

material damage/business interruption policy wording

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Introduction

An insurance Policy is a legal contract where You pay Us a premium based on the information You have provided. In return, based on that information, We provide the protection as outlined in the following document and Schedule for Losses that occur during the Period of Insurance.

This Policy consists of the proposal and any other information You supplied to Us when this insurance was arranged, this document and the Schedule. They should be read as one document. This Policy is subject to Your rights under the Insurance Law Reform Act 1977 and 1985.

General Definitions at the end of this Policy contains words with their meanings defined. Wherever these words appear throughout this Policy with the first letter capitalised the particular meaning given in Section 4 - General Definitions applied.

Please take the time now to read the Policy and Schedule to make sure it meets Your needs and You understand Your requirements as laid out in this Policy.

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Section 1 – General applicable to all sections

1.1 Insurance Contract

In consideration of You having paid or agreeing to pay the premium, We agree to indemnify You in the manner and to the extent set out in this Policy.

1.2 General Exclusions

These are the general exclusions that apply to all Sections of this Policy. In addition there are specific exclusions which apply to each Section of this Policy in which they are set out.

1.2.1 War and Terrorism

This Policy does not insure any death, injury, Loss, damage, liability, cost or expenses of whatever nature directly or indirectly caused by, resulting from, or in connection with, any of the following regardless of any other contributing cause or Event:

- 1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war;
- 2 mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any act of any person or persons acting on behalf of or in connection with any organisation the objects of which are or include the overthrowing or influencing of any de jure or de facto government by terrorism or by any violent means,
- 3 any Act of Terrorism.

This Policy also excludes any 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 events excluded above.

1.2.2 Confiscation, Nuclear

This Policy does not insure Loss directly or indirectly caused by:

- 1 confiscation, requisition, or destruction of or damage to Property by order of government or local authority unless the order is given for the purpose of controlling fire or another peril for which insurance is provided by this Policy;
- 2 nuclear weapons material;
- 3 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. (For the purpose of this exclusion, combustion includes any self-sustaining process of nuclear fission.)

1.2.3 Electronic Data

Notwithstanding anything to the contrary in this Policy, this Policy does not insure:

- 1 the corruption, destruction or alteration of or damage to data, coding program or software or;
- 2 the unavailability of data or reduction in the functionality, availability or operation of hardware, software and embedded chips.

1.2.4 Infectious Disease

This Policy does not insure any Loss or financial Loss directly or indirectly caused by a notifiable disease under the Biosecurity Act 1993 or an infectious disease notifiable under the Health Act 1956 or any subsequent amendment or replacing act.

1.3 General Conditions

These are the general conditions that apply to all Sections of this Policy. In addition there are specific conditions which apply to each section of this Policy in which they are set out.

1.3.1 Application of Additional Cover Clauses

Where the terms of any Additional Cover clause in this Policy are inconsistent with any other terms of the Policy, the terms of the Additional Cover clause will prevail. Where the terms of any Additional Cover clause are inconsistent with the terms of any other Additional Cover clause, the terms most favourable to You will prevail.

Where the Schedule states that an Additional Cover clause is subject to a special limit or other special provision, the limit or provision will apply to that Additional Cover clause but not to other Loss that would be covered under the Policy without the Additional Cover clause.

1.3.2 Breach of Warranty or Condition

The indemnity provided by this Policy will not be invalidated or prejudiced by reason of any breach of warranty or condition of this Policy where the breach occurs without Your knowledge.

This insurance will also not be prejudiced by any act of the owner or occupier whereby the risk of Loss to Property is increased without Your authority or knowledge provided that notice is given to Us immediately You become aware of any of the above happenings and You agree to pay an appropriate additional premium if required.

1.3.3 Cancellation

1 By You

This Policy may be cancelled by You at any time, and with immediate effect, by written notice delivered to Us. In the event of such cancellation, We will be entitled to a pro rata proportion of the premium (subject to any adjustment required by the terms of this Policy).

2 By Us

This Policy may be cancelled by Us at any time by giving notice to You. The notice may be by letter, facsimile or email to Your last postal address, facsimile or email address on Our records (or Your insurance broker's or agent's).

The cancellation will take effect at 4 p.m. on the 30th day after the notice has been posted, faxed or emailed. In the Event of such cancellation, We will refund to You the pro rata proportion of the premium (subject to any adjustment required by the terms of this Policy).

1.3.4 Change of Facts or Circumstances

You must notify Us immediately of any change in circumstances that has happened after the start of this Policy that You know is going to happen and which may materially:

- 1 increase the known risk insured, or
- 2 alter the nature of the risk insured.

If You do notify Us of a change We may alter the premium and/or the terms of the Policy.

If You do not comply with this obligation any Loss that happens after the date of the change in circumstance may, at Our election, not then be insured and We may, at Our election, not continue to insure You.

1.3.5 Claims

Upon becoming aware of any circumstance, occurrence or Loss giving rise, or likely to give rise, to a claim under this Policy:

You must:

- 1 take prompt steps to minimise the Loss;
- 2 take reasonable steps to protect the Property from further Loss;
- 3 immediately notify Us;
- 4 if a criminal act is suspected, inform the police;
- 5 at Your expense, provide Us with any reasonably required proof and information in respect of the claim.

You must not:

- 1 prejudice Our ability to settle the claim;
- 2 dispose of or abandon any Property for which You intend to make a claim;
- 3 start any repairs without Our permission unless it is necessary to prevent further Loss.

You must then:

- 1 fully complete Our claim form as soon as practicable;
- 2 give Us free access to examine and assess any Loss;
- 3 provide any other information or assistance We reasonably request in relation to Your claim;
- 4 forward any letters of demand or court documents to Us immediately;
- 5 if We request it, provide a statutory declaration to verify the Loss;
- 6 if We request it, attend interviews with any person We nominate;
- 7 be responsible for the payment of the Deductible to Us or to the repairer unless We are deducting it from any claim settlement to You.

Your compliance with the terms and conditions of this Policy, and the truth of any statements made to Us (whether made by You or not), are conditions precedent to any liability for Us to provide any indemnity under this Policy.

In the Event of a valid claim under this Policy, We will make progress claim payments on production of acceptable evidence of insured Loss; Provided that, if the aggregate of progress payments exceeds the total amount of the adjusted Loss, You will immediately refund the difference between the amount of adjusted Loss and the aggregate of payments actually made.

1.3.6 Coverage

In all cases the coverage in each Section is subject to all the terms, exclusions and conditions of the relevant Section, and all the general obligations, general exclusions and general conditions of this Policy.

1.3.7 Deductible

We are not liable for the Deductible shown in the Schedule for each Event.

Where an Event causes Loss to Property or items under more than one Section or Additional Cover clause of this Policy only one Deductible will apply except for the Natural Disaster Deductible.

The amount of the Deductible will be the highest of any Deductible applied by any of the Sections or Additional Cover clauses.

1.3.8 Fraud

If any claim is in any respect dishonest or fraudulent, all benefit under the claim to You will be forfeited. For the purpose of this condition if You consists of more than one person or entity, each of them will be treated as having been issued with a separate Policy.

1.3.9 Goods and Services Tax

Provided that Goods and Services Tax (GST) is recoverable by Us, the sums insured by this Policy are exclusive of GST to the extent that, in the Event of a claim, We will pay a maximum of the sum insured plus additional GST to a maximum of the current rate of GST applied to that sum insured.

1.3.10 Headings

Headings have been used for ease of reference and are not to be used for interpretation of the terms and conditions of this Policy.

1.3.11 Inspection

We are entitled to inspect the insured Property at any reasonable time and You must provide such information as may be reasonably required by Us in relation to Your Property. Neither this condition, nor any inspection performed by Us, nor any report arising from such an inspection, are to be regarded as an undertaking by Us to determine or warrant that any operations or premises are safe.

1.3.12 Misdescription

This Policy is voidable retrospectively by Us in the event of any misrepresentation, misdescription or non-disclosure of any material fact prior to inception. However, the insurance will not be prejudiced by:

- 1 any innocent and inadvertent misdescription of property or occupancy in the proposal;
 - 2 any act of the occupier whereby the risk of Loss to insured Property is increased without Your authority or knowledge;
- provided that notice is given to Us immediately You become aware of any of the above happenings and You agree to pay an appropriate additional premium if required.

1.3.13 More than One Insured

Where this Policy is to the benefit of more than one person or entity named as the insured in the Schedule:

- 1 The person or entity first named in the Schedule will be responsible for payment, on behalf of all of You, of any premium due or that may become due in terms of this Policy;
- 2 Our obligation to make any payment to You in terms of this Policy will be discharged on making that payment to the person or entity first named in the Schedule;
- 3 any notice, for which provision is made in this Policy, given by or given to the person or entity first named in the Schedule will be deemed sufficient notice by or to all of You.

1.3.14 Mutually Acceptable Adjusters

Where We wish to appoint a loss adjuster in respect of any claim under this Policy, the appointee must be mutually acceptable to You and Us.

1.3.15 New Zealand Policy

This Policy is to be governed by and construed in accordance with the laws of New Zealand, whose courts will have sole jurisdiction over any legal action arising out of or in connection with this Policy.

