



Contaminated product recall

Policy document

Rest of World

PREAMBLE

IMPORTANT: COVERAGE TRIGGERS. It is important for **you** to review this Policy carefully as the trigger for coverage, including when **you** must notify **us** of a claim, under each Section and Insuring Clause may differ.

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Schedule and any Endorsements. This Policy is not complete unless it is signed and a Schedule is attached.

The sections of this Policy are identified by the blue lines across the page with white upper case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper case print are references to specific Insuring Clauses, Sections or Conditions. Other terms in bold lower case print are defined terms and have a special meaning as set forth in the Definitions section and elsewhere. Words stated in the singular will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** have provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below:

INSURING CLAUSES

INSURING CLAUSE 1: PRODUCT RECALL

SECTION A: ACCIDENTAL CONTAMINATION

We agree to reimburse **you** for **product recall costs** as a direct result of any unintentional error by:

- a. **you**; or
- b. a contract manufacturer operating on **your** behalf;

during the **production process** of an **insured product**, that is first discovered during the **period of the policy**, provided that the unintentional error would result or has resulted in the **insured product** causing **bodily injury** or **damage**, if consumed or used as intended.

SECTION B: SUPPLIED CONTAMINATED INGREDIENTS

We agree to reimburse **you** for **product recall costs** as a direct result of:

- a. **you**; or
- b. a contract manufacturer operating on **your** behalf;

incorporating a **supplied contaminated ingredient** during the **production process** of an **insured product**, that is first discovered during the **period of the policy**, provided that the incorporation of

the **supplied contaminated ingredient** would result or has resulted in the **insured product** causing **bodily injury** or **damage**, if consumed or used as intended.

SECTION C: MALICIOUS PRODUCT TAMPER

We agree to reimburse **you** for **product recall costs** as a direct result of the malicious alteration or contamination of an **insured product**, other than malicious alteration or contamination caused by a **cyber peril**, that is first discovered during the **period of the policy**, provided that the malicious alteration or contamination would result or has resulted in the **insured product** causing **bodily injury** or **damage**, if consumed or used as intended.

SECTION D: CYBER MALICIOUS PRODUCT TAMPER

We agree to reimburse **you** for **product recall costs** as a direct result of the malicious alteration or contamination of an **insured product** caused by a **cyber peril**, that is first discovered during the **period of the policy**, provided that the malicious alteration or contamination has resulted in the **insured product** causing **bodily injury** or **damage**, when consumed or used as intended.

SECTION E: PRODUCT EXTORTION

We agree to reimburse **you** for any reasonable sums necessarily incurred as a direct result of **product extortion** first occurring during the **period of the policy** for:

- a. the amount of any payment made by **you** to meet the extortion demand;
- b. any **response consultant** costs;
- c. the cost of offering a reward in order to identify the perpetrators of the threat;
- d. the interest for a loan from a financial institution made to **you** for the purposes of paying any reasonable sums necessarily incurred as a direct result of **product extortion**;
- e. the security guard services recommended by the **response consultants** for a maximum period of 90 days; and
- f. all other reasonable costs necessarily incurred by **you** with **our** prior written agreement.

SECTION F: NEGATIVE PUBLICITY

We agree to reimburse **you** for **product recall costs** as a direct result of any media report made by a **third party**, including social media, first published during the **period of the policy** which names **you** or an **insured product** and alleges an **insured product** has been accidentally or maliciously contaminated and would result or has resulted in the **insured product** causing **bodily injury** or **damage**, if consumed or used as intended.

SECTION G: GOVERNMENT ACTIONS

We agree to reimburse **you** for **product recall costs** as a direct result of an **official authority** enforcing or recommending the recall of an **insured product** on the basis that the **insured product** is likely to result in or has resulted in **bodily injury** or **damage** if consumed or used as intended, first occurring during the **period of the policy**.

