

# Product Recall – Consumer Goods & Component Parts

## Policy wording





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## STATUTORY NOTICE

### Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- Reduces the risk we insure you for; or
- Is common knowledge; or
- We know or should know as an insurer; or
- We waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### Unusual terms

Please also note the Sanction Limitation General Condition, which prevents the **insurance company** from providing cover, benefits or paying claims where that would expose the **insurance company** to sanctions, prohibitions or restrictions.

### Privacy

Delta Insurance Australia Pty Ltd is committed to protecting your privacy. We have adopted the

Australian Privacy Principles (**APPs**) contained in the Privacy Act 1988 (Cth) (**Privacy Act**). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information.

Any Personal Information collected about you will only be used for the purposes indicated in Delta Insurance Australia's Privacy Policy and only in the instance where you have provided consent to Delta Insurance Australia, or as otherwise required by law.

Delta Insurance Australia will need to collect personal information from you or your insurance agent to assist with assessing your risk in order to provide the insurance that you are applying for.

### Use of your Information

The information collected will be used for the purpose in assisting with underwriting and administering your insurance cover on behalf of the Insurers, Delta Insurance Australia represents. Where reasonable and practicable to do so, Delta Insurance Australia, will collect your Personal Information only from you. In some cases, to verify your identity, Delta Insurance Australia may need to obtain or verify your Personal Information from a third party.

Information collected can also be used towards improving Delta Insurance Australia's customer service, product data research analysis and to advise you of any other products and services that may be of interest to you.

### Security of your information

Your Personal Information is stored in a manner that reasonably protects it from misuse and loss and from unauthorised access, modification or disclosure.

When your Personal Information is no longer needed for the purpose for which it was obtained, Delta Insurance Australia, will take reasonable steps to destroy or permanently de-identify your Personal Information. However, most of the Personal Information is or will be stored in client files which will be kept, by Delta Insurance Australia for a minimum of 7 years.

Whilst underwriting and reviewing your policy, Delta Insurance Australia may share your information with your insurance agent, claims assessors, and to third party administrators providing related services to your insurance policy. Your information will be provided to the Insurer's we represent, based in the UK

and whose details we will provide to you when issuing an insurance quotation.

By providing Delta Insurance Australia with your Personal Information, you are consenting to the collection, use, disclosing and or processing of your personal data for the purposes as described above.

#### Further Information

Delta Insurance Australia understands that you may not want to share with us the information which is requested to review your insurance policy, and this may affect our ability in providing and assessing an insurance policy.

For more information regarding how Delta Insurance Australia collects, stores, uses and discloses your information, please read our privacy policy located at [www.deltainsurance.com.au](http://www.deltainsurance.com.au) or alternatively you can contact us at (07) 3017 4720.

The **insurance company** agrees with the **named insured** in consideration of the payment of, or agreement to pay, the premium and subject to all the provisions of this **policy**.

## COVERAGES

### MANUFACTURING RISK FOR CONSUMER GOODS AND COMPONENT PARTS

To reimburse the **named insured** for any **loss** arising out of a:

- a **design error**; or
- b **supply chain error**; or
- c **manufacturing error**

that would cause a **defect** in or **mislabeled** of an **impacted product** which is first discovered by the **insured** during the **policy period** and reported to the **insurance company** pursuant to the Insured Incident Requirements section of this **policy**.

### RESPONSE SERVICES

To reimburse any **response services** resulting from a potential, suspected or actual **insured incident**, which is first discovered by the **insured** during the **policy period** and reported to the **insurance company** pursuant to the Insured Incident Requirements section of this **policy**.

## ADDITIONAL COVERAGES

### REGULATORY PROCEEDING

To reimburse the **insured** for any **penalties** which the **insured** is legally liable to pay because of a **regulatory proceeding** resulting from an **insured incident** (but not a **cyber incident**) first made against the **insured** during the **policy period** and reported to the **insurance company** pursuant to the Insured Incident Requirements section of this **policy**.

