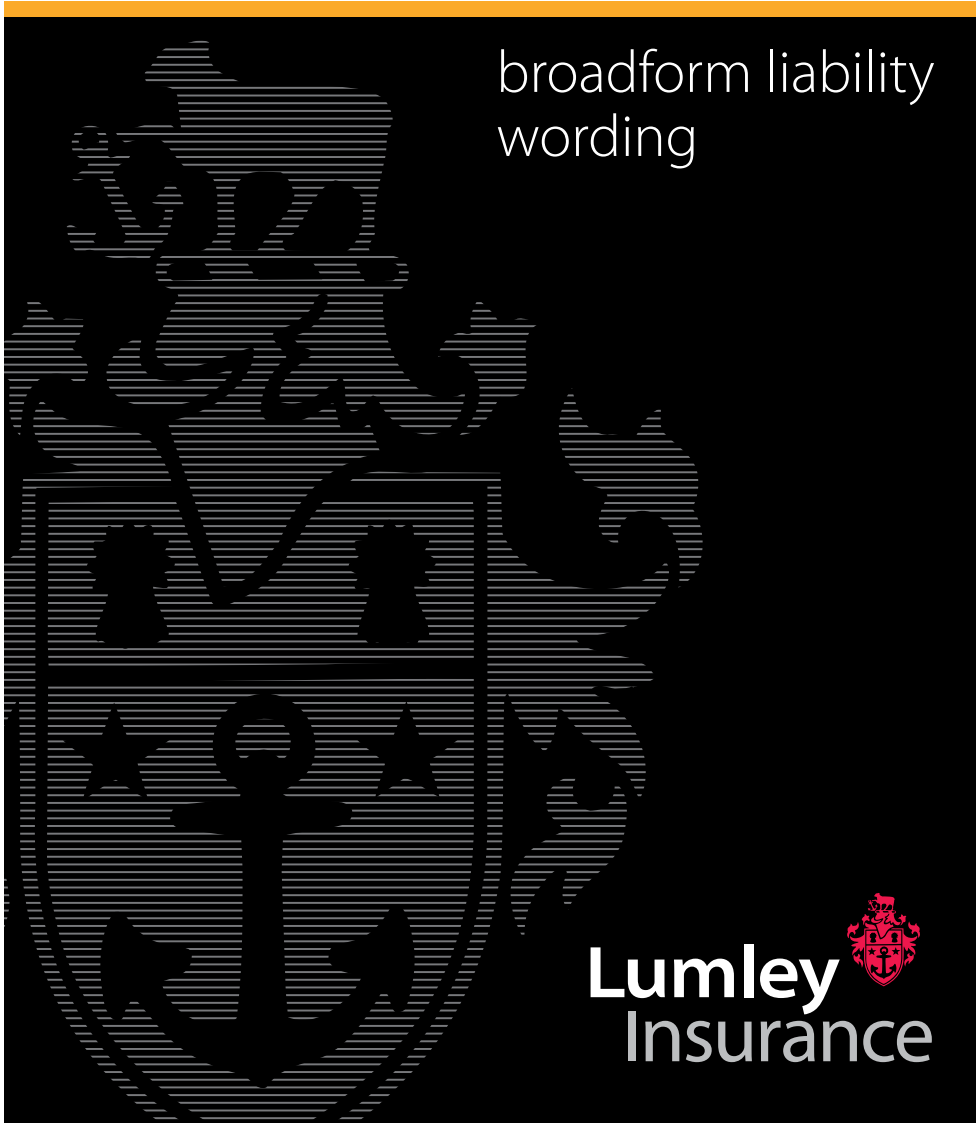


general liability



broadform liability
wording



Email: general@lumley.com.au

Website: www.lumley.com.au

BROADFORM LIABILITY

Policy Wording

The insurer of this product is:

Wesfarmers General Insurance Limited ABN 24 000 036 279 AFS Licence
No. 241461, trading as Lumley Insurance

Preparation Date: 10th June 2011

New South Wales

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IMPORTANT INFORMATION

Duty of Disclosure

Before You enter into a contract of general insurance with Us, You have a duty at law to disclose to Us anything that You could reasonably be expected to know is relevant to Our decision whether to accept the risk of insurance and if so, on what terms.