INSURING CLAUSE 2: RECTIFICATION COSTS AND BUSINESS INTERRUPTION

SECTION A: PREMISES RECTIFICATION COSTS

We agree to reimburse **you** for any reasonable sums necessarily incurred during the **premises rectification period** as a direct result of a **product recall event** for:

- a. the gross salary of **your** minimum workforce up to a maximum period of six months;
- b. the cleaning, repair and recalibration of machinery and distribution vehicles owned or operated by **you**;
- c. the cleaning and repair of buildings owned or leased by **you**; and
- d. the sub-contracting of manufacturing and distribution.

SECTION B: PRODUCT RECTIFICATION COSTS

We agree to reimburse **you** for any reasonable sums necessarily incurred during the **indemnity period** as a direct result of a **product recall event** for the reworking, remanufacture or replacement costs, and any redistribution, of an **insured product**, whichever costs less.

SECTION C: BUSINESS INTERRUPTION

We agree to reimburse **you** for **your loss of sales** during the **indemnity period** as a direct result of a **product recall event**.

SECTION D: CLAIM PREPARATION COSTS

We agree to pay on **your** behalf any reasonable sums necessarily incurred for professional fees to determine the amount of **your loss of sales** covered under INSURING CLAUSE 2 (SECTION C only).

SECTION E: RETAILER COSTS

We agree to reimburse **you** for **retailer costs** as a direct result of a **product recall event**.

INSURING CLAUSE 3: CRISIS SERVICES AND REHABILITATION COSTS

SECTION A: PRE-EVENT INVESTIGATION COSTS

We agree to reimburse **you** for the reasonable and necessary **investigation costs** incurred by **you**, or a **third party** with **your** prior written agreement, to identify if a **product recall event** has occurred.

SECTION B: CRISIS COMMUNICATION COSTS

We agree to pay any reasonable sums necessarily incurred by **you** for the following services provided by the **response consultants** to respond to a **product recall event**:

- a. public relations and crisis communications;
- b. coordinating **your** operational response;
- c. legal and regulatory advice; and
- d. all other reasonable and necessary services.

SECTION C: REHABILITATION COSTS

We agree to reimburse **you** for any reasonable sums necessarily incurred by **you** during the **indemnity period** for advertising and promotional activity of an **insured product** that has been subject to a **product recall event**.

HOW MUCH WE WILL PAY

The maximum amount payable by **us** in respect of each Section of each Insuring Clause will not exceed the **limit of liability**.

Where more than one claim under this Policy arises from the same original cause or single source or event, all of those claims will be deemed to be one claim and only one **limit of liability** in respect of each Section will be payable. For the avoidance of doubt, with respect to **INSURING CLAUSE 1 (SECTION F only)**, multiple media reports relating to the same issue will be deemed the same original cause.

Where cover for any claim is provided under multiple Sections of **INSURING CLAUSE 1**, only one Section will respond to that claim and this will be the Section with the highest **limit of liability**.

YOUR DEDUCTIBLE

We will only be liable for that part of each and every claim which exceeds the amount of the **deductible**. If any expenditure is incurred by **us** which falls within the amount of the **deductible**, then **you** will reimburse that amount to **us** upon **our** request.

Where more than one claim under this Policy arises from the same original cause or single source or event, all of those claims will be deemed to be one claim and only one **deductible** will apply. For the avoidance of doubt, with respect to **INSURING CLAUSE 1 (SECTION F only)**, multiple media reports relating to the same issue will be deemed the same original cause.

Where cover is provided under multiple Sections or multiple Insuring Clauses only one **deductible** will apply to that claim and this will be the highest **deductible** of the Sections under which cover is provided.

DEFINITIONS

1. "Bodily injury" means
death, bodily injury, physical illness or physical disease of or to any:

- a. person; or
- b. animal, provided that the **insured product** is manufactured specifically for animals.

"**Bodily injury**" does not mean mental injury, mental illness or mental disease.