### ADVERSE PUBLICITY

To reimburse the **insured** for any **loss** caused by any **adverse publicity** which is first discovered by the **insured** during the **policy period** and reported to the **insurance company** pursuant to the Insured Incident Requirements section of this **policy**.

### CYBER INCIDENT

To reimburse the **insured** for any **loss** caused by a **cyber incident** which is first discovered by the **insured** during the **policy period** and reported to the **insurance company** pursuant to the Insured Incident Requirements section of this **policy**.

## EXCLUSIONS FROM COVER

This **policy** does not apply to any **loss, penalties** or **response services**:

### ASBESTOS

arising out of, based upon or attributable to asbestos or any materials containing asbestos in whatever form or quantity.

### CRIMINAL, DISHONEST, FRAUDULENT AND MALICIOUS ACTS AND OMISSIONS

arising out of, based upon or attributable to any criminal, dishonest, fraudulent or malicious act or omission, or intentional or knowing violation of the law, if committed by the **responsible person** or by others if the **responsible person** was aware of such conduct or activity.

### CRIMINAL FINES AND PUNITIVE DAMAGES

which constitutes criminal fines or criminal penalties, punitive or exemplary damages imposed by third parties, courts or governmental organisations or agencies.

### CUSTOMER DESIGNS

arising out of, based upon or attributable to any error in design by a **customer**.

### INSURED AGAINST INSURED

arising out of, based upon or attributable to any **claim** brought by or on behalf of any **insured** against any other **insured**.

### LIABILITY FOR BODILY INJURY AND PROPERTY DAMAGE

attributable to or consisting of liability to any third party, including without limitation any consumer of an **impacted product**, for **bodily injury** or **property damage**.

### NATURAL DETERIORATION OR DECOMPOSITION

arising out of, based upon or attributable to the natural deterioration or decomposition of any **insured's product** having passed its specified or reasonably expected expiration date for use or consumption.

### NUCLEAR, RADIATION

arising out of, based upon or attributable to any ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radiological, electromagnetic or nuclear irritant or contaminant.

### PRE-EXISTING CONDITIONS

arising out of, based upon or attributable to any pre-existing condition, circumstance or situation of which any **responsible person** was aware prior to the inception of this **policy**, and which could reasonably have been expected to cause, lead to or result in an **insured incident**.

### RESPONSIBLE PERSON'S KNOWLEDGE

arising out of, based upon or attributable to an **insured incident** that occurs after any **responsible person** has knowledge or should have knowledge of:

- a a **design error**, **supply chain error**, or **manufacturing error**; or
- b circumstances which could give rise to a **defect** in or **mislabeled** of an **impacted product**; or
- c a violation of any governmental law or regulation; or
- d use of materials or substances in the manufacturing process which have been banned or declared unsafe by any governmental entity or authority in

the jurisdiction the **impacted product** is intended to be sold;

and fails to take reasonable corrective action regarding such **defect**, deviation, circumstances or violation.

### RETROACTIVE DATE

arising out of, based upon or attributable to any **insured's product** manufactured prior to the retroactive date shown in the Schedule.

### WAR AND TERRORISM

arising out of, based upon or attributable to, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority or any act of terrorism.

### LIMIT OF INDEMNITY

The Limit of Indemnity specified under this **policy** is specified in the Schedule for "each insured incident" and is the maximum amount payable by the insurance company for all **loss**, **penalties** or **response services**, except for part (a) of the definition of response services (crisis consulting costs), in excess of the Retention, arising from each **insured incident**.

The Limit of Indemnity specified under this **policy** as "in the aggregate" is the maximum amount payable by the **insurance company** for all **loss**, **penalties** or **response services** except for except for part (a) of the definition of response services (crisis consulting costs), in excess of the Retention.

Any **loss**, **penalties** or **response services** except the costs at part (a) crisis consulting costs of **response services**, payable by the **insurance company** will reduce the Limit of Indemnity and may exhaust it.