You have the same duty to disclose those matters to Us before You renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of a matter:

- that diminishes the risk to be undertaken by Us;
- that is of common knowledge;
- that We know or, in the ordinary course of business, ought to know;
- as to which compliance with Your duty is waived by Us.

If You fail to comply with Your duty of disclosure, We may be entitled to reduce Our Liability under the contract in respect of a claim or may cancel the contract.

If Your non-disclosure is fraudulent, We may also have the option of avoiding the contract from its inception.

Code of Practice

The Insurance Council of Australia Limited has developed a General Insurance Code of Practice, which is a self regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry.

We are a signatory to the Code. Further information about the General Insurance Code of Practice is available from Us.

Complaints

If You do not agree with any decision We make in relation to Your insurance policy please contact Us indicating the nature of the complaint.

We will then resolve or attempt to resolve Your complaint or refer it to Our Internal Dispute Resolution Officer.

Privacy

We are bound by and comply with the National Privacy Principles (NPPs) and the *Privacy Act 1988 (Cth)* ('the Act'). Our privacy policy is available from any of Our offices or online at www.lumley.com.au. Information on individuals will be collected by Us for the purpose of providing insurance, policy administration and claims handling. Failure to provide this information may result in policy cover being absent or inadequate. We will disclose this information collected to other companies in Our group, other insurers, financial institutions, claims reference agencies, loss adjusters, investigative agencies and other service providers. Disclosure extends to disclosure overseas. Disclosure will also be made where required by law. Under the Act individuals may be able to obtain details of the information held on them by Us.

POLICY WORDING

Please read this document carefully as it sets out the Schedule, Exclusions, Conditions, Definitions, Endorsements and any other terms that apply to this contract of general insurance. These documents should be read together and any word or expression that has been given specific meaning in this Policy shall bear this meaning wherever it appears. The singular shall include the plural and vice versa where applicable.

1. AGREEMENT

Subject to the terms, Conditions, Exclusions and Endorsements of this Policy, We agree to indemnify You where the Insured named in the Schedule has paid or agreed to pay the premium to Us.

2. INSURING CLAUSE

We will pay all amounts that You shall become legally liable to pay by way of Compensation for, Personal Injury, Property Damage or Advertising Injury which happens during the Period of Insurance as a result of an Occurrence within the Geographical Limits in connection with the Insured Business.

3. COSTS AND EXPENSES

We will in respect of any Claim covered by the Insuring Clause:

- 3.1 defend, in Your name and on Your behalf, any claim or suit against You alleging Personal Injury, Property Damage or Advertising Injury and seeking damages on account thereof even if any of the allegations made in such claim or suit are groundless, false or fraudulent;
- 3.2 pay all charges, expenses and legal costs incurred by Us or by You with Our prior written consent for:
 - (a) the investigation, defence or settlement of any such claim or suit, including loss of salaries or wages because of Your attendance at any hearing or trial at Our request; or
 - (b) bringing or defending appeals in connection with such claim or suit;
- 3.3 pay all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit and all interest accruing on Our portion of any judgement until We have paid, tendered or deposited in court that part of such judgement which does not exceed the Limit of Liability;
- 3.4 pay expenses incurred by You for:
 - (a) rendering first aid or surgical or medical relief to others at the time of any Personal Injury (other than any medical expenses where payment is prevented by law);
 - (b) temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up or underpinning thereof;
 - (c) purchasing or hiring or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including any such protection which You are required to provide by any Government, Local Government or other Statutory Authority;
- 3.5 pay all legal costs incurred by You with Our consent for Your representation at any:
 - (a) Coronial inquest or inquiry;
 - (b) proceedings in any court or tribunal relating to liability insured against by this Policy, provided that:
 - (i) any amounts paid by Us as Costs and Expenses, will be in addition to the applicable Limit of Liability;
 - (ii) in respect of any claims or suits originating in any court in North America, the Limit of Liability will include all amounts paid by Us as Costs and Expenses;
 - (iii) where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this Policy;
 - (iv) in jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the costs of defending that claim or suit incurred with Our prior written consent.

4. LIMIT OF LIABILITY

The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims arising out of any one Occurrence.

However, for Products Liability, the Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay:

- (a) in respect of any one claim or series of claims, and
- (b) in the aggregate during the Period of Insurance.

The Deductible payable by You will not reduce the applicable Limit of Liability.

