

Lumley General Insurance Limited

Combined Public and Products Liability Policy



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Combined Public and Products Liability Policy

Terms of Policy

1. In consideration of the payment to Lumley General Insurance Limited (hereafter called "Lumley") of the amounts payable for this insurance, Lumley will indemnify the Insured in accordance with this Policy.

COVERAGE

1.1 Liability

Lumley will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation (excluding punitive and/or exemplary and/or aggravated damages and/or any additional damages resulting from the multiplication of compensatory damages) in respect of Personal Injury and/or Property Damage happening during the Period of Insurance caused by an Occurrence in connection with the Business of the Insured.

1.2 Law Costs and Expenses

With respect to the indemnity afforded by this Policy Lumley will:

- 1.2.1 defend in his name and on his behalf any suit against the Insured alleging such Personal Injury or Property Damage and seeking damages on account thereof even if such suit is groundless, false or fraudulent, and Lumley may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;
- 1.2.2 pay all expenses incurred by Lumley, all costs taxed against the Insured in any such suit and all interest accruing after entry of judgement until Lumley has paid tendered or deposited in court such part of such judgement as does not exceed the limit of Lumley's liability thereon;
- 1.2.3 reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred with the consent of Lumley;
- 1.2.4 pay expenses incurred by the Insured for first aid to others at the time of Personal Injury caused by an Occurrence (other than medical expenses prohibited by Section 126 of the Health Act):

Provided that:

- (i) Lumley shall not be obliged to pay any claim or judgement or to defend any suit after the Limit of Liability has been exhausted by payment of judgements or settlements,
- (ii) if a payment exceeding the Limit of Liability has to be made to dispose of a claim, Lumley's liability to pay any law costs and expenses in connection therewith shall be limited to such proportion of the law costs and expenses as the Limit of Liability bears to the amount paid to dispose of the claim.

The amounts thus incurred, except payments in settlement of claims, suits and all costs awarded against the Insured, are payable by Lumley in addition to the applicable Limit of Liability of this Policy.

2. LIMIT OF LIABILITY

The maximum liability of Lumley in respect of any claim or any series of claims for Personal Injury and/or Property Damage caused by or arising out of one Occurrence shall not exceed the Limit of Liability specified in the Schedule. All Personal Injury and Property Damage arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.

The aggregate liability of Lumley during any one Period of Insurance for all claims arising out of the Insured's Products shall not exceed the Limit of Liability specified in the Schedule.

3. DEDUCTIBLE

When specifically indicated in the attached Schedule, each claim arising under this Policy is subject to the deductible shown.

4. EXCLUSIONS

This Policy does not cover liability in respect of:

4.1 Aircraft and Watercraft

Personal Injury and/or Property Damage arising out of the ownership, maintenance, operation or use by the Insured of:

- 4.1.1 any Aircraft, hovercraft, or
- 4.1.2 any Watercraft or vessel exceeding 7.5 metres in length provided that this exclusion does not apply to floating jetties that are attached to land or some other fixed object.

4.2 Aircraft Products

Personal Injury and/or Property Damage arising out of the Insured's Products that are used with the Insured's knowledge in Aircraft or aerial devices.

4.3 Aircraft Refuelling

Personal Injury and/or Property Damage caused by or arising from the refuelling of Aircraft.

4.4 Asbestos

Personal Injury and/or Property Damage (including loss of use of property) caused by or arising directly or indirectly out of or in connection with:

- 4.4.1 the mining, handling, processing, manufacture, sale, transportation, distribution, storage or use of asbestos or asbestos products or products containing asbestos; or
- 4.4.2 any process of decontamination, disposal, removal, treatment or control of asbestos or asbestos products or materials containing asbestos.

This exclusion 4.4.2 shall only apply to those claims arising in consequence of inhalation of asbestos fibre or damage to or loss of use of property due to the presence of asbestos in any form.

4.5 Contractual Liability

Liability assumed by the Insured under any contract or agreement except to the extent that such liability would have been implied by law. This exclusion shall not apply to:

- 4.5.1 liability assumed by the Insured under any lease of real or personal property;
- 4.5.2 liability assumed by the Insured under a warranty of fitness or quality as regards the Insured's Products;
- 4.5.3 those written contracts specified in the Schedule.

4.6 Exports to USA and/or Canada

Personal Injury and/or Property Damage caused by or arising out of the Insured's Products knowingly exported by the Insured, his agents or servants to the United States of America and/or the Dominion of Canada.

4.7 Faulty Workmanship

The cost of performing, completing, correcting or improving any work undertaken by the Insured.

4.8 Fines, Penalties

Fines, penalties or liquidated damages.