Where any Sub-Limit of Indemnity is specified in this **policy** or the Schedule, the **insurance company** will have no liability in excess of such Sub-Limit of Indemnity. Any Sub-Limit of Indemnity will be part of, and not in addition to, the Limit of Indemnity.

There will be no obligation to pay any **loss**, **penalties** or **response services** after the Limit of Indemnity has been exhausted, or after deposit of the Limit of Indemnity in a court of competent jurisdiction.



Crisis Consulting costs, part (a) of the definition of **response services**, are in addition to and not subject to the Limits of Indemnity.

## RETENTION

This **policy** applies only to **loss, penalties or response services** in excess of the Retention specified in the Schedule, which will apply separately to each and every **insured incident**. If more than one Coverage or Additional Coverage is triggered only one Retention is payable.

The costs referred to at paragraphs (a) crisis consulting services and (b) investigation services in the definition of **response services** are not subject to a Retention.

## INSURED INCIDENT REQUIREMENTS

### NOTIFICATION OF INSURED INCIDENTS

- a As a condition precedent to coverage under this **policy**, the **named insured** must give notice to the **insurance company** of any potential, suspected or actual **insured incident** as soon as practicable after any **responsible person** first discovers such **insured incident** but in no event later than 45 days after the end of the **policy period**.

Any notice must include:

- i the reasons why the **named insured** reasonably anticipates that such fact or circumstance could give rise to an **insured incident**, and
- ii particulars of the dates, location and nature of the potential, actual or suspected **insured incident**.

Any subsequent **insured incident** reported to the **insurance company** arising from any previously reported potential or suspected **insured incident** will be deemed as having been reported at the time of the earliest notification to the **insurance company** pursuant to this paragraph.

### NOTICE OF A REGULATORY PROCEEDING

As a condition precedent to coverage under this **policy**, the **named insured** must give notice to the **insurance company** of any **regulatory proceeding** as soon as practicable but in no event later than 45 days after the end of the **policy period**.

### NOTICE TO THE INSURANCE COMPANY

All notices to the **insurance company** must be sent either by e-mail to or by mail to the address specified in the Schedule.

## DEFENCE AND SETTLEMENT OF A REGULATORY PROCEEDING

Coverage for a **regulatory proceeding** is provided on an indemnity basis and legal counsel will be mutually agreed by the **named insured** and the **insurance company**, in the absence of agreement, the **insurance company's** decision will be final.

### ASSISTANCE AND COOPERATION

If any actual, potential or suspected **insured incident** is reported by the **named insured** under this **policy**, the **insured** will give all information and assistance to the **insurance company** as it may need to investigate such matters. The **insured** will cooperate with the **insurance company** in responding to such **insured incident**. The **insured** agrees not to take any action which in any way increases the **insurance company's** exposure under this **policy**.

Except where expressly provided for in this **policy**, any costs to provide such information or assistance to the **insurance company** will be at the **insured's** own cost.

### OTHER INSURANCE

The insurance under this **policy** will apply in excess of any other valid and collectible insurance available to any **insured**, including any self-insured retention or deductible of such insurance. This provision will not apply where such other insurance is written only as specific excess insurance over this **policy**.

### SUBROGATION AND RECOVERIES

- a Where the **insurance company** has agreed to pay or has paid an amount under the **policy** it is entitled to exercise any rights the **insured** has against any person or entity in respect of the amount paid or to be paid.
- b The **insured** will do whatever is reasonably necessary to secure and preserve such rights after it becomes aware of a fact or circumstance giving rise to an **insured incident**.
- c The **insured** must, at its own cost, assist the **insurance company** and provide information as the **insurance company** may reasonably require to exercise its rights of subrogation under this clause or at law. This may include providing and signing statements and other documents and the giving of evidence.
- d The **insurance company's** rights under this provision arise whether or not payment has in fact been made and whether or not the **insured** has been fully indemnified for the amount.

- e The **insurance company** may not exercise any rights under any provision that it is not entitled to pursuant to the Insurance Contracts Act 1984 (cth).