5. EXCLUSIONS

This Policy does not cover:

5.1 Advertising Injury

Liability for Compensation in connection with Advertising Injury resulting from

- (a) any statement made at Your direction where You are aware or reasonably suspect that the statement or part of the statement is false;
- (b) Your failure to perform Your obligations pursuant to any contract. However this Exclusion 5.1 (b) shall not apply to any claim for unauthorised appropriation of advertising ideas contrary to an implied contract;
- (c) any incorrect description of the Products or services;
- (d) any mistake in advertised price of the Products or services;
- (e) any failure of the Products or services to conform with advertised purpose, performance, quality, fitness, longevity, or durability;
- (f) Your activities where Your principal occupation or business is advertising, broadcasting, publishing or telecasting.

5.2 Aircraft, Hovercraft & Aircraft Products

Liability for Compensation arising from:

- (a) the ownership, maintenance, operation, or use by You of any Aircraft or Hovercraft;
- (b) any property used for the purpose of an airport or any Aircraft landing strip;
- (c) any Products which You know or have reasonable cause to believe would be or are intended for incorporation into any part of an Aircraft's or a Hovercraft's structure, engines, machinery, skirts, propellers, electrical systems, computer systems, fuel or hydraulic systems, temperature or oxygenation systems, or navigation and control systems.

5.3 Asbestos

Liability for Personal Injury, Property Damage or Advertising Injury directly or indirectly caused by, arising from or in any way connected to asbestos.

5. EXCLUSIONS (continued)

5.4 Contractual Liability

Liability assumed by You under any contract, warranty or agreement that requires the Insured to:

- (a) effect insurance cover over real or personal property;
- (b) assume liability for Compensation regardless of fault;

However this Exclusion 5.4(b) shall not apply to any:

- (i) liability that would have been implied by law in the absence of such contract, warranty or agreement; or
- (ii) liability pursuant to contractual terms including warranties regarding merchantability, quality, fitness or care of the Products which are implied by law or statute; or
- (iii) liability assumed under an Incidental Contract; or
- (iv) liability assumed under any contracts specifically designated in the Schedule or in any Endorsement(s) to this Policy.

5.5 Criminal, Fraudulent, Malicious, Wilful or Dishonest Acts

Personal Injury, Property Damage or Advertising Injury caused by, arising from or in any way connected with any alleged or actual criminal, fraudulent, malicious, wilful or dishonest act or omission committed by You or on Your behalf or at Your direction.

5.6 Electronic Data

Liability directly or indirectly caused by, arising from or in any way connected with:

- (a) the communication, display, distribution, or publication of Electronic Data;
- (b) the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- (c) any error on creating, amending, entering, deleting or using Electronic Data;
- (d) the total or partial inability or failure to receive, send, access or use Electronic Data for any time period or at all;
- (e) any business interruption losses resulting from any of the matters mentioned in (a) to (d) above.

5.7 Employers Liability

Liability caused by, arising from or in any way connected with:

- (a) Personal Injury to any worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any law or legislation relating to workers compensation or accident compensation whether or not such policy, fund, scheme or self insurance has been effected.

However, this Exclusion 5.7 (a) will not apply to the extent that Your liability would not be covered under any such policy, fund, scheme or self insurance arrangement had You complied with Your obligations pursuant to any such law or legislation.

- (b) the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement.
- (c) any law relating to Employment Practices.

For the purpose of this Exclusion 5.7, the term 'worker' means any person deemed to be employed by You pursuant to any Workers Compensation law or legislation. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Your workers;

5.8 Faulty or Incomplete Work

The cost of performing, completing, correcting or improving any work undertaken by You or on Your behalf, but this Exclusion 5.8 does not apply to Personal Injury or Property Damage resulting from such unperformed, incomplete, incorrect or unimproved work.

5.9 Fines, Penalties, Punitive, Exemplary or Aggravated Damages

Liability for any fines, penalties, punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

5.10 Libel and Slander

Liability for libel and slander:

- (a) resulting from statements made prior to the commencement of the Period of Insurance;
- (b) resulting from any statement made at Your direction where You know or reasonably suspect the statement or part of the statement to be false;
- (c) incurred by You if the Insured Business is advertising, broadcasting, publishing or telecasting.

5.11 Liquidated Damages

Liability arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that the liability would have attached in the absence of such clauses or warranties.