1.3.16 Other Insurance

If, at the time of any claim arising under this Policy, You have any other valid and collectable insurance covering all or part of the same Loss, this Policy will apply only to the amount of any Loss in excess of that recoverable under the other insurance.

1.3.17 Other Interested Parties

If there is any mortgagee, debenture holder, hire purchase company, conditional purchaser or other party with a financial interest in any insured Property which has been notified to Us, we may, at Our option, pay any claim to the interested parties in the order of their legal priorities, and to the extent of their financial interest.

However, Our total liability will not exceed the amount that would have been paid to You.

1.3.18 Recovery Apportionment

If We, having exercised Our right of subrogation, recover any part or all of a Loss in respect of which a claim has been paid or is payable under this Policy, the amount so recovered will be apportioned as follows:

- 1 You will be fully reimbursed for any uninsured portion of the Loss, excluding any underinsurance, including that portion of the Loss which is uninsured by reason of a Deductible;

- 2 We will be fully reimbursed to the extent of Our actual payment under this Policy; with
- 3 any remaining balance belonging to You.

1.3.19 Subrogation

Where, upon accepting liability for a claim under this Policy, We are entitled to become subrogated to Your right of recovery or indemnity from any other person or corporation, You must, at Our expense, do and permit to be done anything reasonably required by Us for the purpose of enforcing that right. You must comply with this condition when required, whether before or after having been indemnified by Us. You shall not voluntarily and knowingly release any third party from liability arising from Loss insured by this Policy unless declared to and accepted by Us.

Section 2: Material Damage

2.1 Cover

If, during the Period of Insurance, a Loss happens to any of Your Property at the Situation, We will indemnify You for that Loss subject to the terms of this Policy.

2.1.1 Maximum Amount Payable

Subject to the 'Reinstatement of Amount of Insurance' condition, Our liability under section 2 of this Policy will not exceed the Total Sum Insured at each Situation as stated in the Schedule, and if more than one item is included in the Schedule, will not exceed in respect of each item the Sum Insured applicable to that item.

The additional covers insured under sections 2.2 Additional Cover and 2.3 Optional Additional Cover are either included in the Total Sum Insured or in addition to the Total Sum Insured as stated in each additional cover clause.

2.1.2 Basis of Indemnity applicable to this section

Payment/Repair/Replacement

We will indemnify You by payment, repair or replacement of Your Property at Our option.

- 1 For the following Property We will indemnify You on the following basis:
 - (a) Customer's Property – the market value at the time of the Loss unless You are required to insure the Property for replacement cost.
 - (b) Employees' and directors' Property – the market value at the time of the Loss, except where You are required to insure the Property for replacement cost.
 - (c) Electric motors, starters, sealed and semi-sealed units – the replacement cost of items 7 years old or less. For items older than 7 years the depreciated replacement cost.
 - (d) Experimental and research projects – the cost of all materials and the value of labour expended on the projects, but excluding the value of the projects themselves.
 - (e) Hothouses, glasshouses and shadehouses – where the exterior cladding is of flexible plastic material any claim in respect of such cladding will be based on a depreciated replacement value, notwithstanding the Reinstatement provisions in the Policy.
Depreciated replacement value is a straight line depreciation based on the manufacturer's expected effective life span of the cladding with a maximum of five years.
 - (f) Portable tools of trade:
 - (a) electric, electronic (excluding portable computer and video data projectors) or other motor-driven equipment – the replacement cost, if insured for replacement, for items 5 years old or less.
 - (b) Portable computers and video-data projectors – the replacement cost, if insured for replacement, for items 2 years old or less.
 - (c) All other portable tools of trade – the replacement cost, if insured for replacement, for items 10 years old or less.
- In all other Situations, We pay the market value at the time of Loss.
- (g) Stock – the cost of replacing the Stock at the time immediately preceding the Loss, less a fair allowance for redundant or obsolete stock.
- (h) Works of Art:

Where a claim is payable for damage to Property insured comprising a work of art, We may appoint an independent and suitably qualified valuer or restorer to determine whether the work of art can be restored to its pre-damage condition.

If the valuer or restorer determines that the work of art cannot be economically restored to its pre-damage condition, the work of art will be deemed destroyed. Its pre-damage value will be determined by the valuer or, providing the restorer is suitably qualified, by the restorer. The amount payable as indemnity will be the difference between the pre-damage value and any salvage value of the damaged work of art.

If the valuer or restorer determines that the work of art can be economically restored to its pre-damage condition, the amount payable as indemnity will be the cost of restoration or, if the restoration is not carried out, the restorer's reasonable estimate of the cost of restoration.

Where any lost or damaged work of art is an item forming part of a pair or set of items, and the lost or damaged item cannot be economically restored to its pre-Loss condition, the item will be deemed totally lost or destroyed. The amount payable as indemnity will be such proportion of the pre-Loss value of the pair or set as the item bears to the set of items.

Providing a work of art has been satisfactorily restored following damage, this insurance will not cover any reduction in market value due solely to the fact of the work of art having been damaged and restored. The onus of proving that any restoration work is unsatisfactory rests with You.

- 2 For all other Property We will indemnify You on the following basis:
 - (a) the reasonable cost of repairing the Property to the condition it was in immediately preceding the Loss, or
 - (b) the cash amount equal to the reasonable cost of repairing it, or
 - (c) replacing the Property with similar Property in a similar condition, or
 - (d) the cash amount equal to the market value of the Property, or
 - (e) the replacement cost, but only for that Property designated in the Schedule as being insured for replacement value, subject to the Reinstatement clause in the Policy.

2.2 Additional Cover

The material damage section of this Policy includes cover for the following:

2.2.1 Alternative Residential Accommodation

Where any residential Property covered by the material damage section of this Policy is rendered uninhabitable by an insured Event, cover is extended to include expenses for alternative accommodation (including the cost of boarding out domestic cats and/or dogs which normally reside there) necessarily incurred by You or by the occupant (being Your employee or officer), provided that:

- 1 these expenses are not otherwise insured;
- 2 the period for which the expenses are covered will be limited to the period reasonably required for Reinstatement of the affected Property;
- 3 We will be entitled to deduct a reasonable allowance for expenses reduced or avoided in consequence of the affected Property being rendered uninhabitable;
- 4 Our liability in respect of any one Loss will not exceed 25% of the cost incurred in reinstating the affected Property following its destruction or 25% of the cost that would have been incurred if the affected Property had been destroyed.

The amount payable under this clause is in addition to the indemnity otherwise payable for the Property listed in the Schedule.

2.2.2 Capital Additions

Cover is extended to Property acquired by You (including but not limited to: alterations, additions and improvements to existing Property) at the Situation described in the Schedule during the Period of Insurance, provided You notify Us within 90 days of You acquiring the Property.

However:

- 1) This extension of cover does not apply to stock, or Property of any kind expressly excluded from this insurance, or any appreciation of value that is not due to a physical alteration, addition or improvement.
- 2) Cover under this extension takes effect on the acquired Property when the risk in the Property passes to You.
- 3) On receipt by Us of the particulars of the Property acquired We may charge an additional premium calculated pro rata from the date on which cover commenced, and if the Period of Insurance has not yet expired, the terms of this clause 2.2.2 will be fully reinstated.

The limit of cover for any one Event is the amount specified in the Schedule.

The amount payable under this clause is in addition to the indemnity otherwise payable for the Property listed in the Schedule.

2.2.3 Claims Assessment

We will cover claims assessment costs, including but not limited to fees reasonably incurred by or on behalf of You for the purpose of assessing or preparing any valid claim made under the Material Damage Section of this Policy. These costs include the reasonable salaries, Wages, overheads and other expenses of Your employees and consultants.

The costs payable under this clause are included in the sum insured on the affected Property.

2.2.4 Computer Software

Notwithstanding the definition of Property, We will cover You for Loss during the Period of Insurance to computer software not otherwise excluded by the general exclusion for electronic data 1.2.3.

The costs payable under this clause are included in the sum insured on the affected Property.

2.2.5 Demolition and Other Costs

We will cover reasonable costs necessarily incurred for any of the following purposes in consequence of Loss insured under the Material Damage Section of this Policy:

- 1 Demolition, dismantling, shoring or propping up of Your Property;
- 2 Removal of stock, plant and other chattels whether damaged or undamaged;
- 3 Disposal of debris (including any kind of solid, liquid or gaseous matter) from the site of Your damaged Property and the area immediately adjacent to such site.

In respect of any one Event, Our liability for these costs will not exceed the limit shown in the Schedule. If no such limit is shown, the costs will be deemed to be included in the sum insured on the affected Property.

The cover provided does not include any sums which You become legally liable to pay by way of compensation or other damages consequent upon pollution or contamination of Property by any of the debris.

2.2.6 Disclaimer and Release

Where You are required by legislation or by contractual agreement to release any of:

- 1 the Fire Service Commission;
- 2 any fire protection suppliers of equipment;

- 3 any oil company;
- 4 any other party to an agreement which has been declared to and accepted by Us;
from liability arising from Loss insured by the Material Damage Section of this Policy, the release is allowed without prejudice to this insurance. Further, this insurance will not be prejudiced by any disclaimer clause in any contract entered into by You for:
 - (a) the storage of goods; or
 - (b) the leasing of Property;whether the storage and leasing contracts are declared to Us or not.