#### ACTION AGAINST THE INSURANCE COMPANY

No action will lie against the **insurance company** unless and until the **insured** has fully complied with all the terms of this **policy** and unless the action is started within 24 months after inception of the **insured incident**.

### GENERAL CONDITIONS

#### CALCULATION OF LOSS

- a Written request for payment

In the event of any covered **loss, penalties** or **response services** the **insured** must provide the **insurance company** with a written request for payment as soon as practicable.

This written demand must include:

- i a computation of the **loss, penalties** or **response services** showing in detail how the **loss, penalties** or **response services** have been calculated and what assumptions have been made; and
  - ii any documentary evidence, including true copies of the **insured's** books of account, bills, invoices, vouchers and other relevant documents that the **insurance company** or its representatives (including forensic accountants) may require.
- b Cooperation of the **insured** for the calculation of loss  
The **insured** must cooperate and assist the **insurance company's** and its designates with their investigations, including reasonable access to any premises, personnel and documents the **insurance company** deems necessary for the purpose of the calculation of **loss, penalties** or **response services**.
  - c Determination of the amount by the insurance company  
The **insurance company** will apply standard accounting principles as recognised by the relevant regulatory authorities in the **insured's** home jurisdiction. If the **insured** does business in more than one jurisdiction the relevant accounting principles to be applied will be those of the jurisdiction in which the **subsidiary, division** or other organisational unit that sustained the **loss, penalties** or **response services** is based.

Whether or not any partial payments have been made, the **insured** must submit to the **insurance company** a final written statement of **loss, penalties** or **response services** including all items of **loss, penalties** or **response services** as soon as practical or upon request after an **insured incident** becomes known to the **insured**.

Nothing in the condition will be deemed to amend or supersede the provisions of the Notification of Insured Incidents section of this **policy**.

#### APPRAISAL OF A COVERED LOSS IN THE EVENT OF DISAGREEMENT

In the event that the **insurance company** and the **insured** cannot agree on the monetary value of a covered **loss, penalties** or **response services** and the **insurance company** rejects the **insured's** final statement of that **loss, penalties** or **response services**, the amount of that covered **loss, penalties** or **response services** will be submitted for an independent appraisal. The process is as follows:

- a Written demand  
A written demand for an independent appraisal must be made by either party within 60 days of the **insurance company's** rejection;
- b Selection of the appraiser  
Once this demand has been made, each party shall select a competent and disinterested appraiser and notify the other party of the name of the appraiser selected within 20 days of such demand;
- c Selection of the umpire  
Within 15 days of designating the respective appraisers, the appraisers shall first select a competent and disinterested umpire. If they cannot agree on the selection of an umpire, such umpire shall be selected by the then current President of the Australasian Institute of Chartered Loss Adjusters.
- d Submission of the case by the parties and decision  
After 30 days of the appointment of the umpire, both parties will submit their cases to the appraisers and the umpire. The appraisal panel will then make a decision on the amount of the covered **loss, penalties** or **response services** along with details and itemisation of the elements of the **loss, penalties** or **response services**. The decision must be signed at least by two of the three panel members.

Each party will be responsible for payment of fees to its chosen appraiser and will share equally other expenses of the appraisal, including the umpire's fees.

### GOODS AND SERVICES TAX

When the **insurance company** makes a payment under this **policy** for the acquisition of goods, services or other supply, the **insurance company** will reduce the amount of the payment by the amount of any input tax credit that the **insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When the **insurance company** makes a payment under this **policy** as compensation instead of payment for the acquisition of goods, services or other supply, the **insurance company** will reduce the amount of the payment by the amount of any input tax credit that the **insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

Where and to the extent that the **insurance company** is entitled to claim an input tax credit for a payment made under the **policy**, then any monetary limit in the **policy** applying to the **insurance company's** obligation to make such a payment, shall be net of the entitlement to the input tax credit.

Where and to the extent that the **insured** is entitled to claim an input tax credit for a payment required to be made by the **insured** as a retention, then the amount of the retention shall be net of the **insured's** entitlement to the input tax credit.

