

contractors mobile machinery policy



WESFARMERS GENERAL INSURANCE LIMITED

ABN 24 000 036 279

Email: general@lumley.com.au

Website: www.lumley.com.au

New South Wales

Lumley House
Level 9, 309 Kent Street
Sydney NSW 2000
Phone: (02) 9248 1111
Fax: (02) 9248 1122

Suite 19, 50 Glebe Road
The Junction
Newcastle NSW 2291
Phone: (02) 4925 7500
Fax: (02) 4940 0295

Victoria

Level 3, 99 King Street
Melbourne VIC 3000
Phone (03) 8627 4333
Fax: (03) 8627 4312

Australian Capital Territory

Level 4, 10 Rudd Street
Canberra City ACT 2601
Phone: (02) 6279 0333
Fax: (02) 6279 0330

Tasmania

Level 11, 27 Paterson Street
Launceston TAS 7250
Phone: (03) 6331 5844
Fax: (03) 6331 1370

South Australia

465 Pulteney Street
Adelaide SA 5000
Phone: (08) 8228 1700
Fax (08) 8228 1777

Western Australia

Level 9, 50 St George's Terrace
Perth WA 6000
Phone: (08) 9220 8222
Fax: (08) 9220 8251

Queensland

Level 2, 99 Melbourne Street
South Brisbane QLD 4101
Phone: (07) 3307 4800
Fax: (07) 3307 4899

Level 5, Northtown Tower
Flinders Mall
Townsville QLD 4810
Phone: (07) 4722 6000
Fax: (07) 4724 4398

North Territory

Level 2, Beagle House
38 Mitchell Street
Darwin NT 0800
Phone (08) 8946 4600
Fax (08) 8946 4666

Contractors Mobile Machinery Policy

IMPORTANT INFORMATION ABOUT THE POLICY

Thank you for choosing the Lumley Insurance "Contractors Mobile Machinery" Policy. Please read the Policy carefully to find out your rights and duties and what is or is not insured. If you want to know anything about the insurance or want to change it, please contact your broker or us.

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

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

Your duty however does not require disclosure of matter:

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

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

THE AGREEMENT

After you have paid the premium, we will insure you against Loss and legal liability (as set out in the Policy) which occurs in Australia during the Period of Insurance.

DEFINITIONS

"Accident" means an event that you did not expect or intend.

"Dry Hire" means hired out by you without your driver or operator.

"Excess" means the amount (which excludes GST) specified in the Schedule and elsewhere in the Policy which you must first contribute to each and every claim.

"GST" means Goods and Services Tax.

GST Note: All 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 your claim and the amount of input tax credit 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 arising out of your misrepresentation of, or failure to disclose, your proper input tax credit entitlement in the settlement of any claim or premium relating to the Policy.

"Loss" means sudden physical loss or damage caused by Accident.

"Machine" means the machine specified in the Schedule.

"Period of Insurance" means the period specified in the most recent Schedule or the subsequent period for which the Policy has been renewed. A new Period of Insurance begins each time the Policy is renewed.

"Policy" means this document, the Schedule and any other notice we give you in writing.

"Schedule" means the attachment which forms part of the Policy and specifies the Policy number and other details of the insurance.

"we", "us", "our", and "Lumley Insurance" means Wesfarmers General Insurance Limited ABN 24 000 036 279, trading as Lumley Insurance.

"you", "your" means anyone insured under the Policy.

SECTION 1 - THE MACHINE

If Loss happens to the Machine by Accident, at our option, we will pay you:

- (a) the cost of repairing or replacing the Machine, or
- (b) the Machine's market value immediately before Loss occurred, or
- (c) the sum insured specified in the Schedule.

However, if the Machine was insured for less than 90% of its market value at the time of Accident, the cost of repairing or replacing the Machine will be limited to the same proportion of the cost as the sum insured bears to 90% of the Machine's market value immediately before Loss occurred. Nothing contained in this clause shall increase the sum insured specified in the Schedule.