2.2.7 Electric Current Damage

Notwithstanding exclusion 2.4.8 2, the Material Damage Section of this Policy extends to cover Loss to:

- 1 electric motors and starters, sealed and semi-sealed units which do not individually exceed 3.75kw or 5hp;
 - 2 distribution switchboards and permanently installed electrical reticulation;
- directly caused by the failure of electrical insulation, or abnormal or artificially generated electric current, or electrically induced self-heating.

2.2.8 Employees' Effects

We will cover the personal effects of Your directors and employees for which You are responsible, but only whilst the effects are at premises owned or occupied by You, or elsewhere whilst being worn, kept, carried or used by the directors or employees acting in the course of their duties to, or employment with, You. The effects are deemed to be included in the description of insured Property as if they were owned by You.

This extension of cover does not apply to Loss to the personal effects of any director or employee who is entitled to indemnity for that Loss under any other Policy of insurance.

However, We will not be liable for more than the amount specified in the Schedule for any one director or employee, and the amount specified in the Schedule for any one Event.

The amount payable is included in the sum insured on the affected Property.

2.2.9 Expediting Costs

Where a claim is payable under the Material Damage Section of this Policy for the cost of reinstating any insured Property, We will also indemnify You for such additional costs of express freight and overtime labour as are reasonably incurred for the purpose of expediting that reinstatement.

The costs payable are included in the sum insured on the affected Property.

2.2.10 General Average / Salvage Charge

We will indemnify You against general average and salvage charges adjusted or payable in connection with any insured Property being transported during the Period of Insurance by sea or air between places in New Zealand according to the contract of affreightment and/or the governing law and practice.

This indemnity is free of any Deductible amount.

The costs payable are included in the sum insured on the affected Property.

2.2.11 Gradual Damage – Residential Portion of the building

Notwithstanding exclusions 2.4.4 1 and 2 We will cover the residential portion of Your insured Property for Loss resulting from the action of hidden mildew, hidden rot or hidden gradual deterioration, caused by water which leaks or overflows from any internal water pipe, internal waste disposal pipe or internal water tank permanently installed at the Situation.

Provided that the leak or overflow first occurs and the Loss is first discovered during the Period of Insurance.

The limit of cover is the amount specified in the Schedule for any one 12 month period. The limit includes the cost of locating the leak provided We have given Our prior consent. We will not pay for repairing the leak.

The costs payable are included in the sum insured on the affected Property.

2.2.12 Hazardous Substance Emergency

We will indemnify You for the reasonable costs that the New Zealand Fire Service is authorised to make against You for any hazardous substance emergency during the Period of Insurance arising out of or in connection with insured Property whether or not there is Loss to insured Property.

The limit of cover for any one Event is the amount specified in the Schedule.

The costs payable are included in the sum insured on the affected Property.

2.2.13 Landscaping

Following an insured Loss We will cover the reasonable cost to repair or replace landscaping which shall include ornamental trees, shrubs, plants and lawns including expenses reasonably incurred in clearing, cleaning or repairing drains, gutters, sewers, pipes, tanks or fixed apparatus.

The costs payable are included in the sum insured on the affected Property.

2.2.14 Money

Notwithstanding exclusion 2.4.6 2, cover is extended to include Loss during the Period of Insurance of:

Part A

- 1 Money in transit.
- 2 Money at Your Business Situation or sites of contract during Business Hours.

- 3 Money in a securely locked safe or strongroom at Your Business Situation outside Business Hours.

Part B

- 1 Money at Your Business Situation outside Business Hours and not in a securely locked safe or strongroom, including Money in cash machines or gambling machines.
- 2 Money at Your residential premises or of any principal or authorised employee of Yours.

Definitions for this Money Clause

Money

'Money' means current coin, bank and currency notes, cheques, traveller's cheques, postal notes, phone cards, credit card vouchers, Money orders, unused postage stamps, redeemable vouchers and tokens, franking machine credits, and other negotiable instruments.

Business Hours

'Business Hours' means any hours during which You or any principal or any employee entrusted with the care, custody or control of Money is on the premises for the purpose of Your Business.

Principal

'Principal' means any of Your directors and executive officers, but only in their capacity as such.

Exclusions for this Money Clause

This clause does not insure:

- 1 Loss due to errors in receiving or paying out;
- 2 Loss occurring whilst the Money is entrusted to any person other than You, or any principal, or any employee or agent of Yours, or any professional Money carrier;
- 3 Loss resulting from payment of Money in exchange for any cheque which is subsequently dishonoured;
- 4 Loss occurring whilst the Money is in an unlocked and unattended Vehicle;
- 5 Loss of Money stolen from a safe or strongroom opened by a key or combination, either of which was left at the Situation outside Business Hours, unless such key or combination was properly secured;
- 6 Loss directly resulting from theft or fraud by any of Your employees. However, this exclusion does not apply to Loss discovered within 72 hours (excluding Saturdays, Sundays and public holidays) of the act of theft or fraud;
- 7 Loss covered by a valid and collectable claim under a policy of Fidelity Guarantee (or equivalent) form of insurance.

Limits of Liability for this Money Clause

Our liability under part A is up to the limit specified in the Schedule and part B is up to the limit specified in the Schedule.

However, if an additional limit designated 'Christmas Carry' is shown in the Schedule, Our liability under part A will be increased by an amount equal to the additional limit during the months of December and January.

The amount payable under this clause is in addition to the indemnity payable for the Property listed in the Schedule.

2.2.15 Portable Tools of Trade (including electronic equipment)

Notwithstanding exclusion 2.4.3 We will cover portable tools of trade including portable electronic equipment such as laptops, cell phones, electronic notebooks and diaries, video data projectors or similar used in Your Business while away from Your Business premises anywhere in New Zealand including while in transit. However, the following conditions apply:

- 1 The limit of cover is the amount stated in the Schedule, per item and per any one Event.
- 2 The deductibles are those stated in the Schedule.
- 3 We will not cover You for theft of portable tools of trade including electronic equipment from unlocked or insecure vehicles or insecure containers or the open air.

The amount payable is included in the sum insured on the affected Property.

2.2.16 Professional Fees

We will cover all reasonable professional and clerk of works fees, salaries and costs necessarily incurred in reinstating damage to Your Property which is insured under the Material Damage Section of this Policy.

This clause does not apply to fees for preparing claims made under this Policy.

The amount payable is included in the sum insured on the affected Property.

2.2.17 Property Under Construction

Notwithstanding exclusion 2.4.6 1 of this Material Damage Section, We will cover You for Property in the course of installation, construction, demolition, erection, or testing following any of them, provided the Property is owned or to be owned or occupied by You and provided the completed value of the contract does not exceed the amount specified in the Schedule.

The amount payable is included in the Total Sum Insured of the Material Damage Section of this Policy.

2.2.18 Protection Costs

We will cover costs reasonably incurred by You for the purpose of, and for damage directly resulting from, controlling during the Period of Insurance any cause of Loss that threatens to involve the insured Property which would be covered under the Material Damage Section of this Policy. However:

- 1 this indemnity does not apply to costs or damage for which indemnity would be payable under the Material Damage Section of this Policy in the absence of this clause;

2 The limit of cover for any one Event is the amount specified in the Schedule.

The cost payable is included in the sum insured on the affected Property.

2.2.19 Redundant Foundations

Where the foundations of any building or plant are made redundant for any reason in consequence of Loss to the Property resting on them covered under the Material Damage Section of this Policy and, if the value of the foundations is reduced as a result, the Loss of value will be deemed to be Loss for the purpose of any claim under this Policy.

If it is not necessary to demolish the foundations in order to reinstate damaged Property, and if the presence of the abandoned foundations increases the market value of the Property to which they are fixed, the amount of the increase will be treated as salvage in the adjustment of Loss for claim settlement purposes.

The amount payable under this clause is included in the sum insured on the affected Property.

2.2.20 Redundant Plant, Equipment and Stock

We will cover the market value of Your insured plant, equipment and Stock made redundant as a result of Loss to other insured Property covered under this Material Damage Section of this Policy.

However, the following conditions apply:

- 1 the plant and equipment must be
 - (a) part of the same interdependent system or line as the lost or damaged insured Property; or
 - (b) part of a Stock of spares held exclusively for the lost or damaged insured Property.
- 2 if the presence of the redundant plant and equipment increases the resale value of the original building site then We will offset the increase in resale value from the claim payment.
- 3 If, due to the Loss, Stock is made redundant, that Stock will be considered as part of the Loss.

The amount payable under this clause is included in the sum insured on the affected Property.

2.2.21 Refrigerated Goods

Notwithstanding exclusion 2.4.5 2 We will cover:

- 1 Loss during the Period of Insurance to perishable goods at Your Business's Situation where the goods are stored or about to be stored in refrigerated cabinets or chambers and,
- 2 costs reasonably and necessarily incurred to avoid or minimise Loss during the Period of Insurance to refrigerated goods arising from accidental stoppage, Loss, or malfunction of refrigerating plant, including the sudden failure of the public electricity supply to Your Situation unless prior notice of the disconnection has been given.