- 2. "**Claims managers**" means
the claims managers stated in the Schedule.
- 3. "**Cyber peril**" means
any denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or Ransomware) or computer virus.
- 4. "**Damage**" means
physical damage to, or destruction of, tangible property owned by a **third party**, other than damage to the **insured product** or to any product containing the **insured product**.
- 5. "**Deductible**" means
the amount stated as the deductible in the Schedule.
- 6. "**Disposal or destruction costs**" means
the cost to dispose of or destroy an **insured product**, including packaging materials.
- 7. "**Expiry date**" means
the expiry date stated in the Schedule.
- 8. "**Inception date**" means
the inception date stated in the Schedule.
- 9. "**Indemnity period**" means
the period beginning at the date the **product recall event** is first discovered and lasting for the indemnity period stated in the Schedule.
- 10. "**Insured product**" means
 - a. the products stated as the insured products in the Schedule, that are manufactured or distributed by **you** or on **your** behalf, including any of their ingredients and components; and
 - b. any **new product**.
- 11. "**Investigation costs**" means
the costs to physically examine and inspect, including any reasonable and necessary testing, the following:
 - a. an **insured product**;

- b. machinery and distribution vehicles owned or operated by **you**; and
- c. buildings owned or leased by **you**.

12. **"Labour costs"** means

- a. the overtime paid to **your** employees to recall an **insured product**; and
- b. the cost to hire temporary employees to recall an **insured product**.

13. **"Limit of liability"** means

the amount stated as the limit of liability in the Schedule.

14. **"Loss of sales"** means

your income before tax that, had the incident which gave rise to the claim not occurred, would have been generated directly from the sales of **your insured products** during the **indemnity period**, less:

- a. actual revenue (less sales tax) generated directly from the sales of **your insured products** during the **indemnity period**; and
- b. any saving in costs as a result of the reduction in revenue.

15. **"New product"** means

any product first manufactured or distributed by **you** or on **your** behalf during the **period of the policy** which complies with all of the following:

- a. has been tested to the same quality standards as the insured products stated in the Schedule;
- b. utilises the same **production process** as the insured products stated in the Schedule; and
- c. is used or consumed in the same way as the insured products stated in the Schedule.

16. **"Official authority"** means

any governmental, regulatory or law enforcement agency.

17. **"Period of the policy"** means

the period between the **inception date** and the **expiry date** or until the Policy is cancelled in accordance with **CONDITION 3**.

18. **"Premises rectification period"** means

the period where **your** premises are partially or fully closed for necessary cleaning or repairs.

19. **"Premium"** means

the amount stated as the premium in the Schedule and any subsequent adjustments.

20. **"Product extortion"** means

an extortion demand made directly against **you** by an individual or group who threaten to do any of the following if the demand is not met:

- a. alter, contaminate or render substandard the products manufactured or distributed by **you**; or
- b. publicise that the products manufactured or distributed by **you** have been or will be altered, contaminated or rendered substandard.

21. **"Production process"** means

the process for manufacture, blending, mixing, compounding, testing, handling, packaging, production, storage, distribution and labelling, including the instructions for use.

22. **"Product recall costs"** means

the reasonable sums necessarily incurred by **you** or a **third party** on **your** behalf for:

- a. investigation costs;
- b. storage and transportation costs;
- c. labour costs;
- d. disposal or destruction costs; and
- e. the cancellation of promotional advertising and retail shelf slotting fees.

23. **"Product recall event"** means

any act or event the subject of **INSURING CLAUSE 1** of this Policy for which **you** have purchased coverage.

24. **"Replacement costs"** means

the value of any **insured product** which has been recalled or destroyed, including packaging materials, that cannot be reused, calculated on an actual cash value basis or replacement cost basis, whichever is less.

25. **"Response consultants"** means

- a. the response consultants stated in the Schedule; or
- b. any other crisis management consultants retained by **you** with **our** prior written agreement.

26. **"Retailer costs"** means

any reasonable sums necessarily incurred by a retailer of an **insured product** that **you** are contractually obliged to pay.

"Retailer costs" does not mean **product recall costs**.

27. **"Senior executive officer"** means

your board members, C-level executives, in-house lawyers and risk managers.

