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*.

Regulations

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

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.

Valuable Cargo

Includes bullion, precious metal objects, precious stones, precious jewellery, bank notes, coins, bonds, negotiable instruments or securities of any kind, valuable works of art, wines, spirits, tobacco, tobacco products.

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;
- (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.