The limit of cover per Event is the amount specified in the Schedule.

The amount payable under this clause is included in the sum insured on the affected Property.

2.2.22 Rewards

We will cover the cost of any reward paid by You for the purpose of recovering any of Your Property that has suffered a Loss covered under this Policy. However:

- 1 no payment will be made unless it contributes to the protection or recovery of the Property;
- 2 the terms of the reward must be agreed by Us prior to the reward being offered;
- 3 Our liability will not be increased beyond the sum insured on Your Property concerned.

We will not unreasonably refuse Our agreement to the terms of a reward payable under this clause.

The amount payable under this clause is included in the sum insured on the affected Property.

2.2.23 Rewriting of Records

Notwithstanding the definition of Property and notwithstanding the general exclusion for electronic data 1.2.3 We will pay the reasonable costs of collecting and reproducing the information on Your Business records that suffer a Loss covered under the Material Damage Section of this Policy. The value of the information itself is not insured.

However, the following conditions apply in respect of electronic data:

- 1 You must have all electronic data on back-up files;
- 2 there must be an adequate back-up system in operation and that back-up system must have been effectively tested; and
- 3 back-ups must be kept secure on or off site and must be updated at least on a weekly basis.

The limit of cover for any one Event is the amount specified in the Schedule.

The amount payable under this clause is included in the Sum Insured on the affected Property.

2.2.24 Social Club

The Property of any social club, sports club or similar body whose activities are principally for the benefit of Your employees is deemed to be included in the description of insured Property as if it were owned by You.

The amount payable under this clause is included in the Total Sum Insured of the Material Damage Section of this Policy.

2.2.25 Stock Declaration

If the Stock is subject to declaration conditions (D) in the Schedule the premium charged for cover on Stock is provisional and represents 75% of the full premium payable for the sum insured on Stock. It is adjustable at the end of the Period of Insurance in accordance with the following conditions:

- 1 Declarations of the actual value of the Stock held on the last day of each month within the Period of Insurance must be made to Us not later than six weeks after the end of each month;
- 2 The sum insured on Stock is the limit of Our liability in respect of that Property. If any monthly declaration exceeds that amount, then in computing the average of the monthly declarations, the sum insured will be included in place of the actual declaration for that month;
- 3 If no declaration is received for any one month, the specified sum insured will apply in place of the declaration for that month;
- 4 The average of these monthly declarations will be computed at the end of the Period of Insurance and the actual premium payable will be assessed on that average (or on one half of the sum insured on stock, whichever is greater);
- 5 We will refund to You the amount by which the provisional premium paid exceeds the actual premium payable as calculated above. Alternatively, You will pay to Us the amount by which the provisional premium paid falls short of the actual premium;
- 6 If, during the Period of Insurance, You fail to furnish a minimum of 75% of the declarations required in terms of this clause, the clause will cease to apply, and
 - (a) the premium will be calculated on the full sum insured; and
 - (b) You must pay to Us the amount by which the provisional premium falls short of that premium.

2.2.26 Stolen Keys

Where any key (including any equivalent device) or combination giving access to insured Property is stolen or believed on reasonable grounds to have been duplicated without proper authority during the Period of Insurance, We will indemnify You for the costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations. Cover also includes the reasonable cost of opening any safe or strongroom following theft of its key or combination.

The costs payable under this clause are included in the sum insured on the affected Property.

2.2.27 Subsidence or Landslip

The Material Damage Section of this Policy extends to cover Loss during the Period of Insurance arising directly or indirectly from subsidence or landslips.

However, the following conditions apply:

- 1 In relation to the removal of land which has moved or slipped, We will only provide cover for the area of the building line and immediately adjacent areas up to a maximum of 5 metres from the external walls of the Building. Cover for the removal of land is limited to \$10,000. We will not cover any land stabilisation charges incurred.
- 2 We will not cover:
 - (a) any Loss or decrease in the value of the land or site;
 - (b) subsidence of land or erosion of land by the action of the sea;
 - (c) normal settling, shrinkage or expansion of land, Buildings or foundations;
 - (d) subsurface subsiding due to the water table drying out through atmospheric or climatic conditions.
- 3 Exclusion 2.4.9 2 in the Material Damage Section of this Policy as it applies to the above perils is deleted.
- 4 The limit of cover is the amount specified in the Schedule for each Event.

The Deductible amount is the amount specified in the Schedule for each Event.

The costs payable under this clause are included in the sum insured on the affected Property.

2.2.28 Temperature Change Protection

We will cover the reasonable costs of avoiding Loss to insured Property in a temperature-controlled environment resulting directly from Loss to insured Property covered under the Material Damage Section of this Policy.

This includes the reasonable costs incurred of removing Your Property and storing it at another place.

The costs payable under this clause are included in the sum insured on the affected Property.

2.2.29 Temporary Removal

Notwithstanding exclusion 2.4.6 6, We will cover Your Property (except stock) whilst temporarily removed to any place in New Zealand and whilst in transit to or from that place.

However, Our liability will not exceed the amount for which We would be liable had the Loss occurred at the particular place from which the Property is temporarily removed.

In this clause, temporarily removed means removed for a particular purpose, with the intention that the Property be returned to the place from which it has been removed once that purpose has been served.

2.2.30 Theft

We will cover theft or any attempt thereat, notwithstanding exclusion 2.4.3, but We will not be liable under this clause for:

- 1 theft of insured Property from unlocked or insecure vehicles or insured Property that is left in the open air and not in a secure yard;
- 2 theft or fraud by You or by any of Your employees or principals;
- 3 any fraudulent scheme or device or false pretence practised on You or on any other person having care of Your Property.

The portable tools of trade clause 2.2.15 applies in priority over this clause.

The costs payable under this clause are included in the sum insured on the affected Property.

2.2.31 Transit

We will cover Your Property whilst it is in transit anywhere in New Zealand, including between New Zealand ports.

However, the following conditions apply:

- 1 The limit of cover for each Event is the amount specified in the Schedule.
- 2 Exclusion 2.4.6 6 does not apply.

In respect of any goods destined for transit beyond New Zealand, cover under this Policy ceases at the time the goods pass over the ship's rail or through air transport loading doors at any New Zealand port or airport.

The amount payable under this clause is included in the sum insured on the affected Property.

2.2.32 Unharmed Property

If, for the sole purpose of reinstating Your Property which is insured under the Material Damage Section of this Policy, it is necessary to demolish, damage or remove any Property or part unharmed, We will indemnify You for the cost of doing so. We will also indemnify You for the cost of reinstating the Property or part to a condition the same as, but not better nor more extensive than, its condition immediately prior to the demolition, damage or removal.

The amount payable under this clause is included in the sum insured on the affected Property.

2.3 Optional Additional Cover

Each of the following clauses will have no effect unless there is a statement in the Schedule that the particular clause will apply.

2.3.1 Natural Disaster (Earthquake etc)

The Material Damage Section of this Policy extends to cover Loss to Your Property directly or indirectly caused by Natural Disaster. However, the following conditions apply:

- 1 exclusion 2.4.9 1 in relation to the above perils is deleted;
- 2 the clause only applies to Your Property for which indemnity is not provided under the provisions of the Earthquake Commission Act 1993;
- 3 the Deductible to be paid by You is the amount or percentage shown in the Schedule.

If any EQC Residential Property insured by the Material Damage Section of this Policy suffers Natural Disaster damage during the Period of Insurance covered by the Earthquake Commission Act 1993, Our liability will be limited to any costs in excess of those covered by the Act. The Deductible amount under this Policy will only apply to the extent that it exceeds the amount of the cover under that Act. For the purpose of this clause, the cover under the Earthquake Commission Act 1993 is deemed to include the amount of 'excess' imposed by the terms of that cover.

2.3.2 Reinstatement

Applicable to those items of insured Property where it is stated in the Schedule (RV) that this clause applies.

In the event of any insured Property to which this clause applies suffering Loss, the basis on which the amount payable under the Material Damage Section of this Policy (or under each item of the Material Damage Section of this Policy if the Property is described under separate items) is to be calculated will be the cost of Reinstatement of that Property.

Insurance under this clause is subject to the special provisions set out below, and is subject also to the terms and conditions of the Material Damage Section of this Policy except in so far as they are varied by this clause.

Definitions

In this clause, and unless the context requires otherwise:

Reinstatement

'Reinstatement' means:

- (a) where Property is lost its replacement by an Equivalent Building or by Equivalent Plant as the case may require;
- (b) where Property is damaged but not destroyed, the restoration of the damaged portion of the Property to a condition substantially the same as, but not better or more extensive than, its condition when new.

Equivalent Building

'Equivalent Building' means:

- (a) a Building or structure which is as nearly as practicable the same as the Building or structure lost or Destroyed, using currently equivalent materials and techniques and incorporating such alterations as are necessary to comply with any building or other Regulations made under or framed in pursuance of any Act of Parliament or regulation or by-law of any local authority;
- (b) where, as a result of any special circumstances, no Building or structure which falls within the scope of paragraph 2(a) can be constructed; a Building or structure which is designed to perform a purpose or function the same as or equivalent to (but not more extensive than) that performed by the building or structure lost or Destroyed;
- (c) where, as a result of any special circumstances, no Building or structure which falls within the scope of paragraph 2(a) is suitable to Your reasonable requirement, then, with Our consent (which will not be unreasonably withheld), a Building or structure which is designed to perform a purpose or function suitable to that requirement, but not more extensive than that performed by the Building or structure lost or Destroyed.