SECTION 1 - EXTENSIONS

Each extension is subject to the terms of the Policy in so far as they can apply.

Accessories, Tools and Spare Parts

Where the Machine has sustained insured loss or damage, we will also pay you for Loss to accessories, tools or spare parts that were attached to or within the Machine at the time of Loss subject to a maximum of \$2,000 in respect of any one such item but limited in total to a maximum of 5% of the sum insured on the Machine.

Protection and Removal

Where the Machine has sustained insured loss or damage, we will also pay you for the reasonable cost of protecting and removing the Machine to the nearest repairer or place of safety, or to any other location to which we agree.

Signwriting

Where the Machine has sustained insured loss or damage, we will also pay you for the cost of restoring any signwriting, advertising signs and the like which formed a permanent part of the Machine at the time of Accident, and which suffered Loss as a direct result of the same Accident.

Tyre Replacement

Where, as a direct result of Accident, any tyre on the Machine is so physically damaged that it cannot be safely used again, we will pay the cost of replacing it with a new one of similar make and specification. However, we will not pay if the damaged tyre was a recap or a retread or had a remaining tread depth, immediately before Accident, less than the minimum legal requirement.

Expediting Expenses

Where the Machine has sustained insured loss or damage, in addition to the sum insured, we will pay the cost of overtime, nightwork, work on public holidays, express freight and air freight (by a recognised scheduled flight) up to 50% of the amount otherwise payable to a maximum of \$5000.

Dry Hire

We will insure you for Loss to the Machine whilst on Dry Hire provided that:

- (a) you have conditions of hire in place making the hirer responsible for Loss, and
- (b) the hire agreement is not subject to any damage waiver, or conditions restricting our rights of subrogation.

SECTION 1 - EXCLUSIONS

This section of the Policy does not insure:

1. damage to the Machine's tyres caused by applying its brakes or by punctures, cuts or bursting during normal use.
2. theft of, or further damage to, the Machine after Loss unless you have taken precautions to protect or safeguard the Machine.
3. any pure financial loss, such as loss of use of the Machine, loss of profit or increased working costs.
4. Loss caused by failure to provide the Machine with adequate oil, coolant or lubrication.
5. Loss to any part of the Machine which has sustained wear and tear, corrosion or mechanical, electrical or electronic breakdown.
6. Loss resulting from theft of the Machine by anyone:
 - (a) posing as a prospective buyer
 - (b) to whom you have entrusted the Machine under any hire, hire purchase or lease agreement
 - (c) in whose debt the Machine stands as security under any agreement.
7. Loss resulting from any fault in, or failure of, the design or specification of the Machine.
8. Loss resulting from the Machine:
 - (a) undergoing a test of any kind except as required by law.
 - (b) being used, operated or prepared for operation in a manner contrary to the manufacturer's instructions or guidelines.
 - (c) being used or operated in a manner or for a purpose other than that for which it was designed.
9. Loss resulting from foreign matter having been maliciously placed in the Machine whilst unattended unless such Loss is accompanied by violent and forcible entry to a locked building, compound or to any locking device on the Machine through which entry was gained.
10. Loss caused by explosion or collapse of any pressure vessel in or on the Machine unless the vessel was, at the time of Loss, certified in accordance with the law.

SECTION 2 - LEGAL LIABILITY

This section of the Policy applies only if the Machine is registered for use on public roads. It will not operate unless an amount is specified for section 2 in the Schedule.

For the purpose of this section of the Policy, "you" includes:

- (a) anyone using or in charge of the Machine with your consent.
- (b) any authorised passenger of the Machine.
- (c) your employer or principal where the Machine was, at the relevant time, driven on their behalf with your consent.

We will insure you for legal liability arising out of loss of or damage to property caused by Accident in connection with the Machine. However, we will not pay more than the amount specified in the Schedule in respect of all liability (including liability insured under the extensions) arising from any one Accident.