4.9 Injury to Employees

- 4.9.1 Personal Injury to any employees of the Insured arising directly or indirectly out of or in the course of their employment in the Business of the Insured;
- 4.9.2 any liability the Insured may have in respect of Personal Injury sustained by any person who is, pursuant to any legislation relating to workers' compensation, deemed or defined to be an employee of the Insured;
- 4.9.3 any liability in respect of which the Insured is entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmens' compensation including any legislation of any State or Territory and whether or not

the Insured is party to such Contract of Insurance;

- 4.9.4 any liability arising out of Personal Injury to employees of the Insured imposed by the provisions of any workers' compensation legislation or any industrial award or agreement or determination.

4.10 Libel and Slander

Liability arising out of the publication or utterance of a libel or slander:

- 4.10.1 made prior to the commencement of this Period of Insurance, or
- 4.10.2 made by or at the direction of the Insured with knowledge of the falsity thereof, or
- 4.10.3 related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Insured.

4.11 Loss of Use

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- 4.11.1 a delay in or lack of performance by or on behalf of the Insured of any contract or agreement;
- 4.11.2 the failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the Insured's Products after such Products have been put to use by any person or organisation other than an Insured.

4.12 Pollution

4.12.1 Personal Injury and/or Property Damage caused by or arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water. Provided that this exclusion does not apply if such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.

4.12.2 Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution provided that this exclusion 4.12.2 shall not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage.

4.13 Product Defect

Property Damage to the Insured's Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

4.14 Product Recall

Damages, costs or expenses arising out of or resulting from the recall, withdrawal, removal, reinstallation, inspection, repair, replacement or loss of use of the Insured's Products or of any property of which such Products form a part, if such recall, withdrawal, removal, reinstallation, inspection, repair, replacement or loss of use is caused or necessitated by any actual or suspected defect or deficiency in or unsuitability of, the Insured's Products.

Provided that this exclusion 4.14 does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the Insured's Products after such Products have been put to use by any person or organisation other than an Insured.

4.15 Professional Liability

The rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith where such professional advice or service is given for a fee.

4.16 Property in Physical or Legal Control

Property Damage to:

4.16.1 Property owned by or leased or rented to the Insured, or

4.16.2 Property in the physical or legal control of the Insured,

but this exclusion shall not apply to liability for Property Damage to:

4.16.3 premises (including Landlord's fixtures and fittings) which are leased or rented to the Insured;

4.16.4 premises (or the contents thereof) not owned, leased or rented by the Insured but temporarily occupied by the Insured for work therein but no indemnity is granted for damage to that part of the property on which the Insured is working and which arises out of such work;

4.16.5 Vehicles (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such Property Damage occurs whilst any such Vehicles are in a car park owned or operated by the Insured. Cover under this section 4.16.5 does not apply if the Insured as part of his business is a car park owner or operator for reward;

4.16.6 employees' property;

4.16.7 any other property not specified within clauses 4.16.3 to 4.16.6 inclusive, which is in the physical or legal control of the Insured subject to Lumley's Limit of Liability not exceeding \$50,000 arising out of any one Occurrence.

Provided that Lumley shall not be liable for:

(i) Property Damage to property which is owned by or hired, rented or leased by the Insured;

(ii) Property Damage to goods or property whilst being transported or carted;

(iii) Property Damage to that part of any property upon which the Insured is or has been working where such Property Damage arises from such work of the Insured.

4.17 Radioactivity

Personal Injury and/or Property Damage directly or indirectly caused by contributed to or arising from:

4.17.1 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 only combustion shall include any self-sustaining process of nuclear fission.

4.17.2 nuclear weapons material.

4.18 Territorial Limits

4.18.1 Claims made and actions instituted within the United States of America or the Dominion of Canada or any other territory coming within jurisdiction of the Courts of the United States of America or the Dominion of Canada.

4.18.2 Claims and actions to which the laws of the United States of America or the Dominion of Canada apply.

Provided that this exclusion shall not apply to claims and actions arising from the presence outside Australia of any person who is normally resident in Australia and who is not a manual worker or a supervisor of work.

4.19 Vehicles

Personal Injury and/or Property Damage arising out of the ownership, possession, operation, control or use by the Insured of any Vehicle:

4.19.1 which is registered; or

4.19.2 which is required under any legislation to be registered;

4.19.3 in respect of which insurance is required to be effected by or on behalf of the Insured by or under any legislation including legislation of any State or Territory, whether or not such insurance is effected,

but this exclusion shall not apply to Personal Injury and/or Property Damage:

(i) caused by or arising from the delivery or collection of goods to or from any stationary Vehicle;

(ii) caused by or arising from the loading or unloading of goods to or from any stationary Vehicle;

- (iii) caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle (excluding whilst the Vehicle is transporting or carting goods);
- or Property Damage (excluding Personal Injury) to any bridge, weighbridge, road or anything beneath caused by the weight of any Vehicle or of the load carried thereon.

4.20 War

Any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or damage to property by or under the order of any Government or public or local authority.