Equivalent Plant

'Equivalent Plant' means any plant or equipment as nearly as practicable the same as or equivalent to the plant or equipment lost or Destroyed, having regard to the current state of technology, and having an equivalent capacity to that of the lost or destroyed plant or equipment, but not greater capacity unless plant or equipment with an equivalent capacity is not available and the replacement plant or equipment has the nearest to an equivalent capacity.

Destroyed

'Destroyed' means so damaged by an insured Event that the Property, by reason only of that damage, cannot be repaired.

Site

'Site' means any parcel of land owned or occupied by You.

Regulations

'Regulations' means building or other regulations made under or framed in pursuance of any Act of Parliament or regulation or by-law of any local authority.

Undamaged

'Undamaged' means not damaged physically and directly by an Event insured under the Material Damage Section of this Policy.

Special Provision

Compliance with Regulations

The amount payable under this clause will include the cost incurred in Reinstatement which is necessary to comply with any Regulations, provided that the amount payable will not include any such cost:

- 1 to the extent to which the work had already been required of You by notice served prior to the happening of the Loss; or
- 2 in respect of Undamaged Property or Undamaged portions of Property other than foundations (unless foundations are expressly excluded from insurance under this Policy).

This special provision 2 will apply whether or not the Undamaged Property or portion comprises a separate building or structure or a separate item of plant or equipment.

Site of Reinstatement

Where Property is destroyed, the work of Reinstatement must be carried out on the same Site; provided that the work may be carried out upon another Site:

- 1 where Reinstatement on the same Site is not permissible by reason of any Regulations; or
- 2 where Reinstatement on the same Site is not suitable to Your reasonable requirements, in which case, and with Our consent (which will not be unreasonably withheld), Reinstatement may be carried out on any alternative Site subject to Our liability in respect of the cost of Reinstatement not exceeding the cost which would have been incurred had Reinstatement been carried out on the same Site.

Limitations on Amount Payable

- 1 Where the work of Reinstatement is carried out in terms of the Equivalent Building definition 2 (b) or 2 (c), or on any location other than the original location at the same Site, Our liability in respect of the cost of Reinstatement will not exceed the cost which would have been incurred had Reinstatement been carried out in terms of definition 2 (a) on the original location;
- 2 Where Your Property is damaged but not Destroyed, Our liability will not exceed the amount We could have been called upon to pay for Reinstatement if the Property had been Destroyed;
- 3 Our liability under this clause in respect of any item of insured Property will not exceed the sum insured in respect of that item.

Circumstances Where this Clause Does Not Apply

No payment, beyond the amount which would have been payable had this clause not been incorporated in the material damage section of this Policy, will be made:

- 1 if You elect not to reinstate the Property;
- 2 if the work of Reinstatement is not commenced and carried out with reasonable dispatch;
- 3 until the cost of Reinstatement has been actually incurred;
- 4 where a Building or structure is damaged, but not Destroyed, and the repair of the damage is not permissible by reason of any Regulations, or by reason of the Undamaged portion of the Property.

Where, by reason of any of these circumstances, no payment is to be made beyond the amount which would have been payable if this clause had not been incorporated in the Material Damage Section of this Policy, the rights and liabilities of You and Us in respect of the Loss will be the same as if this clause had not been incorporated in the Material Damage Section of this Policy.

Valuation of the Property

- 1 If We require a valuation for any Period of Insurance, You must at Your expense provide Us with a certificate by a registered professional valuer approved by Us specifying the estimated cost of Reinstatement of any item or items of insured Property to which this clause applies;
- 2 The certificate must also contain such other estimates and information as We may reasonably require;
- 3 The sum to be insured under this clause in respect of each item will not be less than the amount of the estimate specified in the certificate in respect of that item.

Rates, Tax and Other Charges

The amount payable under this clause will not include the amount of any rate, tax, duty, development charge, or any other charge or assessment arising out of capital appreciation, which may be payable in respect of the Property by reason of compliance with any Regulations.

2.3.3 Seasonal Stock Increase

The sum insured on Stock is increased for a maximum of 90 days from the date specified in the Schedule by the amount specified in the Schedule.

The amount payable under this clause is in addition to the indemnity otherwise payable.

2.4 Exclusions

Refer also to the general exclusions of this Policy.

2.4.1 Building Defects and Deterioration

The Material Damage Section of this Policy does not insure against Loss to any Building or structure directly or indirectly caused by the failure of that Building or structure to contain:

- 1 a material; or
- 2 a design; or
- 3 a system; or
- 4 a reasonable standard of workmanship;

that was necessary to effectively prevent or manage the presence or penetration of moisture or water to which the Building or structure might reasonably be subjected.

2.4.2 Faulty Design, Material, Workmanship

The Material Damage Section of this Policy does not cover the cost of:

- 1 repairing or replacing faulty materials; or
- 2 putting right faulty workmanship; or
- 3 putting right work performed to a faulty design, plan or specification;

but this exclusion does not apply to any Loss occurring as a result of that faulty material, workmanship or design, plan, or specification not otherwise excluded by 2.4.1.

2.4.3 Disappearances/Fraud/Theft

The Material Damage Section of this Policy does not insure Loss directly resulting from:

- 1 unexplained disappearances; shortages revealed only by the taking of an inventory; shortages due to clerical or accounting errors, shoplifting, misplacing of information;
- 2 Your decision to hand over the Property to someone else before You are paid for it;
- 3 theft, unless accompanied by violence or threat of violence to persons, or violent and forcible entry to or exit from any fully enclosed Building or fully enclosed part of a Building.

2.4.4 Deterioration/Contamination

The Material Damage Section of this Policy does not insure Loss directly caused by:

- 1 normal working, normal maintenance, wear and tear, erosion, corrosion, gradual deterioration (including but not limited to gradual deterioration caused by dampness or penetration of moisture), slowly developing deformation or distortion;
- 2 action of micro-organisms (including but not limited to rot and mould), vermin or insects;
- 3 the nature of Your Property (including but not limited to shrinkage, evaporation, loss of weight, change in flavour, colour, texture or finish, action of light);
- 4 dust, fumes, smoke or smut, from any normal industrial operation.

2.4.5 Pollution/Artificially Controlled Temperature

The Material Damage Section of this Policy does not insure Loss:

- 1 arising directly or indirectly from a polluting Event,
- 2 in connection with a change in any artificially controlled temperature or atmosphere.

2.4.6 Excluded Items

Unless specifically shown in the Schedule, the Material Damage Section of this Policy does not insure:

- 1 Property in the course of installation, construction, demolition, erection, or testing following any of them;
- 2 current coin, bank and currency notes, cheques, traveller's cheques, postal notes, money orders, unused postage stamps, redeemable vouchers and tokens, franking machine credits, credit card vouchers, phone cards or other negotiable instruments, in excess of \$1,000 in value in each case for any one Loss at any one Situation, except as insured under the money clause;
- 3 jewellery, precious stones, furs, precious metals or bullion, other than as Stock of the business or as part of any plant;
- 4 motor vehicles and other mechanical or electrically propelled vehicles (including but not limited to railway locomotives and rolling stock), and accessories contained in them or on them, other than:
 - (a) any unregistered crane or other mobile plant used within or in the vicinity of any Situation owned or occupied or operated by You;
 - (b) held as Stock of the business but not whilst in use or on demonstration;
- 5 watercraft and aircraft of every kind, and accessories contained in them or on them, except as held as Stock of the business or for auction but not whilst in use or on demonstration;
- 6 Property in transit other than at premises owned or occupied by You;
- 7 Property damaged as a result of it undergoing any Production Process where the damage is directly caused by the operation of that process.
- 8 any of the following Property unless it is specified in the Schedule:

standing timber, growing crops, crops harvested but not yet in storage, live plants, trees, hedges (other than live plants, trees and hedges covered under the building definition), livestock, dams, canals, reservoirs (but not tanks), road or railway tunnels, road or railway bridges (other than bridges or tunnels at premises owned or occupied by You included in the sum insured), docks, piers, wharves, mining Property located beneath the surface of the ground, any land including topsoil and backfill;
- 9 any consequential economic losses whatsoever including penalties, loss of use of any Property, delays, or loss of market.

2.4.7 Exposure to Weather / Utilities / Cessation of Work

This Material Damage Section of this Policy does not insure Loss:

- 1 directly caused by exposure to weather conditions where the Property is not normally left in the open unless reasonable precautions have been taken to protect the Property from those conditions;
- 2 in connection with the interruption of the supply to Your Situation of water, gas, electricity or any other fuel;
- 3 in connection with the total or partial cessation of work, retarding or interruption or cessation of any process.

2.4.8 Machinery Breakdown

- 1 In respect of the boiler or Pressure Vessel immediately affected, the Material Damage Section of this Policy does not insure the cost of repairing or replacing any part that has exploded, overheated, ruptured, burst, cracked, leaked or collapsed due to generated or applied fluid pressure or vacuum (but not pressure caused by chemical explosion).