SECTION 2 - EXTENSIONS

Each extension is subject to the terms of the Policy in so far as they can apply.

Bodily Injury Liability

We will insure you for legal liability arising out of bodily injury (including resulting death) caused by Accident in connection with the Machine, but this extension does not apply:

- (a) where you are partly or wholly insured under any compulsory statutory insurance scheme or accident compensation scheme, or would have been so insured but for failure to:
 - (i) insure or register the Machine, or
 - (ii) lodge a claim, or
 - (iii) comply with a term or condition in accordance with the requirements of any such scheme.
- (b) to liability directly or indirectly arising out of anyone having inhaled asbestos fibres.
- (c) to liability arising out of death or bodily injury to anyone who, at the time of Accident, was:
 - (i) operating or in charge of the Machine, or
 - (ii) your employee, or
 - (iii) a member of your family.

SECTION 2 - EXTENSIONS (continued)

Cross Liability

We will insure each of you as if issued with a separate Policy, but our aggregate liability to all of you will not exceed the amount specified in the Schedule.

Loss of Use of Undamaged Property

We will insure you for legal liability arising out of Accident in connection with the Machine resulting in loss of use of undamaged property.

Movement of Other Machines

We will insure you for legal liability arising out of damage to property caused by you having moved any other machine that was parked in a position which prevented or impeded the loading, unloading or lawful passage of the Machine.

Removal of Debris

We will insure you for costs necessarily incurred in cleaning up or removing debris resulting from Accident in which goods have fallen or leaked from the Machine. However, we will not pay more than \$25,000 under this extension in respect of any one Accident.

Sea Transportation

We will insure you for any General Average and Salvage Charges incurred as a result of an occurrence involving the Machine while in transit by sea between places in Australia.

Towing Disabled Machines

We will insure you for legal liability arising out of Accident to any trailer or disabled machine being towed by the Machine, but not if it was being towed for any kind of reward.

Trailers

We will insure you for legal liability arising out of Accident in connection with the use of any trailer or disabled machine attached to the Machine.

OPTIONAL EXTENSION (Additional Premium Payable)

Use of the Machine as a Tool of Trade

If the Schedule specifies that this extension applies, exclusion 1 below is deleted. It is a requirement precedent to this extension that:

- (a) the Machine was being used at the time of Accident for the purpose for which it was designed, and
- (b) if excavating, you obtain plans and any other relevant documentary particulars of underground service installations at the site of the work before work begins.

Failure to comply with these requirements voids insurance under this extension.

SECTION 2 - EXCLUSIONS

This section of the Policy does not insure legal liability:

1. arising out of Accident in connection with the use or operation of the Machine for a purpose other than for driving on a public road.
2. arising out of damage to property belonging to you or held by you in trust or in your care, custody or control.
3. for any fines, penalties or aggravated, exemplary or punitive damages.
4. assumed by you by agreement unless the liability would have attached in the absence of the agreement.
5. arising out of damage to property directly or indirectly caused by vibration or by the weakening of support.
6. arising out of:
 - (a) the discharge, dispersal, release or escape of any pollutant, contaminant or irritant into or upon land, the atmosphere, any water course or any body of water, or
 - (b) the cost of removing, nullifying or cleaning up any such pollutant, contaminant or irritant,

unless you can prove that the discharge, dispersal, release or escape was caused by sudden Accident.

Our liability for all sums payable in respect of all claims occurring during any one Period of Insurance, and arising from such discharge, dispersal, release or escape, will not exceed the amount specified in the Schedule.

7. for death or bodily injury if the Machine involved in such death or bodily injury is registered in the Northern Territory of Australia.