28. **"Storage and transportation costs"** means
- a. the cost to rent additional warehouse storage; and
 - b. the cost to transport a recalled **insured product** from any **third party** to a destination designated by **you**.
29. **"Supplied contaminated ingredient"** means
- any ingredient that was contaminated prior to **you** or a contract manufacturer operating on **your** behalf receiving the ingredient.
30. **"Third party"** means
- any person who is not **your** employee or any legal entity that is not **you**.
31. **"We/our/us"** means
- the underwriters stated in the Schedule.
32. **"You/your"** means
- the company named as the insured in the Schedule.

EXCLUSIONS

We will not make any payment under this Policy:

EXCLUSIONS RELATING TO PRODUCT RECALL

In respect of **INSURING CLAUSE 1, SECTIONS F and G**:

1. Carcinogens

arising directly out of any **product recall event** resulting from any **insured product** containing, or an allegation of any **insured product** containing, any;

- a. carcinogen, regardless of whether the carcinogen is known or is shown to have other non-carcinogenic effects; or
- b. genetically modified organism.

EXCLUSIONS RELATING TO ALL INSURING CLAUSES

2. Change of regulation

arising directly out of any change in government or regulatory legislation.

3. Circumstances known at inception

arising directly or indirectly out of any circumstances or occurrences which may give rise to a claim under this Policy of which a **senior executive officer** was aware, or ought reasonably to have been aware, prior to the **inception date**, whether notified under any other insurance or not.

4. Failure to follow instructions

arising directly or indirectly out of the failure by a **third party**, other than a contract manufacturer operating on **your** behalf, to follow instructions for an **insured product** including its maintenance, consumption, storage or use.

5. Failure to take corrective action

for a **product recall event** which occurs after a **senior executive officer** becomes aware of a defect or deviation in the **production process** of an **insured product** and fails to take reasonable steps to rectify the defect or deviation at the time of discovery.

6. Legal actions

for any costs and expenses incurred in the investigation, defence or settlement of a lawsuit, arbitration or mediation made against **you**, including any judgement or award.

7. Nuclear

arising directly or indirectly from or contributed to by:

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.

However, this **EXCLUSION** will not apply to industry processes and techniques that have been approved by an **official authority**.

8. Other insurance

for which **you** are entitled to indemnity under any other insurance except for:

- a. any additional sum which is payable over and above the other insurance where that insurance has been declared to **us**, or
- b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the Policies.

9. Product quality

arising directly out of the appearance, finish, fitness to perform a function, efficiency or durability of an **insured product**, unless this issue would result or has resulted in the **insured product** causing **bodily injury** or **damage**, if consumed or used as intended.

10. Product safety violations

arising directly out of any intentional:

- a. violation by **you** of any applicable laws or regulations, as determined by final adjudication, arbitral tribunal or written admission by **you**; or
- b. failure by **you** to adhere to instructions provided directly to **you** by an **official authority**;

relating to the **production process** of an **insured product**, including the use of any ingredients, components, materials or substances that have been banned or declared unsafe by an **official authority**.

11. Sanctions

or will be deemed to provide any cover, to the extent that the provision of such payment or cover will expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America.

12. Terrorism

arising directly or indirectly out of:

- a. any act or threat of force or violence by an individual or group, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear; or
- b. any action taken in controlling, preventing, suppressing or in any way relating to a. above.

However, this Exclusion will not apply when **you** or an **insured product** are the direct target of a. to b. above.

13. War

arising directly or indirectly out of:

- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or mounting to an uprising, military or usurped power; or
- b. any action taken in controlling, preventing, suppressing or in any way relating to a. above.

14. Wilful or dishonest acts of senior executive officers

arising directly or indirectly out of any wilful, criminal, malicious or dishonest act, error or omission by a **senior executive officer** as determined by final adjudication, arbitral tribunal or written admission.