5.12 Loss of Use

Liability for loss of use of tangible property, which has not been physically lost, damaged or destroyed, directly arising out of:

- (a) a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- (b) the failure of any Products or work performed by You or on Your behalf to meet the level of performance, purpose, quality, fitness, longevity, or durability expressly or impliedly warranted or represented by You. However this Exclusion 5.12 (b) shall not apply to loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such Insured Products or work have been put to use by any person or organisation other than You.

5.13 Owned Property

Property Damage to property owned by You.

5.14 Pollution

Liability caused by, arising directly or indirectly from or in any way connected with:

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water;
- (b) the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants.

Provided that with respect to liability incurred outside North America, Exclusion 5.14 shall not apply where such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place during the Period of Insurance. Exclusion 5.14 will apply to any liability incurred in North America regardless of how it arises.

5. EXCLUSIONS (continued)

5.15 Products Defect

Liability caused by, arising from or in any way connected with Property Damage to any Products where such Property Damage is directly caused by a fault or defect in the Products; however, this Exclusion 5.15 will only apply to Property Damage to the specific part of the Product which directly causes the damage due to its faulty or defective nature.

5.16 Products Guarantee

Liability directly or indirectly caused by, arising from or in any way connected with any warranty or guarantee by You or on Your behalf in relation to any Insured Product. However this Exclusion 5.16 shall not apply to the product safety, product standards or product information requirements of any Commonwealth State or Territory legislation.

5.17 Products Recall

Liability for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products, where such Products are withdrawn or recalled from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.

5.18 Professional Liability

Liability caused by or arising out of any breach of duty owed in a professional capacity or any error or omission connected therewith, by You or any person for whose breaches You may be held legally liable. However, this Exclusion shall not apply to any claim for Personal Injury or Property Damage arising out of:

- (a) the rendering of or failure to render professional medical advice by Medical Persons employed by the Insured to provide first aid at Your premises where Your business or profession does not involve the provision of medical treatment; or
- (b) professional advice or services provided by You without charging a fee; or
- (c) advice given by You in respect of the use or storage of the Products.

5.19 Property in Physical or Legal Control

Liability for Property Damage to property owned by, leased, hired, on loan or rented to You or otherwise in Your physical or legal control other than:

- (a) premises or part of the premises (including the contents of such premises) leased or rented to You, or temporarily occupied by You for the purpose of the Insured Business, but no indemnity is granted if You have assumed the responsibility to insure such premises;
- (b) premises temporarily occupied by You (including the contents of such premises) for the purpose of carrying out work in connection with the Insured Business but no indemnity is granted for physical damage to or destruction of that part of any premises or contents on which You have been working if such physical damage or destruction arises from such work;
- (c) any other property temporarily in Your possession for the purpose of being worked upon, but no indemnity is granted for physical damage to or destruction of that part of any property on which You have been working if such physical damage or destruction arises from such work;
- (d) any Vehicle (including its contents, spare parts and accessories while they are in or on a Vehicle) not belonging to or used by You, whilst such Vehicle is in a car park owned or operated by You provided that You do not operate the car park for reward, as a principal part of the Insured Business;
- (e) the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or Employees, or the clothing and personal effects of any of Your visitors;

- (f) any property (except property owned by You) not mentioned above whilst in Your physical or legal care, custody or control where You have accepted or assumed legal liability for such property other than under a contract. Our liability to pay Compensation under this clause 5.19(f) is limited to \$500,000 for any one Occurrence during the Period of Insurance.

5.20 Radioactive Contamination

Liability directly or indirectly caused by, arising from or in any way connected with:

- (a) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon or device employing atomic or nuclear fission or fusion or other like reaction or radioactive force or matter; or
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to the above mentioned liability.

5.21 Terrorism

Any death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with:

- (a) any act of Terrorism regardless of any other contributing cause or event; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

5.22 Vehicles

Liability for Personal Injury or Property Damage caused by or arising out of the operation, ownership, possession or use by You of any Vehicle:

- (a) which is registered for use on a public road or which is legally required to be so registered; or
- (b) in respect of which compulsory liability insurance or statutory indemnity is required by legislation, whether or not such insurance has been effected or a statutory indemnity provided.