However, this exclusion does not apply to resultant Loss to other insured Property.

- 2 In respect of the Machine immediately affected, the Material Damage Section of this Policy does not insure any mechanical or electrical breakdown or derangement.

However, this exclusion does not apply:

- (a) If any insured Loss originating completely outside the Machine results in the mechanical or electrical breakdown or derangement of the Machine. For the avoidance of doubt there is no cover when the breakdown or derangement results from:

- (i) A part of the Machine being drawn into it, or
- (ii) Any operator error or omission, or any servicing error or omission.

- (b) To resultant Loss to other insured Property.

2.4.9 Natural Disaster / Normal Settlement

Unless specifically shown in the Schedule the Material Damage Section of this Policy does not insure:

- 1 Natural Disaster damage;
- 2 landslip, subsidence, erosion or expansion of the land;
- 3 normal settlement, shrinkage or expansion of buildings, foundations, walls, pavements, roads and other structural improvements.

2.5 Conditions

Refer also to the general conditions of this Policy.

2.5.1 Alteration of Risk

If You become aware of a material change in the nature of the risk of Loss covered by the Material Damage Section of this Policy, this insurance will cease in respect of the affected Property immediately unless and until the change is accepted by Us in writing.

If the change is accepted by Us You agree to pay a reasonable premium for the increased risk.

However, this insurance will not be prejudiced by:

- 1 such changes in the use or occupancy of the Situation as are usual or incidental to Your Business;
- 2 the performance of any structural alterations or repairs to insured Property, providing the circumstances are reported to Us in writing within a reasonable time after You become aware of them; and provided that You agree to pay a reasonable additional premium for the increased risk if so required by Us;
- 3 the cessation of operations or vacancy of any building for a period not exceeding 30 days;

However, the cessation of operations or vacancy of any building for a period in excess of 30 consecutive days is allowed, providing the circumstances are reported to Us within a reasonable time after You become aware of them; and provided that You exercise reasonable care and attention to the premises and make sure the Situation is safe and secure.

2.5.2 Diligence

You must not be reckless and must take reasonable care at all times and at Your own expense to prevent Loss to Your Property.

You must do each of the following during the Period of Insurance:

- 1 Maintain in accordance with the manufacturer's recommendations any fire protection or detection system, security equipment (including locks and alarms) or other protective installations, in good working order and activated.
- 2 If the Situation is protected by a security alarm system (burglar alarm) the alarm must be in efficient working order and be activated at all times when the Situation is unoccupied.

2.5.3 Fat Frying Warranty

If there is a fat fryer at any of the Situations described in the Schedule then You must comply with the following:

- 1 an automatic 'over temperature' device must be fitted to the fryer and maintained to prevent fire by overheating by isolating the power supply from the deep fat fryer;
- 2 during non working hours a close-fitting metal lid must be fitted to the deep fat fryer; during working hours it must be readily available to be used if required;
- 3 grease filters must be fitted in the flue venting and must be clean and free of any build-up of grease at all times;
- 4 an F rated extinguisher or other similar suitable extinguisher must be installed near the fryer and accessible in the Event of a fire in the unit. The extinguisher/s must be serviced at least once a year and maintained in good working order. If a fire blanket is installed, it must be a minimum of 1.2m x 1.8m in size and staff should be trained in its use;

- 5 the fryer must have a master switch for the energy supply, which must be remote from the fryer and the switch must be in the 'off' position at the finish of each day's operation and/or when the premises are unattended. The switch must be easily accessible at all times.

2.5.4 Reinstatement of Amount

In the Event of a claim payment under the Material Damage Section of this Policy, and in the absence of written notice by Us or You to the contrary, any amount of insurance cancelled by the payment will be automatically reinstated. You agree to pay such pro rata premium at the applicable rate as may be required for the Reinstatement.

2.5.5 Salvage

Where insured Property suffers Loss, We may:

- 1 enter any building where the Loss has occurred and take and keep possession of the damaged Property;
- 2 deal with the salvage in any reasonable manner;

provided that:

- (a) You are not entitled to abandon any Property to Us;
- (b) We are not entitled to sell or otherwise dispose of salvaged branded goods without Your prior consent. In the event of You declining to give consent, You will retain possession of the salvaged goods and their reasonable salvage value will be deducted from the amount of claim that would otherwise be payable. Where it is practical to remove brands, labels or other marks, which identify the goods as supplied by You, the salvage value of the goods will be determined after such removal at Our expense.

Section 3: Business interruption

3.1 Cover

If Your Business carried on at the Situation is interrupted or interfered with in consequence of a Loss at the Situation during the Period of Insurance We will indemnify You for the financial loss resulting from the interruption or interference up to the limits specified in the Schedule for each item insured set out below.

Provided that:

- 1 We will not be liable for any financial loss under this Policy unless Your Property damaged at the Situation is insured against the Loss (except Loss arising out of explosion of any boiler or economiser) and We (including the Earthquake Commission where applicable) have (or would have, but for the application of an excess or Deductible) admitted liability in respect of such Loss.
- 2 subject to the 'Goods and Services Tax' clause and 'Reinstatement of Amount of Insurance' clause of this Policy, Our liability will not exceed the total sum insured of this section, and if more than one item is included in the Schedule, will not exceed in respect of each item the sum insured applicable to that item.

3.1.1 Gross Profit or Gross Revenue (as selected)

Where Gross Profit or Gross Revenue has been selected in the Schedule, the amount payable as indemnity shall be:

- 1 In respect of reduction in Gross Profit/Revenue, the amount by which the Gross Profit/Revenue earned by Your Business during the Indemnity Period is less than the amount that would have been earned if the interruption or interference had not occurred, and;
- 2 In respect of additional expenditure, the additional expenditure necessarily and reasonably incurred during the Indemnity Period to avoid or minimise the reduction in Gross Profit/Revenue that Your Business suffers as a result of the interruption or interference. The amount payable shall not exceed the reduction in Gross Profit/Revenue thereby avoided,

less expenses saved as a result of the Loss.

3.1.2 Gross Rental And Management Fees

Where Gross Rentals And Management Fees has been selected in the Schedule, the amount payable as indemnity shall be:

- 1 In respect of reduction in Gross Rentals And Management Fees, the amount by which the Gross Rentals And Management Fees earned by Your Business during the Indemnity Period is less than the amount that would have been earned if the interruption or interference to Your Business had not occurred, and;
- 2 In respect of additional expenditure, the additional expenditure necessarily and reasonably incurred during the Indemnity Period to avoid or minimise the reduction in Gross Rentals And Management Fees that Your Business suffers as a result of the interruption or interference. The amount payable shall not exceed the reduction in Gross Rentals And Management Fees thereby avoided,

less expenses saved as a result of the Loss.

3.1.3 Wages: Dual Basis

Where dual Wages has been selected in the Schedule the amount payable as indemnity shall be:

- 1 In Respect of Reduction in Turnover:
 - (a) Initial Period: beginning with the Loss and ending not later than the number of weeks specified in the Schedule thereafter, the actual amount You pay as Wages to employees whose services cannot, in consequence of the Loss, be used by You, being the amount produced by applying the Rate Of Wages to the shortage in Turnover during that period less any Wages saved as a result of the Loss in this period;
 - (b) Remainder Period: during the remaining portion of the Indemnity Period the sum produced by applying the Rate Of Wages to the shortage in Turnover during that period less any Wages saved as a result of the Loss in this period; but not exceeding the sum produced by applying the remainder percentage of the Rate Of Wages specified in the Schedule to the

shortage in Turnover during that remaining portion of the Indemnity Period increased by such amount as is deducted for savings under the terms of 1 (a) above;

- (c) Optional Period: at Your option, the number of weeks referred to in 1 (a) above may be increased to the optional number specified in the Schedule provided that the amount arrived at under the provisions of 1 (b) shall not exceed such amount as is deducted under 1 (a) for savings effected during the optional number of weeks.

- 2 In respect of additional expenditure, the additional expenditure necessarily and reasonably incurred during the Indemnity Period to avoid or minimise the reduction in Wages that Your Business suffers as a result of the interruption or interference. The amount payable shall not exceed the reduction in Wages thereby avoided.

3.1.4 Payroll/Wages in Lieu of Notice

Where Payroll/Wages in lieu of notice has been selected in the Schedule the amount payable as indemnity shall be:

The amount of Payroll/Wages You shall reasonably pay during the period beginning with the Loss and ending not later than the number of weeks specified in the Schedule to employees whose services cannot, in consequence of the Loss, be utilised by You at all, and an equitable part of the Payroll/Wages paid to employees whose services cannot, in consequence of the Loss, be utilised by You to the full (less any Wages/Payroll saved as a result of the Loss).

3.1.5 Redeployment Expenses

Where selected in the Schedule the insurance under this item covers expenditure reasonably incurred by You during the Indemnity Period in the necessary relocation of employees within New Zealand where, as a result of the Loss, You elect to permanently redeploy employees at any alternative sites within New Zealand. The insured expenses will include all such expenses You would normally incur or reimburse to employees when transferring employees and their families and pets to different places of permanent residence for the purpose of Your Business.