CONDITIONS

1. What you must do if a product recall event occurs

If any **senior executive officer** believes or becomes aware that a **product recall event** has occurred, **you** must:

- a. retain evidence relating to the **product recall event**, including any samples and test records; and
- b. notify the **claims managers** (a telephone call to the **response consultants** will constitute notification) as soon as is reasonably practicable and where possible, follow their directions. However, this notification must be made no later than the end of any applicable extended reporting period.

Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the **response consultants** of the above could lead to the size of the claim increasing or to **our** rights being restricted. **We** will not be liable for that portion of any claim that is due to any unreasonable delay in **you** notifying the **response consultants** of any **product recall event** in accordance with this Condition.

2. Calculation of loss

In the event of a claim for any financial loss sustained by **you**, **you** must provide the **claims managers** with the calculation of the financial loss including:

- a. how the loss has been calculated and what assumptions have been made; and
- b. supporting documents including account statements, sales projections and invoices.

3. Cancellation

This Policy may be cancelled with 30 days written notice by either **you** or **us**.

If **you** give **us** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect. However, if **you** have made a claim under this Policy there will be no return **premium**.

If **we** give **you** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect.

We also reserve the right of cancellation in the event that any amount due to **us** by **you** remains unpaid more than 60 days beyond the **inception date**. If **we** exercise this right of cancellation it will take effect from 14 days after the date the written notice of cancellation is issued.

The Policy Administration Fee will be deemed fully earned upon inception of the Policy.

4. Extended reporting period

In respect of **INSURING CLAUSE 1**, an Extended Reporting Period of 60 days following the **expiry date** of this Policy will be automatically granted at no additional **premium**. This extended reporting period will cover a **product recall event** occurring during the **period of the policy** and reported to **us** during this 60 day extended reporting period, subject to all other terms and conditions of this Policy.

However, this **CONDITION** will not apply when this Policy is cancelled.

5. Fraudulent claims

If **you** notify **us** of any claim knowing it to be false or fraudulent in any way, **we** will have no responsibility to pay that claim, may recover from **you** any sums paid in respect of that claim and reserve the right to cancel this Policy from the date of the fraudulent act. If **we** exercise this right **we** will not be liable to return any **premium** to **you**. However, this will not affect any claim under this Policy which has been previously notified to **us**.

6. Mergers and acquisitions

If **you** acquire an entity during the **period of the policy** whose annual revenue does not exceed 20% of **your** annual revenue, as stated in its most recent financial statements, cover is automatically extended under this Policy to include the acquired entity's products as **insured products** but only in respect of those products that:

- a. have been tested to the same quality standards as the insured products stated in the Schedule;
- b. utilize the same **production process** as the insured products stated in the Schedule; and
- c. are used or consumed in the same way as the insured products stated in the Schedule.

If **you** acquire an entity during the **period of the policy** whose annual revenue exceeds 20% of **your** annual revenue, as stated in its most recent financial statements, no cover will be provided under this Policy for this entity's products unless **you** give **us** written notice within 30 days of the completion of the acquisition, obtain **our** written agreement to extend coverage, and agree to any additional **premium** and terms of coverage required by **us**.

If during the **period of the policy** **you** consolidate, merge with or are acquired by another entity then all coverage under this Policy will terminate at the date of the consolidation, merger or acquisition unless **you** give **us** written notice within 30 days of the completion of the consolidation, merger or acquisition and agree to any additional **premium** and terms of coverage required by **us**.

7. Salvage and recoveries

You must maintain all of **your** rights of recovery against third parties and make these available to **us** where possible.

In the event of any salvage, recovery or receipt of any monies following any payment for **product recall costs** made by **us** under this Policy, the salvage, recovery or monies will be applied in proportion to the amounts paid by **you** and **us**.

8. Choice of law

This policy will be interpreted under, governed by and construed in all respects in accordance with the law of the jurisdiction of the place of registration of the company stated as the insured in the Schedule and **we** and **you** agree to submit to the exclusive jurisdiction of the courts within the territorial limits and jurisdiction of the place of registration of the company stated as the insured in the Schedule.