Provided this Exclusion 5.22 shall not apply:

- (i) to Personal Injury where that compulsory liability insurance or statutory indemnity does not provide indemnity.
- (ii) where the reason or reasons why the compulsory liability insurance or statutory indemnity does not provide indemnity for Personal Injury or Property Damage do not involve any breach by You of any legislation relating to Vehicles; or
- (iii) where the Personal Injury or Property Damage arises as a result of the use of any Vehicle (including any tool or plant forming part of or attached to or used in connection with such Vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or any Worksite; or
- (iv) where the Personal Injury or Property Damage arises out of or in connection with the loading or unloading of any Vehicle, or from the delivery or collection of goods by any Vehicle; or
- (v) where the Personal Injury or Property Damage arises as a result of the use of any Vehicle temporarily in Your care, custody and control for the purpose of parking.

5. EXCLUSIONS (continued)

5.23 War

Liability directly or indirectly caused by, arising from or in any way connected with:

- (a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war; or
- (b) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.

5.24 Watercraft

Liability directly or indirectly caused by, arising from or in any way connected with the ownership, maintenance, operation or use by You of any Watercraft exceeding 23 metres in length.

However this Exclusion 5.24 shall not apply with regard to claims arising out of:

- (a) Watercraft used in operations carried out by any independent contractor for whose conduct You may be held liable;
- (b) Watercraft owned and operated by others and used by You for business entertainment;
- (c) floating jetties, floating pontoons or bouys.

6. CONDITIONS

6.1 Acquisitions

Notwithstanding anything contained herein to the contrary the indemnity provided by this Policy extends to include properties, assets, companies or firms formed or acquired by You or of which You assume management responsibility, provided that:

- (a) the nature or activities of such properties, assets, companies or firms are consistent with the description of Insured Business as stated in the Schedule; or
- (b) where the nature or activities of such property, assets, companies or firms are inconsistent with the description of the Insured Business as stated in the Schedule, We must be notified in writing not more than ninety (90) days after the formation, acquisition or assumption of management responsibility.

Provided that:

- (i) We reserve the right to vary the terms of the Policy and charge any additional premium deemed appropriate in the circumstances.
- (ii) no indemnity shall be granted in respect of claims for Personal Injury, Property Damage or Advertising Injury where such injury or damage occurred prior to the date of such acquisition, formation or assumption of management responsibility.
- (iii) this automatic provisional cover shall not apply to individuals, companies or firms domiciled in North America, property or assets located in North America or operations or activities in North America.

6.2 Bankruptcy or Insolvency

We shall not be relieved from the payment of any claims by reason of Your becoming bankrupt or insolvent.

In case of the execution against You of any final judgement covered by this Policy being returned 'unsatisfied' by reason of bankruptcy or insolvency, then an action may be maintained by the litigant whose action was successful against You or that litigant's representatives against Us in the same manner and to the same extent as it could have been brought against You subject always to the terms and conditions of the Policy and the Limit of Liability.

6.3 Cancellation

- (a) You may cancel this Policy at any time by giving written notice to Us. We will refund to the Insured the pro-rata premium less a short-period premium rate of 10% calculated on the unexpired Period of Insurance from the date of cancellation.
- (b) We may also cancel this Policy in any of the circumstances permitted by the *Insurance Contracts Act 1984 (Cth)*. In the event of the Policy being cancelled by Us, a refund will be paid to the Insured for the pro-rata premium calculated on the unexpired Period of Insurance from the date of cancellation.

6.4 Claims Notification and Procedures

You shall:

- (a) without delay provide Us with full written particulars of every Occurrence, circumstance, claim, writ, summons, proceedings, impending prosecution, inquest and the like in respect of which there may arise liability under the Policy;
- (b) use Your best endeavours to preserve any damaged or defective property which may prove necessary or useful by way of evidence in connection with any claim;
- (c) so far as may be reasonably practicable, make no alteration or repair to any premises, machinery, fittings, appliances or plant until We have had an opportunity to inspect them and have given Our written consent, except in order to prevent further Personal injury, Property Damage or Advertising Injury;
- (d) in the event of an Occurrence, at Your own expense take all reasonable precautions to prevent further Personal Injury, Property Damage or Advertising Injury arising out of the same or similar circumstances, but such mitigation costs shall not be recoverable under this Policy;
- (e) not make any admission, offer, promise or payment in connection with any Occurrence or claim without Our written consent;
- (f) give to Us all information, statements, documents and assistance as may reasonably be required in the prosecution, defence or settlement of any claim at Your own expense.