### CURRENCY

Limits of Indemnity, premiums, other amounts as expressed in this **policy** and **loss, penalties or response services** payable under the **policy** are in AUD currency. If the **loss, penalties or response services** paid by the **insurance company** has been calculated in a currency other than AUD currency, the rate of exchange will be based on the published wholesale exchange rate on the date the **insurance company** receives written notice of the **insured incident**. However, if it is subsequently determined that there was no **defect or mislabeling insured incident**, the exchange rate for crisis consulting costs within part (a) of the definition of **response services** will be based on the published wholesale exchange rate on the date the crisis consulting costs within part (a) of the definition of **response services** are first submitted to the **insurance company** in writing.

### SALVAGE

Any salvage or other recovery, after expenses incurred in salvage or recovery is deducted, will accrue entirely to the **insurance company's** benefit until the **insurance company** recovers all sums it has paid. In case of damage to property bearing a brand or trademark, or which in any way carries or implies the guarantee or the responsibility of the **insured**, the salvage value of such damaged property will be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics, the costs of which will be borne by the **insured**.

The **insured's** good will and public image will be considered in determining whether any **insured's product** should be involved in salvage recovery. The **insured** agrees not to unreasonably restrict our right to salvage. The **insured** will have full right to the possession of all goods involved in any **insured incident** and will retain control of all damaged goods. The **insured** may not under any circumstances abandon any property to the **insurance company**.

### DUE DILIGENCE

The **insured** agrees to exercise due diligence to take all reasonable and practical steps to avoid any happening or circumstances giving rise to any **insured incident** and to make all reasonable efforts to mitigate any **loss, penalties or response services** occurring as a result of any **insured incident**.

### MERGERS AND ACQUISITIONS

- a In the event a **named insured** acquires another entity whose revenues do not exceed 10% of the total annual revenues of the **named insured** as specified in the **proposal**, then such acquired entity will be considered part of the **insured**, and this **policy** will apply, from the date of such acquisition, for any **loss, penalties or response services** in any way involving such entity; or
- b In the event the **named insured**:
  - i merges with another entity such that the **named insured** is the surviving entity; or
  - ii acquires another entity whose revenues exceed the percentage threshold specified in (a) above,then this **policy** will only apply for a period of 60 days, from the date of such merger or acquisition, for any **loss, penalties or response services** in any way involving such merged or acquired entity.

After 60 days, coverage will only be available under this **policy** if:

- i the **named insured** provides the **insurance company** with information in connection with such merger or acquisition as the **insurance company** requires; and
  - ii the **named insured** accepts any special terms, conditions, exclusions or additional premium charge as may be required by the **insurance company**.
- c Coverage for such entity specified in (a) or (b) above will only apply to any **insured incident** first discovered after the date of such merger or acquisition.

#### **CANCELLATION**

**a** By the **named insured**

If the **named insured** has not reported an **insured incident** or facts or circumstances which may give rise to an **insured incident** the **named insured** may cancel this **policy** by giving the **insurance company** 30 days written notice. In such event the **insurance company** will give the **named insured** a pro-rata refund of the premium for the remaining portion of the **policy period** after the expiration of the notice period for cancellation.

**b** By the **insurance company**

The **insurance company** may cancel this **policy** in accordance with the Insurance Contracts Act 1984 (cth).

**c** Non renewal by the **insurance company**

If the **insurance company** decides not to renew this Policy, the **insurance company** will provide written notice to the **named insured** at least 60 days before the end of the **policy period**.

#### **AUTHORISATION**

The **named insured** will be considered the agent of all the **insureds**. This means that the **named insured**:

- a** will act on behalf of all the **insureds** with respect to the giving of or receipt of all notices pertaining to this **policy**, and
- b** will accept any endorsements to this **policy**, and
- c** will be responsible for the payment of all premiums and Retentions and for receiving any return premiums.