GENERAL EXTENSIONS - APPLICABLE TO BOTH SECTIONS

Automatic Inclusion

If you acquire a replacement or additional machine during the Period of Insurance, we will insure that machine under the Policy from the date upon which you acquire it, but you must notify us:

- (a) immediately if the value of the acquired machine exceeds \$250,000, or
- (b) within 30 days of acquisition if the value of the acquired machine does not exceed \$250,000.

Insurance on the replaced Machine will cease from the date upon which you dispose of it.

LPG Conversion

The Policy will not be prejudiced by modification of the Machine to operate on liquefied petroleum gas, provided that the modification has been carried out in accordance with the relevant statutory standard.

Other Interested Parties

The Policy insures any person or organisation who has an insurable interest in the Machine at the time of its loss or damage, but only to the extent of that interest.

GENERAL EXCLUSIONS - APPLICABLE TO BOTH SECTIONS

The Policy does not apply to Loss or legal liability:

1. occurring while you are, or anyone with your consent is, operating the Machine without a current licence, except where permitted by law.
2. caused by or arising out of the use, operation or preparation for operation of the Machine by anyone who, at the time of Accident:
 - (a) was under the influence of any drug or intoxicating liquor, or
 - (b) had a percentage of alcohol or drug in their breath, blood or urine in excess of the percentage permitted by law in the state or territory where the Accident took place, or
 - (c) who subsequently refused to provide or allow the taking of a sample of breath, blood or urine for testing.
3. occurring while the Machine is conveying, towing or lifting a load in excess of that for which the Machine was constructed and/or configured at the time of such occurrence, but this exclusion will not apply unless the excess load caused or contributed to Accident.
4. caused or contributed to by the unsafe or unroadworthy condition of the Machine unless you could not have reasonably detected that condition.
5. during use of the Machine:
 - (a) for any illegal purpose with your knowledge and consent, or
 - (b) for any race, trial, test, contest or preparation for any of them.
6. cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other contributing cause or event:
 - (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 - (b) nuclear reaction, nuclear radiation or radioactive contamination; or
 - (c) riot, strike or lockout; or
 - (d) any act of Terrorism.

For the purpose of this exclusion, Terrorism means an act including but not limited to the use or threat of force or violence by any person or group of people, 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.

The Policy also excludes Loss, 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 any act of Terrorism.

GENERAL EXCLUSIONS - APPLICABLE TO BOTH SECTIONS (continued)

7. resulting from lawful seizure of the Machine or from any other operation of the law.
8. occurring while the Machine is in use for, or is attached to any other machine in use for, the commercial carriage of any substance to which the Australian Code for the Transport of Dangerous Goods by Road or Rail applies, unless the Code has been complied with. In respect of Accident arising out of such use, our liability under section 2 of the Policy will not exceed \$100,000 in any one Period of Insurance.
9. occurring while the Machine is on rails, other than as cargo.
10. occurring while the Machine is totally or partially immersed in the water of an incoming tide.
11. resulting from any operation in which a load is shared, or rigged for sharing, by more than one Machine.
12. caused or contributed to by any alteration after the commencement of the Policy:
 - (a) in your business, which increases the risk of loss damage or liability occurring, or
 - (b) if your interest in the business ceases or changes in nature for whatever reason.

If your business is wound up or carried on by a receiver or permanently discontinued, all insurance under the Policy will cease from that time.

13. caused or contributed to by:
 - (a) the corruption or destruction of data, coding program or software and/or
 - (b) the unavailability of data and malfunction of hardware, software and embedded chips and/or
 - (c) any business interruption losses resulting therefrom.

This exclusion shall not apply where such Loss occurs as a direct result of physical damage which is otherwise insured by the Policy.

GENERAL CONDITIONS - APPLICABLE TO BOTH SECTIONS

If you do not comply with these conditions, then in the event of Loss, we may reduce, or refuse to pay, the claim.

Cancellation

You may cancel the Policy at any time by giving us written notice. We will calculate a premium at our customary short term rates, deduct it from the premium that you have paid, and refund the balance to you. We will not refund any premium in respect of a Machine for which we have paid a total loss claim.