3.1.6 Severance and Redundancy Payments

Where selected in the Schedule the insurance under this item covers all payments which You are required to pay to employees in accordance with their employment contract whose services are terminated as a result of Loss.

3.1.7 Additional Cost of Working

Where selected in the Schedule the insurance under this item covers the additional costs and expenditure reasonably incurred by You during the Indemnity Period in consequence of the Loss for the purpose of avoiding or diminishing a reduction in Gross Profit or Gross Revenue and/or for resuming or maintaining any normal business operations or services that are not otherwise covered under this Policy, but excluding any cost of reinstating physical damage to Your Property.

3.1.8 Book Debts

Where selected in the Schedule the insurance under this item covers the net financial loss that is established during the twelve months after the Loss resulting solely from the interruption or interference to the business of collectible amounts owed to You plus the reasonable costs incurred by You in establishing, tracing and recovering those debts less an equitable allowance for bad debts or variations in trade.

3.1.9 Penalty Payments

Where selected in the Schedule the insurance under this item covers any penalties, damages or other amounts which You are legally liable to pay, in accordance with the terms and conditions of any contract, for any unavoidable breach of contract by You resulting from any interruption to or interference with Your Business as a sole consequence of Loss.

3.1.10 Claim Preparation Costs

Where selected in the Schedule the insurance under this item covers all costs, professional fees and expenses reasonably incurred by You for the purpose of assessing, preparing, presenting and certifying any claims made under this Section and the Material Damage Section of this Policy insofar as such costs are not more specifically insured or recoverable under any other Policy of insurance.

Salaries, Wages, overheads and other expenses of Your employees and consultants will be deemed to be part of such costs and expenses.

3.1.11 Rewriting of Records

Where selected in the Schedule and notwithstanding the definition of Property and the general exclusion for electronic data 1.2.3 the Business Interruption Section of this Policy insures the reasonable cost of collecting and reproducing the information on Your Business records that suffer a Loss covered under this Policy. The value of the information itself is not insured.

However, the following conditions apply in respect of electronic data:

- 1 You must have all electronic data on back-up files;
- 2 there must be an adequate back-up system in operation and that back-up system must have been effectively tested;
- 3 back-ups must be kept secure on or off site and must be updated at least on a weekly basis.

The limit of cover for any one Event is as specified in the Schedule. The cover in this clause is in addition to the cover provided under 2.2.24 in the Material Damage Section of this Policy.

3.1.12 Loss of Lease Goodwill

Where selected in the Schedule the insurance under this item covers Loss of Lease goodwill should the whole or any part of a leased Situation occupied by You suffer Loss during the Period of Insurance covered by the Material Damage Section of this Policy, provided that:

- 1 the rebuilding or Reinstatement of the Situation at the existing site is prohibited by building or other regulations under or formed in pursuance of any Act of Parliament or the by-laws of any municipal or other local authority; or
- 2 the owner of the premises not being You, decides for any reason whatsoever, not to undertake the rebuilding or reinstatement at the existing site following such Loss, or
- 3 the owner of the premises not being You, terminates the lease in accordance with the terms thereof following such Loss.

The amount payable as indemnity hereunder shall be limited to the unexpired value of the lease goodwill at the date of Loss calculated by

reducing the purchased value of the lease goodwill pro rata according to the proportion of the term of the lease which has elapsed at the date of Loss, provided also that:

If You are able to obtain suitable alternative situations for the purpose of Your Business after the termination of the lease by the lessor then, after calculation of the Loss of Lease goodwill as set herein, this amount shall be reduced to a figure which shall represent as nearly as reasonably practicable the actual Loss of Lease goodwill.

3.2 Additional Cover

3.2.1 Accumulated Stocks

In adjusting any claim, account will be taken and an equitable allowance made if, during the Indemnity Period Turnover is temporarily maintained from accumulated stocks of finished goods held by You, thus causing a shortage of Stock of finished goods after the Indemnity Period has expired.

3.2.2 Acts of Civil Authorities

The Business Interruption Section of this Policy insures financial loss resulting from interruption or interference because the whole or part of Your Situation is closed by order of any lawfully constituted civil authority during the Period of Insurance as a result of:

- 1 danger to human life or bodily injury to any person in the vicinity of the Situation;
- 2 damage to any Property;
- 3 defects in drains or other sanitary arrangements but not defects in water or sewerage;
- 4 vermin or pests;
- 5 fumes or the escape of any hazardous materials;
- 6 any other criminal act, but excluding any criminal act by You.

Proviso 1 of 3.1 Cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.2.3 Closure of Transport Routes, Ports or Airports

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by the closure during the Period of Insurance of any transport route, port, container port, airport or railway terminal in New Zealand due to Loss to any Property at such premises that would be covered under Section 2 of this Policy if it had covered that Property.

Proviso 1 of 3.1 Cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.2.4 Contractual Commitments

The Business Interruption Section of this Policy insures the amount You are legally liable to pay under contracts for purchases unavoidably not used during the Indemnity Period as a result of a Loss during the Period of Insurance covered under this section, less any sums received or receivable by You in respect of such purchases through any salvage handling operations or resale.

3.2.5 Customers' / Suppliers' Premises

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that Property during the Period of Insurance at any place within New Zealand or Australia that is:

- 1 occupied by manufacturers, processors or suppliers of goods or services to You; or
- 2 occupied by any of Your customers.

Proviso 1 of 3.1 Cover does not apply to this clause.

This clause is subject to the limit shown in the Schedule.

3.2.6 Dependent Business that Attracts Customers

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that Property during the Period of Insurance to an anchor tenant situated in the same retail shopping complex as Your Business.

Proviso 1 of 3.1 cover does not apply to this clause.

Our liability in respect of any one Loss will be limited to an Indemnity Period of 30 days from the date Turnover is first affected and this clause is subject to a 24-hour time Deductible.

3.2.7 Loss of Utilities

The Business Interruption Section of this Policy insures financial loss resulting from interruption of or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that Property during the Period of Insurance to any electricity station or sub-station or power lines or telecommunication networks or gas works or natural gas works (but excluding any offshore installation) or energy-producing plant or water works or treatment plants or any other supplier of utilities, and including all Property or plant or equipment or supply pipes or supply lines of any of them.

Proviso 1 of 3.1 cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.2.8 Prevention of Access

The Business Interruption Section of this Policy insures financial loss resulting from interruption or interference with Your Business caused by Loss that would be covered under Section 2 of this Policy if it had covered that Property during the Period of Insurance in the vicinity of Your

Situation that prevents or hinders the use of or access to the Situation during the Period of Insurance regardless of whether Your Property or Situation suffers Loss.

Proviso 1 of 3.1 cover does not apply to this clause.

This clause is subject to the limit and Deductible shown in the Schedule.

3.3 Optional Additional Cover

The following optional clause will apply only when designated or specified in the Schedule.

3.3.1 Natural Disaster Damage (Earthquake etc)

Notwithstanding exclusion 3.4.1 1, this Policy insures financial Loss resulting from interruption of or interference with Your Business caused by:

- 1 Natural Disaster;
- 2 Measures taken under proper authority, following an Event listed above to:
 - (a) avoid its spreading, or
 - (b) reduce its consequences,during the Period of Insurance.

3.4 Exclusions

Refer also to the general exclusions of this Policy.

3.4.1 Natural Disaster/Mechanical or Electrical Breakdown/Transit

This Policy does not cover any financial loss resulting from interruption of or interference with the business arising from:

- 1 Natural Disaster;
- 2 Mechanical or electrical breakdown or derangement of machinery or electrical equipment other than as a result of a Loss arising from electrical current damage cover 2.2.8 under the Material Damage Section of this Policy or the boiler explosion cover under 3.1.1;
- 3 Property in transit other than at Your Situation.

3.5 Conditions

Refer also to the general conditions of this Policy.

3.5.1 Adjustment of Premium

The premium payable by You is deemed to be provisional and subject to adjustment on expiry of each Period of Insurance as follows:

- 1 Within six months of the period for which the premium is to be adjusted or as soon as practicable thereafter, You will submit to Us a certificate from Your auditors or accountants setting out, if insured, the actual Gross Profit, Gross Revenue, Gross Rentals and Management Fees, Wages – dual basis, Payroll/Wages in lieu of notice and book debts for the accounting year most nearly concurrent with the Period of Insurance.
- 2 The provisional premium will be adjusted at the agreed rate(s) on such actual amounts, or a multiple thereof if the Indemnity Period exceeds twelve months, by payment to Us of an additional premium or by refund to You of a return premium as the case may be, provided that if an additional premium or a return premium is due, it will in no case exceed 50% of the provisional premiums charged for the items involved.
- 3 In the event of a claim occurring during the Period of Insurance, the amount paid or payable for the Loss in respect of the period will be regarded as actually earned.

3.5.2 Alternative Index

In the event of a claim under this Policy, adjustments may be based on Turnover or output or whatever other index of business activity affords the most equitable result, and, except in the definition of Turnover, the word Turnover wherever used in this Policy shall be read as Turnover or alternative index.

3.5.3 Departments

If Your Business is conducted in departments, subsidiaries or other units and the independent trading results are ascertainable, the provisions of this Policy shall apply separately to each department, subsidiary or other unit affected by the Loss. However, Our total liability remains unchanged.