#### **FINANCIAL INTEREST COVERAGE**

The **insurance company** will not provide cover for the **loss, penalties** or **response services** of a **foreign entity**. The **insurance company** will instead indemnify the **named insured** for its financial interest in such **foreign entity** by way of agreed valuation calculated as the amount of **loss, penalties** or **response services** which would have been payable to the **foreign entity** under this **policy**. For the purpose of this provision the **named insured** will be deemed to have suffered **loss, penalties** or **response services** to its financial interest simultaneously with the **foreign entity** which incurred the **loss, penalties** or **response services** for which it would have been entitled to receive indemnity under this **policy**.

#### **ASSIGNMENT**

No **insured** may assign this **policy** or any right under it without the prior written consent of the **insurance company**.

#### **HEADINGS**

The titles of provisions or endorsements in this **policy** are intended solely for convenience and reference. They are not deemed in any way to limit, expand or otherwise affect the provisions to which they relate.

#### **SINGLE FORM OF A WORD**

Whenever the singular form of a word is used in this **policy**, the same word will include the plural when required by context.

#### **GOVERNING LAW**

This **policy** will be governed by and construed in accordance with the laws of the Commonwealth of Australia.

In the event of any dispute arising under this **policy** including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the **insured** will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

Any summons, notice or process to be served upon the **insurance company** may be served upon:

Lloyd's Underwriters' General Representative in  
Australia  
Level 9  
1 O'Connell Street  
Sydney  
NSW 2000  
Australia



who has authority to accept service and to appear on the behalf of the **insurance company**.

#### **ENTIRE AGREEMENT**

By acceptance of the **policy**, the **insured** agrees that this **policy** embodies all agreements between the **insurance company** and the **insured** relating to this **policy**. No change or modification to this **policy** will be effective unless made by endorsement issued by the **insurance company**.

#### **REPRESENTATION BY THE INSURED**

The **insured** agrees that the statements contained in the **proposal** are true, accurate and are not misleading. The **insured** also agrees that the **insurance company** issued this **policy**, and assume the risks hereunder, in reliance upon the truth of such **proposal**.

#### **THE INSURANCE COMPANY'S CONSENT**

Where the **insured** is required under this **policy** to seek the consent of the **insurance company**, the **insurance company** will not unreasonably withhold, delay or deny such consent.

#### **SANCTION LIMITATION**

The **insurance company** will not be liable to provide any cover, benefit or pay any **loss**, **penalties** or **response services** under this **policy** to the extent that the provision of such cover, benefit or payment of such **loss**, **penalties** or **response services** would expose the **insurance company** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the United States of America, Canada, European Union, United Kingdom or Australia.

#### **SEVERAL LIABILITY**

The liability of the **insurance company** under this **policy** is several and not joint with other insurers who may be a party to this **policy**. Any insurer is liable only for the proportion of liability it has underwritten. The **insurance company** and any insurers are not jointly liable for the proportion of liability underwritten by any other insurer; nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this **policy**.

The proportion of liability under this **policy** underwritten by any insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any insurer that may underwrite this **policy**. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to this **policy** in the singular, where the circumstances so require this should be read as a reference to Policies in the plural

#### **COMPLAINTS**

##### **General Insurance Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

If you have any concerns or wish to make a complaint in relation to this **policy**, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance Australia Pty Ltd in the first instance:

Managing Director  
Delta Insurance Australia Pty Ltd  
Email: [complaints@deltainsurance.com.au](mailto:complaints@deltainsurance.com.au)  
Telephone: 07 3017 4720  
Post: GPO Box 1832, Brisbane QLD 4001

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited  
Email: idraustralia@lloyds.com  
Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney  
NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678  
Email: info@afca.org.au  
Post: GPO Box 3 Melbourne VIC 3001  
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

## DEFINITIONS

The following definitions are applicable to this **policy**:

**adverse publicity** means any widely disseminated publication including any recall notification by the government, local or state agency authority of an implied **defect** or **mislabeling** specifically naming the **insured** and the **insured's product**.

