



AUSTRALIA
CANADA
IRELAND
ISRAEL
UNITED KINGDOM
UNITED STATES
REST OF WORLD

CRISIS MANAGEMENT PRODUCT RECALL

POLICY DOCUMENT

PREAMBLE

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 include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** 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: PRODUCT SAFETY

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 and notified to **us** 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 used as intended.

SECTION B: PRODUCT GUARANTEE

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 and notified to **us** during the **period of the policy**, provided that the unintentional error would result or has resulted in the **insured product failing to perform**, if used as intended.

SECTION C: GOVERNMENT ACTIONS

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

SECTION D: SOFTWARE PRODUCT SAFETY

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 **software development process** for an **insured product**, that is first discovered and notified to **us** 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 used as intended.

SECTION E: MALICIOUS PRODUCT TAMPER

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

SECTION F: CYBER MALICIOUS PRODUCT TAMPER

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

SECTION G: PRODUCT EXTORTION

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

- a. any **response consultant** costs;
- b. the cost of offering a reward in order to identify the perpetrators of the threat;
- c. 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**;
- d. the security guard services recommended by the **response consultants** for a maximum period of 90 days; and
- e. all other reasonable costs necessarily incurred by **you** with **our** prior written agreement as a direct result of **product extortion**.

SECTION H: NEGATIVE PUBLICITY

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

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** of an **insured product** that has been subject to a **product recall event**.

SECTION D: LEGAL DEFENSE COSTS AND EXPENSES

We agree to pay on **your** behalf **your** reasonable legal costs and expenses in the defence or settlement of any **claim** made against **you** by a **customer** 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 with **our** prior written agreement.

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**, up to a maximum of 150% of **your** advertising and promotional spend for the **insured product** in the 12 months prior to the **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 H 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 H 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 person.

"Bodily injury" does not mean mental injury, mental illness or mental disease.
2. **"Claim"** means
 - a. a written demand for compensation;
 - b. a written request for a retraction or a correction; and
 - c. a threat or initiation of lawsuit.
3. **"Claims managers"** means
the claims managers stated in the Schedule.
4. **"Customer"** means
any **third party** with whom **you** have a contract in place for **your insured product** to be sold or distributed or integrated into their product by them.
5. **"Cyber peril"** means
 - a. denial of service attack;
 - b. hacking attack;

- c. malware infection; or
 - d. computer virus.
- 6. **"Damage/damaged"** means
physical damage to, or destruction of, tangible property owned by a **third party**, other than damage to the **insured product**.
- 7. **"Deductible"** means
the amount stated as the deductible in the Schedule.
- 8. **"Disposal or destruction costs"** means
the cost to dispose of or destroy an **insured product**, including packaging materials.
- 9. **"Expiry date"** means
the expiry date stated in the Schedule.
- 10. **"Failing to perform"** means
failing to meet an explicit, written performance specification for **your insured product** that:
 - a. was agreed between **you** and **your customer** prior to the supply of the **insured product**; and
 - b. relates to the efficiency, durability or mechanical function of the **insured product**.
- 11. **"Inception date"** means
the inception date stated in the Schedule.
- 12. **"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.
- 13. **"Insured product"** means
 - a. the insured products stated in the Schedule; and
 - b. any **new product**.
- 14. **"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**.
- 15. **"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**.
- 16. **"Limit of liability"** means
the amount stated as the limit of liability in the Schedule.
- 17. **"Loss of sales"** means
your reasonably forecasted revenue before tax, less:

- a. actual revenue less sales tax; and
- b. any saving in costs as a result of the reduction in revenue.

18. **"New product"** means

any product first manufactured or distributed by **you** 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** and where applicable, **software development process**, as the insured products stated in the Schedule; and
- c. is used in the same way as the insured products stated in the Schedule.

19. **"Official authority"** means

any governmental, regulatory or law enforcement agency.

20. **"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 2**.

21. **"Premises rectification period"** means

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

22. **"Premium"** means

the amount stated as the premium in the Schedule.

23. **"Product extortion"** means

a demand for cash, goods or services made directly against **you** by an individual or group who threaten to do any of the following if the demand is not met:

- a. tamper with 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 tampered with or rendered substandard.

24. **"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**; and
- d. **disposal or destruction costs**.