5. DEFINITIONS

5.1 "Aircraft" means:

Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

5.2 "Business" means:

The Business specified in the Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured's employees and first aid, fire and ambulance services and maintenance of the Insured's premises.

5.3 "Insured"

Each of the following is deemed to be an Insured under this Policy to the extent set forth:-

- 5.3.1 The named Insured specified in the Schedule.
- 5.3.2 All the subsidiary companies (now or hereafter constituted) of the named Insured, their places of incorporation being within Australia or any Territory of Australia.
- 5.3.3 Every Director, Executive Officer, Employee, Partner or Shareholder of the Insured or of a company designated in paragraph 5.3.2 above but only whilst acting within the scope of their duties in such capacity.
- 5.3.4 Every principal, in respect of the liability of such principal arising out of the performance by the Insured or by a company designated in paragraph 5.3.2 above of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement, but limited in all to the extent of coverage and Limit of Liability as provided for in this Policy.
- 5.3.5 Every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with the

consent of the Insured (other than an Insured designated in paragraph 5.3.4 or 5.3.6) in respect of claims arising from their duties connected with the activities of any such club.

5.3.6 Each Partner, Joint Venturer, Co-Venturer or Joint Lessee of the named Insured but only:

- (i) with respect to liability incurred as the Partnership, Joint Venture, Co-Venture, Joint Lease and
- (ii) Provided the Partnership, Joint Venture, Co-Venture, Joint Lease has been notified to Lumley within 60 days of formation and has been endorsed on the Schedule hereto.

5.3.7 Any director or senior executive of the Insured in respect of private work undertaken by the Insured's employees for such director or senior executive.

"Insured" does not include the interest of any other person other than as described in 5.3.1 to 5.3.7 above.

5.4 "Insured's Products" means:

Any goods, products or property after they have ceased to be in the possession or under the control of the Insured which are, or are deemed by law to have been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, altered, repaired, serviced, treated, sold, supplied, distributed, imported or exported by the Insured (including any container thereof other than a Vehicle).

5.5 "Medical Persons" means:

Legally qualified medical practitioners, legally qualified registered nurses, dentists and first aid attendants.

5.6 "Occurrence" means:

An event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage, neither expected nor intended from the standpoint of the Insured.

5.7 "Personal Injury" means:

- 5.7.1 bodily injury (which expression includes death, disease or illness), disability, shock, fright, mental anguish or mental injury;
- 5.7.2 false arrest, wrongful detention, false imprisonment or malicious prosecution;
- 5.7.3 wrongful entry or eviction or other invasion of the right of privacy;
- 5.7.4 a publication or utterance of a libel or slander or other defamatory or disparaging material;
- 5.7.5 assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

5.8 “Policy” means:

This document and each memorandum issued by Lumley attached, or intended to be attached, to it.

5.9 “Pollutants” means:

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

5.10 “Property Damage” means:

5.10.1 physical damage to or destruction of tangible property including its loss of use following such physical damage or destruction, or

5.10.2 loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by an Occurrence.

5.11 “Vehicle” means:

Any type of machine on wheels or on self laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

5.12 “Watercraft” means:

Any vessel, craft or thing made or intended to float on or in or travel on or through water.

6. CONDITIONS

6.1 Territorial Limitations

This Policy applies World-Wide subject to exclusions 4.6 and 4.18.

6.2 Payment of Premium

The Insured will pay promptly to Lumley the premium, any adjustments of premium and other amounts charged for this Policy and any renewal, extension or endorsement to the Policy.

6.3 Joint Insureds

Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in an increase of Lumley’s Limit of Liability in respect of any Occurrence or Period of Insurance.

6.4 Notices

Notice in writing shall be given as soon as possible to Lumley of:

6.4.1 every Occurrence, claim, writ, summons, demand, proceedings, impending prosecution, inquest and all information in relation thereto which may result in a claim under the Policy, whether or not the Insured believes any claim amount might fall below any deductible stated in the Schedule.

6.4.2 every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of the Insured.

Any notice given in writing by Lumley to the first named Insured in the schedule shall be deemed to be notice given to each of the parties comprising the Insured.

Service of notices by Lumley shall be effective immediately on receipt by the first named Insured of a facsimile transmission sent from Lumley or in the case of notices by post, three business days after having been posted by Lumley.

6.5 Other Insurance

As soon as is reasonably practical but within 15 days after entering into any other contract of insurance, the Insured shall notify Lumley of, and shall give Lumley full details of, any such other insurance which provides indemnity, in full or in part, for any of the liabilities insured hereunder.

6.6 Subrogation

In the event of a payment under this Policy to or on behalf of the Insured Lumley shall subject to the Insurance Contracts Act 1984, be subrogated to all the Insured’s rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist Lumley in the exercise of such rights.