3.5.4 Liquidation, Receivership or Cessation of Interest

The cover provided by this Policy will be voided if, for any reason other than Loss:

- 1 Your Business is wound up or carried on by a liquidator or receiver or is permanently discontinued; or
 - 2 Your interest in Your Business ceases other than by death;
- at any time after the commencement of this insurance, unless We have agreed to its continuance.

3.5.5 New Business

For the purpose of any claim arising from Loss occurring before the completion of the first year's trading of Your Business at the Situation the terms Rate of Gross Profit, Rate of Wages and Standard Turnover shall have the following meanings and not as stated within:

Rate of Gross Profit means the rate of gross profit earned on the Turnover during the period between the date of the commencement of Your Business and the date of the Loss.

Rate of Wages means the rate of wages to Turnover during the period between the date of the commencement of Your Business and the date of the Loss.

Standard Turnover means the proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the commencement of Your Business and the date of the Loss.

For the purposes of this clause the Rate of Gross Profit, Rate of Wages and Standard Turnover shall be adjusted as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Loss or which

would have affected Your Business had the Loss not occurred, so that the figure thus adjusted shall represent as nearly as may be reasonably practicable the results which, but for the Loss, would have been achieved during the relative period after the Loss.

3.5.6 Reduced Margin

If, in consequence of Loss giving rise to a claim under this Policy, Turnover is maintained at a reduced Rate of Gross Profit, an equitable allowance shall be made for the loss of Gross Profit resulting from an increase in the ratio of Stock usage or purchases (adjusted for Stock variation) to Turnover.

No allowance shall be made for an increase in the ratio of any other uninsured expense to Turnover.

3.5.7 Reinstatement of Amount of Insurance

In the event of a claim payment under the Business Interruption Section of this Policy, and in the absence of written notice by Us or You to the contrary, any amount of insurance cancelled by the payment will be automatically reinstated. You agree to pay such pro rata premium at the applicable rate as may be required for the Reinstatement.

3.5.8 Turnover Elsewhere

If during the Indemnity Period, any goods are sold or services are rendered elsewhere than at the Situation for the benefit of Your Business, either by You or by others on Your behalf, the money paid or payable in respect of those sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

3.5.9 Use of Accountant or Auditors

Any particulars or details contained in Your books of account or any other business books or documents which may be required by Us under the claims condition of this Policy for the purpose of investigating or verifying any claim may be produced and certified by Your accountant or auditors or their agents, whose certificate shall be prima facie evidence of the particulars and details required.

Section 4: General Definitions applicable to all sections

Act of Terrorism

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

Buildings

'Buildings' means: buildings, other structures, and their appurtenances including but not restricted to the plant, fixtures, fittings, pipes, cables, lights, aerials, signs and lettering, tanks, poles, power lines and their supports, walls, gates, fences, landscaping, gardens, ornamental trees and shrubs, roads, paths, yards and the like pertaining to any of them and located in or about the Situation.

Burglary

'Burglary' means: theft accompanied by violence or threat of violence to persons, or violent and forcible entry to or exit from any fully enclosed building or securely locked motor vehicle, or any attempt thereat.

Contents

'Contents' means: Contents of buildings, customers' goods, chattels in the open or under shelter, tenant's improvements, plant and equipment and all other tangible Property not more specifically described in the Schedule. Contents also extends to include landlord's glass, fixtures and fittings and other landlord's Property for which You are responsible if not included under buildings.

Deductible

'Deductible' means: the first amount You bear in relation to each Loss.

EQC Residential Property

'EQC Residential Property' means: residential Property that is covered by the relevant sections of the Earthquake Commission Act 1993 and any statutory amendment to or replacement of that Act.

Event

'Event' means: an event, including continuous or repeated exposure to substantially the same conditions, or a series of events resulting from, or attributable to, one source or original cause. A series of events arising from any one cause during any period of 72 consecutive hours will be treated as one Event.

Gross Profit

'Gross Profit' means: the amount by which

- 1 the sum of the Turnover and the amount of the closing Stock exceeds
- 2 the sum of the amount of the opening Stock and the amount of the Uninsured Working Expenses.

Notes about this calculation:

- (a) The amount of the opening and closing stocks shall be arrived at in accordance with Your normal accounting methods, due provision being made for depreciation, and
- (b) the words and expressions used in this definition shall have the meaning usually attached to them in Your books and accounts.

Gross Rentals and Management Fees

'Gross Rentals and Management Fees' means: the amount of fees received or receivable for services in respect of or associated with the rental of the Situation including but not restricted to contributions to any variable and/or promotional funds, operational expenses, rates, insurance premiums, car parking rentals and any other expenses of whatsoever nature and description and any services rendered by You.

Gross Revenue

'Gross Revenue' means: the monies paid or payable to You for work done or services provided as part of Your Business operations.

Group of Related Companies

'Group of Related Companies' means: a group of companies related or associated to one another by virtue of their ownership.

Hazardous Substance Emergency

'Hazardous Substance Emergency' means: the same as the definition given to it in the Fire Service Act 1975.

Indemnity Period

'Indemnity Period' means: the period beginning with the occurrence of the Loss and ending not later than the number of months or weeks specified in the Schedule thereafter during which the results of Your Business are affected in consequence of the Loss.

Loss

'Loss' means: accidental physical loss or accidental physical damage.

Machine

'Machine' means: any device that:

- 1 Converts and directs motion or energy, or
- 2 Performs any electronic process including any protective component in connection with that device.

Natural Disaster

'Natural Disaster' means: earthquake, hydrothermal and geothermal activity, subterranean fire, volcanic eruption, tsunami and fires resulting from any of these perils.

Payroll

'Payroll' means: the gross remuneration (including but not limited to salaries, Wages, Accident Compensation, redundancy payments, levies, bonuses, sick pay, holiday pay, long service leave, superannuation contributions and other payments and charges pertaining to payroll calculated on a 'per capita' or percentage of payroll basis) for all employees engaged in activities of Your Business.

Period of Insurance

'Period of Insurance' means: the period of time stated in the Schedule that this Policy is in force.

Policy

'Policy' means: the proposal and any other information You supplied Us when this insurance was arranged, this policy wording, the Schedule and any endorsement attaching to the Policy.

Pressure Vessel

'Pressure Vessel' means: a vessel that during ordinary use is subject to generated or applied fluid pressure or vacuum, and includes all parts, controls and systems of that vessel.

Production Process

'Production Process' means: any process of producing, making, treating or servicing goods.

Property

'Property' means: all tangible property of every description which You:

- 1 own (solely or jointly), or
- 2 hold in Your care, custody or control, and are legally responsible for, within the four categories in Section 2 of the Schedule.

Rate of Wages

'Rate of Wages' means: the rate of wages to Turnover during the financial year immediately before the date of the Loss. To which such adjustments shall be made as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Loss or which would have affected Your Business had the Loss not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Loss would have been obtained during the relative period after the Loss.

Rate of Gross Profit

'Rate of Gross Profit' means: the rate of gross profit earned on the Turnover during the financial year immediately before the date of the Loss. To which such adjustments shall be made as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Loss or which would have affected Your Business had the Loss not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Loss would have been obtained during the relative period after the Loss.

Region

'Region' means: the area of land within the applicable Local Government regional boundary. Refer to Terralink International map – Local Government New Zealand regional boundaries.

Schedule

'Schedule' means: the most recent schedule to this Policy.

Shortage in Turnover

'Shortage in Turnover' means: the amount by which the Turnover during a period shall in consequence of the Loss fall short of the part of the Standard Turnover which relates to that period.

Situation

'Situation' means: the situations described in Section 1 of the Schedule.

Standard Turnover

'Standard Turnover' means: the Turnover during the period in the twelve months immediately before the date of the Loss which corresponds with the Indemnity Period, to which such adjustments shall be made as may be necessary to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Loss or which would have affected Your Business had the Loss not occurred so that the

figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Loss would have been obtained during the relative period after the Loss.

Stock

'Stock' means: stock and materials in trade.

Subsidiary company

'Subsidiary Company' means: a company that has more than half the nominal value of its equity share capital owned by a parent company either directly or through other subsidiaries.

Turnover

'Turnover' means: the money paid or payable to You for goods sold and delivered and for services rendered in the course of Your Business.

Vehicle

'Vehicle' means: any type of Machine on wheels, tracks or rollers that is propelled by its own power, and anything designed to be towed by such a Machine.

Wages

'Wages' means: the remunerations (including bonuses, holiday pay, sick pay, long service leave, accident compensation levies and any other benefits and charges pertaining to wages and treated as part of remuneration) of all employees other than those whose remunerations are treated as salaries in Your books of account.

Uninsured Working Expenses

'Uninsured Working Expenses' means: those expenses that vary in direct proportion to the Turnover.

We/Us/Our

'We/Us/Our' means: Lumley General Insurance (N.Z.) Limited

You/Your

'You/Your' means: the persons or entities named in the Schedule as insured, who are insured severally, and any Subsidiary Company or any other organisation under the active management control of that insured.

Your Business

'Your Business' means: your business and undertakings as stated in the Schedule.