25. **"Product recall event"** means

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

26. **"Production process"** means

the process for design, specification, manufacture, testing, packaging, production, storage, distribution and labelling, including the instructions for use.

"Production process" does not mean **software development process**.

27. **"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.
28. **"Response consultants"** means
- the response consultants stated in the Schedule; or
 - any other crisis management consultants retained by **you** with **our** prior written agreement.
29. **"Retroactive date"** means
the retroactive date stated in the Schedule.
30. **"Senior executive officer"** means
your board members, C-level executives, in-house lawyers and risk managers.
31. **"Software development process"** means
the process for design, specification, programming, testing and production of software.
32. **"Storage and transportation costs"** means
- the cost to rent additional warehouse storage; and
 - the cost to transport a recalled **insured product** from any **third party** to a destination designated by **you**.
33. **"Third party"** means
any person who is not **your** employee or any legal entity that is not **you**.
34. **"We/our/us"** means
the underwriters stated in the Schedule.
35. **"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, SECTION D** only:

1. **Cyber peril**

arising directly or indirectly out of any unintentional error which could result or has resulted in a vulnerability in the **insured product** to a **cyber peril**.

In respect of **INSURING CLAUSE 1, SECTIONS C and H** only:

2. **Carcinogen**

arising directly or indirectly out of any carcinogens, regardless of whether such carcinogens are known or shown to have other non-carcinogenic effects, or genetically modified organisms.

EXCLUSIONS RELATING TO ALL INSURING CLAUSES

3. Change of regulation

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

4. 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.

5. 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, storage or use.

6. 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, or **software development process** for, an **insured product** and fails to take reasonable steps to rectify the defect or deviation at the time of discovery.

7. Legal judgments and awards

for any legal judgement or award made against **you**.

8. 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**.

9. 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.

10. 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 used as intended.

However, this **EXCLUSION** will not apply to **INSURING CLAUSE 1, SECTION B**.

11. Product safety violations

arising directly out of:

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

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

12. Retroactive date

arising out of any **insured product** that left **your** care, custody or control before the **retroactive date**.

13. Sanctions

to the extent that the provision of such cover or payment 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.

14. War and terrorism

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 acts 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; and
- c. any action taken in controlling, preventing, suppressing or in any way relating to a. or b. above.

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

15. 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** becomes aware that a **product recall event** has occurred or is believed to have occurred **you** must:

- a. retain evidence relating to the **product recall event**, including any samples and test records;
- b. notify the **response consultants** as soon as is reasonably practicable; and

- c. follow the directions of the **claims managers**.

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. Cancellation

This Policy may be cancelled by **you** if **you** give **us** 30 days written notice or by **us** in accordance with the relevant provisions of the Insurance Contracts Act 1984.

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, subject to a minimum retained amount of 30% of the **Premium**. 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 **we** will notify **you** in writing of the cancellation which will take effect three business days after **your** receipt of the notice.

3. Calculation of loss

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

If **we** are unable to agree with **your** calculation, an appropriate third party expert will be appointed by the **claims managers**.

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.

6. Mergers and acquisitions

During the **period of the policy**, if **you** acquire another entity's assets or liabilities in an amount greater than 20% of **your** assets or liabilities as listed in **your** most recent financial statement then **you** will have no coverage under this Policy for any claim that arises directly or indirectly out of these assets or liabilities unless **you** give **us** written notice within 14 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 **we** have issued an endorsement extending coverage, and **you** have agreed 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. **Disputes resolution**

This Policy does not comply with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred to:

The Managing Director
CFC Underwriting Ltd
85 Gracechurch Street
London EC3V 0AA
United Kingdom
Telephone Number: +44 207 220 8500
Facsimile Number: +44 207 220 8501
Email: enquiries@cfcunderwriting.com

in the first instance. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** should contact:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

If **your** dispute remains unresolved **you** may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes **you** will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

Notwithstanding the above, at **your** request **we** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia and the dispute will be determined in accordance with the law and practice applicable in such Court. Any summons, notice or process to be served upon **us** may be served upon Lloyd's General Representative in Australia, at the address above,

who has authority to accept service and to enter an appearance on **our** behalf, and who is directed at **your** request to give a written undertaking to **you** that he will enter an appearance on **our** behalf.