6.7 Claims

6.7.1 The Insured shall not without the consent in writing of Lumley make any admission, offer, promise, or payment in connection with any Occurrence or claim and Lumley if it so desires shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim.

6.7.2 The Insured shall use its best endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair shall be effected without the consent of Lumley until Lumley shall have had an opportunity of inspection.

6.7.3 Lumley shall be entitled to prosecute in the name of the Insured at Lumley’s expense and for Lumley’s benefit any claim for indemnity or damages or otherwise.

6.7.4 Lumley shall have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as Lumley may require in the prosecution, defence or settlement of any claim.

6.8 Discharge of Liabilities

Lumley may at any time pay to the Insured in respect of all claims against the Insured arising directly or indirectly from one source or original cause the amount of the "Limit of Liability" or such other limit specified in respect thereof (after deduction of any sum or sums already paid as compensation in respect thereof), or any lesser sum for which the claim or claims can be settled and upon such payment Lumley shall relinquish conduct or control of and be under no further liability under the Policy in connection with such claims except for costs, charges and expenses:

- 6.8.1 recoverable from the Insured for all or part of the period prior to the date of such payment;
- 6.8.2 incurred by Lumley;
- 6.8.3 incurred by the Insured with the written consent of Lumley prior to the date of such payment.

6.9 Reasonable Care

The Insured shall:

- 6.9.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition, and
- 6.9.2 take all reasonable precautions to
 - (i) prevent Personal Injury and/or Property Damage, and
 - (ii) prevent the manufacture, sale or supply of defective Products, and
 - (iii) comply and ensure that its employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed;
 - (a) by all relevant Public Authorities,
 - (b) for the safety of persons or property,
 - (c) for the disposal of waste products,
 - (d) for the handling, storage or use of inflammable liquids or substances, gases or toxic chemicals.
- 6.9.3 At its own expense take reasonable action to trace, recall or modify any Insured's Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect, including (but not limited to) any Insured's Products subject to Governmental or statutory ban.

6.10 Inspection of Property

- 6.10.1 Lumley shall be permitted but not obligated to inspect the Insured's property and operations at any time.

- 6.10.2 Neither Lumley's right to make nor its failure to make, nor the making of any inspection nor any report thereof shall be used by the Insured or others in any action or proceeding involving Lumley.

- 6.10.3 Lumley may examine and audit the Insured's books and records at any time during the Period of Insurance and within three years thereafter but such examination and audit shall be restricted to matters which in the opinion of Lumley are relevant to the Policy.

6.11 Adjustment of Premium

- 6.11.1 If the first or renewal premium for the Policy or any part thereof shall have been calculated on estimates furnished by the Insured, the Insured shall within 30 days after the expiry of each Period of Insurance furnish to Lumley such matters, particulars and information relevant to the policy as Lumley may reasonably require. The premium for the said period shall thereupon be adjusted and any difference paid by or allowed to the Insured as the case may be. Provided that the adjusted premium shall not be less than the minimum premium charged by Lumley.

- 6.11.2 The Insured shall keep a record of all matters, particulars and information requested by Lumley and shall on reasonable notice, allow Lumley or its nominee to inspect and make copies of such records.

6.12 Cancellation

- 6.12.1 The first named Insured may cancel this Policy by giving notice in writing to Lumley.
- 6.12.2 Lumley may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act 1984.
- 6.12.3 After cancellation by the Insured, a percentage refund of premium for the current period of insurance will be allowed on the following basis:

When cancellation is effective;

- (i) within 60 days of inception of this Policy or renewal thereof – refund of 50% of annual premium.
- (ii) between 61 and 120 days from inception or renewal – refund of 30% of annual premium.
- (iii) between 121 and 180 days from inception or renewal – refund of 15% of annual premium.
- (iv) after 180 days of inception or renewal – no refund of premium.

- 6.12.4 After cancellation by Lumley, a refund of premium will be allowed pro rata to the unexpired Period of Insurance.

6.12.5 When the premium is subject to adjustment, cancellation will not affect the obligation of the Insured to supply to Lumley such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

6.13 Insurance Contracts Act 1984

Nothing contained in this Policy shall be construed to reduce or waive either the Insured's or Lumley's privileges, rights or remedies available under the Insurance Contracts Act 1984.

6.14 Jurisdiction

All disputes arising out of or under this Policy shall be subject to determination by any Court of competent jurisdiction within Australia according to the law applicable to that jurisdiction.

6.15 Words - Gender

6.15.1 Words importing persons shall include corporations and other legal entities.

6.15.2 The singular includes references to the plural and vice versa and any gender includes reference to all other genders.

6.16 Due Observance

If the Insured fails to comply with any term, condition or provision of the Policy, Lumley may refuse to pay a claim, but in any event Lumley's rights will be subject to the provisions of Section 54 of the Insurance Contracts Act 1984.