We may take over and conduct in Your name the defence or settlement of any claim or issue legal proceedings for damages or recovery of any amounts paid by Us under this Policy. We will have full discretion in the conduct of any legal proceedings and in the settlement of any claim.

6.5 Currency

The currency applicable to this Policy shall be in Australian Dollars (AUD) and all references to dollar amounts will be taken to be AUD unless otherwise stated.

6.6 Cross Liabilities

Where the Insured comprises more than one legal entity, each of those legal entities shall be treated as if a separate Policy had been issued to each of them. Provided that the amount payable by Us in respect of any one claim or series of claims arising out of one Occurrence or in the aggregate, as the case may be, shall not exceed the Limit of Liability as specified in the Schedule regardless of the number of legal entities that comprise the Insured.

6.7 Deductible

The amount shown in the Schedule as a 'Deductible' shall be the first amount payable for all claims arising out of any one Occurrence which is to be borne by You including amounts payable under Section 3 of this Policy.

6. CONDITIONS (continued)

6.8 Discharge of Liabilities

We may at any time pay to You in respect of all claims against You arising directly or indirectly from the one source or original cause:

- (a) the Limit of Liability or such limit specified in this Policy in respect thereof (after deduction of any amount or amounts already paid in respect thereof); or
- (b) any lesser amount for which the claim or claims can be settled.

Upon such payment We shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for costs, charges and expenses incurred by Us or You with Our prior written consent.

6.9 GST (Goods & Services Tax)

All of the amounts insured by this Policy exclude GST. Any claim settlements, up to the total of all amounts insured, will exclude GST. However, if there is a shortfall between the GST component of any claim and the amount of the input tax credit which You are entitled to, We will pay this shortfall in addition to the claim settlement.

We will not be liable to pay any GST, or any fine, penalty or charge that You are liable for where that liability arises out of Your or Your agent's misrepresentation of, or failure to disclose, Your proper input tax credit entitlement in the settlement of any claim or premium relating to the Policy.

6.10 Inspection and audit

We shall have the right, but not the obligation, to inspect Your premises and operations at any reasonable time. Neither, Our right to make an inspection, nor the failure to make an inspection, nor the making of an inspection, nor any report of any inspection shall constitute an undertaking or representation by Us on Your behalf or for Your or others benefit, to determine or warrant that such premises or operations are safe or healthful or fit for use, or fit for a particular purpose, or compliant with any law, rule or regulation.

6.11 Policy Law

All disputes in relation to this Policy shall be determined by Australian Courts, and in accordance with the laws of the State or Territory of Australia in which this Policy is issued.

6.12 Headings

Headings have been included for ease of reference and the Terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

6.13 Notice of Change

You must immediately give Us full particulars in writing of any alteration to the Insured Business. You will pay such reasonable additional premium as We may deem appropriate arising from such alteration.

6.14 Other Insurance

You must provide Us with full particulars of any other insurance which provides indemnity, in full or in part, for any of the liabilities covered under this Policy within the earlier of 21 days of entering into any such other insurance, or at the time this Policy is entered into if the other insurance is in force at that time. In the event of a claim and subject always to the provisions of the *Insurance Contracts Act 1984 (Cth)*, We reserve the right to seek contribution from such other insurance.

6.15 Premium Adjustment

Unless otherwise stated, the Premium charged for this Policy is a flat premium and not subject to adjustment, except in relation to the provisions contained within Conditions 6.1 and 6.13.

6.16 Reasonable Care

You must:

- (a) exercise reasonable care that only competent Employees, independent contractors and agents are engaged and will take reasonable measures to maintain all premises, fittings and plant in safe and sound condition;
- (b) take all reasonable precautions to:
 - (i) prevent any Personal Injury, Property Damage or Advertising Injury;
 - (ii) prevent the manufacture, sale or supply of defective Products; and
 - (iii) comply and ensure that Your Employees, independent contractors and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- (c) take reasonable action to trace, recall or modify any Products containing any defect or deficiency of which You know or have reason to suspect has any defect or deficiency. Such reasonable action to trace, recall or modify any Products shall be undertaken at Your expense.