We may cancel the Policy, but only in accordance with the provisions of the Insurance Contracts Act 1984.

GENERAL CONDITIONS - APPLICABLE TO BOTH SECTIONS (continued)

Entitlement

Each person or organisation entitled to insurance under the Policy will be subject to its terms as if such person or organisation were you.

Transfer of Interest

No interest in the Policy can be transferred without our written consent.

Diligence

You must, in the course of operating the Machine:

- (a) take, and ensure that any employee of yours takes, all reasonable steps to prevent incurring any legal liability for bodily injury or loss or damage to property.
- (b) fully comply with the manufacturer's instructions and all legal requirements and relevant work place authority regulations regarding safety, installation and maintenance of property, including but not limited to the **Occupational Health and Safety Act** (applicable in your State), and
- (c) ensure that any safety devices (including, but not limited to, load movement and overload indicators), where fitted or required, are in place, fully operational and correctly calibrated at all times, and in the event of any such safety device being non-operational or otherwise subject to any "tag out" or "warning notice" procedure or requirement, that such tag out or warning notice is duly displayed or otherwise brought to the attention of any employee as well as the appropriate workplace supervisor.

CLAIMS CONDITIONS - APPLICABLE TO BOTH SECTIONS

If you do not comply with these conditions, then in the event of Loss, we may reduce, or refuse to pay, the claim.

- 1. As soon as you know of any event from which a claim under the Policy may arise, you must immediately notify us by telephone and in writing. You must also provide us with full written details as soon as possible. Any court document or other communication that you receive in connection with the event must be passed on to us immediately.
- 2. When Accident occurs, you may appoint a licensed repairer of your choice, but:
 - (a) you must obtain our written consent before having any repairs started.
 - (b) you must make the Machine available for our inspection.
 - (c) we reserve the right to invite, accept, adjust or decline estimates, or to arrange at our expense for the removal of the Machine to other repairers for quotation purposes.

CLAIMS CONDITIONS - APPLICABLE TO BOTH SECTIONS (continued)

3. In respect of Accident, you must:
- (a) not make any admission of fault or offer of payment without our written consent.
 - (b) allow us to have the sole conduct of all negotiations and proceedings.
 - (c) assist and cooperate with us in all matters arising out of Accident as we may reasonably require, including recovery of costs from anyone responsible for Accident.
 - (d) notify the police as soon as possible if Accident has involved theft or malicious damage.
 - (e) notify us of any other insurance that wholly or partly covers the same Loss or liability.

IMPORTANT INFORMATION

Privacy

Lumley Insurance respects your privacy and complies with the Privacy Act and the National Privacy Principles. A copy of our Privacy Statement is available at any of our offices.

Cooling Off

If you are not completely satisfied with the Policy you may cancel it by notifying us in writing within 21 days of insurance having commenced. You will receive a refund of the amount you have paid unless something has occurred for which a claim may become payable under the Policy.

Confirming Transactions

You may contact us or your adviser, in writing (which is always required if you are advising cancellation) or by phone, to confirm any transaction under the Policy. Any transaction will be documented by us as quickly as possible.

Code of Practice

A self-regulatory Code of Practice exists for the general insurance industry, designed to raise overall standards. Lumley Insurance has adopted the Code, details of which can be obtained from your adviser or any of our offices.

Complaints - Internal and External Complaints Procedure

If you do not agree with any decision we make in relation to your insurance, please write to us stating what you disagree with and why.

We will then either resolve or attempt to resolve your complaint immediately or refer the matter to our Internal Dispute Resolution Committee (IDRC).

If you are not satisfied with a claim decision by the IDRC, the matter may be referred to an independent alternate dispute resolution body, the "Financial Ombudsman Service (FOS)" provided it falls within their jurisdiction.

This page is intentionally left blank