**bodily injury** means physical injury (including death at any time resulting therefrom), sickness or disease.

**claim** means:

- a** a written demand for monetary damages or services; or
- b** a civil or administrative proceeding; or
- c** an arbitration, mediation or other form of alternative dispute resolution proceeding

arising out of an **insured incident**.

**computer systems** means computers, any software residing on such computers and any associated devices or equipment:

- a** operated by and either owned by or leased to the **insured**; or
- b** operated by a third party pursuant to written contract with the **insured** and used for the purpose of providing hosted computer application services to the **insured** or for processing, maintaining, hosting or storing the **insured's** electronic data.

**contract manufacturer** means any third party that designs or manufactures the **insured product** on behalf of the **insured**.

**customer** means any party or parties to whom the **insured** has directly or indirectly provided, supplied or sold the **insured product**. **Customer** does not include a consumer who purchases the **insured's product** for personal use or consumption.

**cyber incident** means **defect** in or **mislabeling** of an **impaired product** caused by a **security breach**.

**defect** means

- a** flaw, fault, imperfection, deficiency, inadequacy, or abnormality that impairs the quality, function, or utility; or
- b** failure to perform; or
- c** loss of use; or
- d** hazard or dangerous condition.

**design error** means an error or omission in the design, specification, and/or development by the **insured** or any **contract manufacturer** on their behalf in relation to an **insured product**.

**extra expense** means the reasonable and necessary expenses incurred by the **insured**, over and above those expenses the **insured** would have incurred had no **insured incident** occurred, to minimize, mitigate, reduce or avoid **income loss** during the time of a slowdown, cessation or shut down of the **insured's** business operations resulting out of an **insured incident**.

**foreign entity** means any **subsidiary** which is located in a jurisdiction where the applicable law or regulation does not allow the **insurance company** to provide cover to that **subsidiary**.

**impacted product** means the **insured product** or any product in which the **insured product** has or would become part of or has been or would be incorporated.

**income loss** means the **insured's** sales revenue lost after the decrease in sales attributable to and caused directly by an **insured incident** less;

- a The costs of raw materials and all other costs that would have been incurred during the same period, but which have been saved as a result of an **insured incident**; and
- b The amount of increased sales, if any, of any other product of the **insured** as a result of an **insured incident**.

**insured** means:

- a the **named insured**;
- b any **subsidiary**; and
- c any partnership or joint venture, which is a corporate entity, while the **named insured** has **management control**, or while the right to elect or otherwise appoint more than 50% of such entity's directors, trustees or other equivalent executive is owned or controlled by the **named insured** directly or indirectly.

**insurance company** means Delta Insurance Australia Pty Ltd writing on behalf of the Lloyd's Underwriters named in the Schedule.

**insured incident** means any **design error**, **supply chain error** or **manufacturing error** that would cause a **defect** or **mislabeling** in an **impacted product** or any **cyber incident** or **adverse publicity** as covered under this **policy**. All related, repeated or continuing **insured incidents** will be deemed a single **insured incident**.

**insured's product** means any product(s), including any of their components, packaging or containers, that:

- a are in production by the **insured**;
- b have been manufactured, processed, treated, assembled, labelled, handled, packaged, stored, or distributed by the **insured** or by any **contract manufacturer** on behalf of the **insured** or;
- c are available for sale by the **insured** or are sold by, or on behalf of the **insured** by any distributor, wholesaler or retailer.

**loss** means any of the below:

- a operating costs

means the reasonable and necessary monetary amount the **insured** has sustained or incurred above the **insured's** normal operating costs to recover, withdraw, recall, restore, repair, replace, refund, reinstall or redesign the **insured's product**

solely and directly as a result of an **insured incident**;

- b business loss

means the actual **income loss** and **extra expense** the **insured** sustained solely and directly as a result of an **insured incident**;

- c reputational damages

means the reasonable and necessary advertising, marketing and public relations costs and expenses the **insured** has sustained or incurred above the **insured's** normal costs and expenses had no **insured incident** occurred solely and directly as a result of an **insured incident**;

- d third party damages

means:

- i reasonable compensatory damages including those agreed as part of a settlement, including costs, expenses, or loss of profit, that the **insured** becomes legally obligated to reimburse or pay its **customers** solely and directly in connection with a **claim** made by a **customer** against the **insured**; or
- ii reasonable legal fees, costs and expenses necessarily incurred by or on behalf of the **insured** solely and directly in connection with the investigation, defence, settlement or appeal of a **claim** made by a **customer** against the **insured**.