6.17 Singular and plural

In this Policy, words importing the singular include the plural and the plural the singular, unless the context requires an alternative construction.

6.18 Subrogation

In the event of a payment to You or on Your behalf under this Policy We shall be subrogated to all Your rights of recovery against any person or organisation.

At Our request and expense, You shall do all things reasonably required by Us for the purpose of enforcing any rights and remedies or of obtaining indemnity from other parties to which We are entitled pursuant to this Policy.

Any recovery made by Us will be retained by Us in respect to any claim and expense payments, including the costs of recovery, made under this Policy. Any recovery amount in excess of such outlays shall be paid to You.

7. DEFINITIONS

7.1 **Advertising Injury** means:

- (a) libel or slander; or
- (b) any infringement of copyright or passing off of title or slogan; or
- (c) unfair competition, or idea misappropriation contrary to an implied contract; or
- (d) invasion or breach of privacy,

arising from any advertisement, publicity article, broadcast or telecast provided it is caused by or arises out of Your advertising activities.

7.2 **Aircraft** means any craft or object designed to travel through air or space, other than model Aircraft.

7.3 **Compensation** means monies paid or agreed to be paid as a result of any judgment, award or settlement for Personal Injury, Property Damage or Advertising Injury.

7.4 **Electronic Data** means any facts, concepts or information converted to a form usable for communications or displays or distribution or processing by electronic or electromechanical data processing or electronically controlled equipment which includes but not limited to programs or software or other coded instructions for such equipment.

7.5 **Employee** means any person who is employed by the Insured or in respect of whom the Insured is required to have cover for Compensation under any relevant Workers' Compensation Act or ordinance.

7.6 **Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your Employees.

7.7 **General Liability** means Your legal liability for Personal Injury, Property Damage or Advertising Injury caused by or arising out of any Occurrence happening in connection with the Insured Business other than Products Liability.

7.8 **Geographical Limits** means anywhere in the World, except for North America where the Policy will only apply in respect of:

- (a) Products exported to such countries; and/or
- (b) travelling Employees whose normal place of residence is outside such countries.

7.9 **Hovercraft** means any vessel, craft or device made or intended to float on or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

7.10 **Incidental Contracts** means:

- (a) any written rental agreement for the lease of real or personal property, not containing an obligation to insure such property or for You to be strictly liable regardless of fault;
- (b) any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communications services or other essential services, except those in connection with work done by You for such authorities or entities;
- (c) any written contract with any railway authority for the loading, unloading or transport of Your Products, including any contract relating to the operation of railway sidings;
- (d) those contracts specifically designated in the Policy Schedule.

7.11 Insured means

- (a) the individuals, companies or firms specified in the Schedule as the 'Insured';
- (b) all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Insured;
- (c) all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Insured and/or any other organisations under the control of the Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Insured after the commencement of the Period of Insurance;
- (d) every subsidiary and/or controlled corporation and/or other organisation of the Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary and/or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to such divestment.

7.12 Insured Business means all activities involved in the business specified in the Schedule and shall include:

- (a) the ownership and tenancy of premises by the Insured ;
- (b) the provision of any sponsorship, charities, galas, first aid, medical, ambulance or fire fighting services by or on behalf of the Insured and any of the persons mentioned in 7.32 (f);
- (c) private work undertaken by Employees for any director, partner, proprietors, officers or executives of the Insured;
- (d) the provision of any canteen, social and/or sporting club or welfare and/or child care facilities by or on behalf of the Insured and any of the persons mentioned in 7.32 (f), which are primarily for the benefit of Employees.

7.13 Limit of Liability means the limit of liability as specified in the Schedule.**7.14 Medical Persons** means qualified medical persons, including but not limited to, medical practitioners, medical nurses, dentists and first aid attendants.**7.15 North America** means

- (a) the United States of America and the Dominion of Canada;
- (b) any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- (c) any country or territory subject to laws of the United states of America or the Dominion of Canada.

7.16 Occurrence means an event including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Property Damage or Advertising Injury that is neither expected nor intended (except for matters set out in item 7.18 (e)) by You.

With respect to Personal Injury and Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

7.17 Period of Insurance means the period specified in the Schedule.

7. DEFINITIONS (continued)

7.18 **Personal Injury** means:

- (a) bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and mental injury, including loss of consortium or services resulting therefrom;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) libel or slander unless arising out of Advertising Injury;
- (d) wrongful entry or wrongful eviction or other invasion of right of privacy;
- (e) assault and battery which was not committed by You or at Your direction, unless committed for the reasonably proportionate purpose of preventing or eliminating danger to persons or property.

7.19 **Policy** means this policy wording, the most recent Schedule and any written Endorsements to the Policy issued by Us.

7.20 **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste material. 'Waste material' includes material to be recycled, reconditioned or reclaimed.

7.21 **Products** means anything (after it has ceased to be in Your physical possession or legal control), manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Insured Business), including any packaging or containers thereof, also including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such Products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Insured Business including discontinued Products.

However, Products do not include:

- (i) food and beverage supplied by You or on Your behalf primarily to Employees as a staff benefit;
- (ii) any vending machine or any other property rented to or located for use of others but not sold by You.

Any claims made against You in respect of Personal Injury or Property Damage arising out of an Occurrence in connection with items specified in (i) and (ii) above shall be regarded as General Liability claims hereunder.

7.22 **Products Liability** means Your legal liability for Personal Injury or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such Products, but only where such Personal Injury or Property Damage occurs away from the premises owned or leased by or rented to You and after physical possession of such Products has been relinquished to others.

7.23 **Property Damage** means:

- (a) physical loss, destruction of or damage to tangible property, including loss of use from such physical loss, destruction or damage; or
- (b) loss of use of tangible property which has not been physically lost, destroyed or damaged.

7.24 **Schedule** means the most current Schedule attachment which forms part of this Policy and which specifies the policy number, issued by Us.

7.25 **Stand-Alone Superannuation Fund** means means a superannuation fund or pension fund established by the Insured under its own trust structure and either managed by them or on their behalf. It does not include an industry fund, a wholesale master trust, a retail master trust, or public sector employees' funds.

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

- 7.27 Tool of Trade** means a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.
- 7.28 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 to be utilised in conjunction with or drawn by any such machine.
- 7.29 Watercraft** means any vessel, craft or thing made or intended to float on or in or travel through water, other than model boats.
- 7.30 We, Us, Our** means Wesfarmers General Insurance Limited, ABN 24 000 036 279, AFS Licence No. 241461, trading as Lumley Insurance.
- 7.31 Worksite** means any premises or site where any work is performed for or in connection with the Insured Business together with all areas surrounding such premises or site or all areas in between such premises or site that You use in connection with such work.
- 7.32 You and Your** means:
- (a) the Insured;
 - (b) every past, present or future director, shareholder, partner, proprietor, officer, executive or Employee of the Insured (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with the Insured Business), or work experience persons or volunteers while such persons are acting for or on behalf of the Insured or within the scope of their duties in such capacity;
 - (c) any Employer Stand-Alone Superannuation Fund managed by the Insured, and the trustees and the directors of the trustee of such fund, but not any investment or retirement fund managers;
 - (d) every principal in respect of liability of such principal arising out of:
 - (i) the performance by or on behalf of the Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limit of Liability as are provided by this Policy;
 - (ii) any Products sold or supplied by the Insured, but only in respect of the Insured's own acts or omissions in connection with such Products and in any event only for such coverage and Limit of Liability as are provided by this Policy;
 - (e) every person, corporation, organisation, trustee or estate to whom or to which the Insured is obligated by reason of law, whether express or implied, to provide insurance such as is afforded by this Policy, but only to the extent required by such law other than by liability created by a contract and in any event only for such coverage and Limit of Liability as are provided by this Policy;
 - (f) every officer, member, Employee or voluntary helper of the Insured whilst working in a canteen, social or sporting club, or providing first aid, medical, ambulance or fire fighting services, or running Employee charities, welfare or child care facilities but only while they are working, providing or running the service in question in their capacity as such an officer, member, Employee or voluntary helper;
 - (g) any director, partner, proprietor, officer or executive of the Insured in respect of private work undertaken by any Employee for such person and any Employee whilst actually undertaking such work;
 - (h) the estates, legal representatives, heirs or assigns of:
 - (i) any deceased or insolvent persons; or
 - (ii) persons who are unable to manage their own affairs by reason of mental disorder or incapacity; who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clause h (i) and h (ii) above;
 - (i) every party including joint venture companies and partnerships to whom the Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such coverage and Limit of Liability as are provided by this Policy.

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