Third party damages will not include the salary of any employee of the **insured**, the cost of their time or any other costs or overheads of the **insured**.

**management control** means:

- a controls the composition of the board of directors; or
- b controls more than half of the shareholder voting power; or
- c holds more than half of the issued share capital.

**manufacturing error** means an error or omission in the production, fabrication, processing, treating, machining, handling, reshaping, assembly, storage and/or packing by the **insured** or any **contract manufacturer** on their behalf in relation to the **insured product**.

**mislabeling** means the label is in violation of any governmental law, regulations or requirements in the jurisdiction in which the **impacted product** is manufactured, distribution or sold.

**named insured** means the entity specified in the

Schedule.

**penalty** means the civil fine or penalty payable to a regulatory, administrative, governmental organisation or agency and only where such penalty is insurable by law.

**policy** means this policy wording, the Schedule and any endorsement attaching to and forming part of the policy.

**policy period** means the period specified in the Schedule.

**property damage** means:

- a physical injury to; or
- b destruction of; or
- c loss of use of

tangible property other than the **insured's product**.

**proposal** means the completed and signed proposal for this **policy** including any written materials submitted with the proposal.

**regulatory proceeding** means a request for information, civil investigative demand or civil proceeding brought by or on behalf of any federal, state, local or foreign governmental entity in such regulatory or official capacity.

**response services** means any of the below services:

- a crisis consulting costs

means the reasonable and necessary fees and expenses incurred by the **insured** for advisory services provided by the **insurance company's** approved crisis consultants only to assist the **insured** in responding to any potential, suspected or actual **insured incident**.

- b investigation costs

means the reasonable and necessary fees, costs and expenses incurred by the **insured** for analysis, testing and/or physical examination necessary to determine whether an **insured incident** has occurred.

- c forensic accounting services

means reasonable and necessary fees and expenses incurred by the **insured** for a forensic accountant for the purpose of assisting the **insured** or the **insured's customer** with the presentation of **loss** to the **insurance company**;

- d legal services

means the reasonable and necessary fees and expenses incurred by the **insured** for legal advice by law firm to assist the **insured** in relation to a potential, suspected or actual **insured incident**;

- e reputational management services

means the reasonable and necessary fees and expenses incurred by the **insured** for a public relations firm to provide crisis communications, advertising, marketing, and public relations services in relation to a potential, suspected or actual **insured incident**.

The above services will be provided by services providers approved by the **insurance company** subject to the terms and conditions of this **policy**. The service providers are to be appointed by the **insured**.

**responsible person** means any principal, partner, corporate officer, director, general counsel (or most senior legal counsel) or risk manager of the **insured** or any individual in a substantially similar position.

**security breach** means a failure of computer security to prevent:

- a **unauthorised access or use of computer systems**, including **unauthorised access or use** resulting from the theft of a password from a **computer system** or from any **insured**;
- b a denial of service attack affecting **computer systems**; or
- c infection of **computer systems** by malicious code or transmission of malicious code from **computer systems**.

**subsidiary** means any entity in which the **named insured** either directly or indirectly has or had **management control** on or before the inception date of this **policy**. Coverage for such entity will only apply for any **insured incident** that occurred while the **named insured** had **management control** of such entity.

**supply chain error** means an error or omission by the **insured's** supplier of raw materials or component parts for use or incorporation into the **insured product**.

**unauthorised access or use** means the gaining of access to or use of **computer systems** by an unauthorised person(s) or the use of **computer systems** in an unauthorised manner.





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Change.**

**Delta Insurance Australia**

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