



Food & Beverage Manufacturing
General Liability Insurance
Policy wording



The terms and conditions of each Part of this Coverage Section apply only to that Part of the Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within this Coverage Section appear within the General Terms and Conditions, the definition contained herein shall apply for the purposes of determining coverage. If the terms and conditions within this Coverage section conflict with the General Terms and Conditions, the terms and conditions of this Coverage Section take priority.

Unless otherwise stated in this Coverage Section, for the purposes of this Coverage Section only, all Exclusions in the General Liability Coverage Section and in the General Terms and Conditions shall apply to this Coverage Section, and where those Exclusions contain the phrases 'Personal Injury' or 'Property Damage' that phrase shall be amended to read 'Personal Injury, Property Damage, Loss, Claims or Clean-up Costs'

In consideration of the premium charged, and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

PART 1 – PRODUCT RECALL

Notwithstanding Exclusions 5.6, 5.10 and 5.18 of the General Liability Coverage Section, and subject to the terms, conditions, limitations and exclusions of this Policy, the **Underwriters** will indemnify the **Insured** for **Loss** incurred by the **Insured** as a direct result of a **Product Recall** commencing during the **Policy Period**, provided that the **Product Recall**:

- 1 is in respect of a **Covered Product** first placed on the market in the territory after the **Retroactive Date**; and
- 2 is on account of a **Product Defect** or a **Product Packaging Defect** in the **Covered Product**; and
- 3 occurs within the **Territorial Limits**; and
- 4 is notified to the **Underwriters** in writing as soon as reasonably practicable and in any event no later than 30 days after the end of the **Policy Period**.

LIMIT OF INDEMNITY

The Product Recall Aggregate Limit specified in the Schedule is the maximum amount for which the

Underwriters will be liable under Part 1 of this Coverage Section, Product Recall, regardless of the number of **Insureds**, **Product Recalls** or **Product Defects** discovered during the **Policy Period**.

The **Product Packaging Defect** Sublimit specified in the Schedule is the maximum amount for which the **Underwriters** will be liable in respect of **Product Packaging Defect** in each **Policy Period**.

EXCESS/CO-INSURANCE

Each **Product Recall** indemnified under Part 1 of this Coverage Section, Product Recall, will be subject to both the Excess Amount and the Co-insured Percentage Amount specified in the Schedule.

The Excess Amount is the first amount of **Loss** incurred by the **Insured** in respect of each **Product Recall**, which must be retained by the **Insured**, for which the **Underwriters** will not be liable and in excess of which the cover provided under Part 1 of this Coverage Section, Product Recall, will apply. For the purposes of this paragraph, all **Product Recalls** arising from the same or substantially the same **Product Defect** will be deemed to be one **Product Recall**.

The Co-insured Percentage Amount is the proportion of each amount of **Loss** incurred in excess of the Excess Amount in respect of each **Product Recall**, which must be retained by the **Insured** and for which the **Underwriters** will not be liable under Part 1 of this Coverage Section, Product Recall.

EXCLUSIONS

Part 1 of this Coverage Section, Product Recall, will not cover, and the **Underwriters** will not be liable in any respect of, any:

1. 12 Months Post Recall

- a **Product Recall Costs** or **Replacement Costs** incurred in respect of any **Product Recall** more than 12 months after that **Product Recall** commences;
- b **Third Party Damages** or **Defence Costs** arising from a claim or demand for any **Product Recall Costs** or **Replacement Costs** referred to in subparagraph a. above;

2. Competitor's Product

Loss as a result of product recall or defect of a product of a competitor of the **Insured**, or of products similar to a **Covered Product**

3. Contractual liability

Loss as a result of:

- a Liability assumed by the **Insured** under contract or agreement, including any liquidated damages, contractual fines or penalties, or indemnities, or
- b Liability by virtue of warranties or guarantees under any contract or agreement,

except that this Exclusion will not apply to liability for compensatory damages that would have attached in the absence of that contract or agreement;

4. Change in Market Circumstances

Loss as a result of any change in customer tastes, competitive environment, economic conditions, population or seasonal sales variations.

5. Contamination

Loss as a result of a **Product Recall** initiated on account of contamination of the **Covered Product** arising in connection with any:

- a bioengineering, genetic engineering or genetic modification of the **Covered Product**;
- b hormone treatment of the **Covered Product**;
- c irradiation of the **Covered Product**;
- d transmissible spongiform encephalopathy (TSE); or
- e carcinogens, regardless of whether such carcinogens are shown to have other non-carcinogenic effects;

6. Foreign Judgments

Loss as a result of legal proceedings brought against the **Insured** in any country outside the **Territorial Limits**. This Exclusion also applies to proceedings within the **Territorial Limits** to enforce, or which are based on, a claim brought outside the **Territorial Limits**;

7. Governmental Regulations

- a **Loss** as a result of or arising from an intentional violation by the **Insured** of any legal,

governmental or regulatory requirements;

- b **Loss** arising from any change in governmental regulations or action during the **Policy Period**;
- c **Loss** as a result of a **Product Recall** of any **Covered Product** which has been banned from the market by any authorised governmental or regulatory body prior to the **Policy Period** or distributed or sold by the **Insured** subsequent to any governmental or regulatory ban;

8. Insured Cross Claims

Loss as a result of any liability or obligation of any **Insured** owed to any other **Insured**

9. Insured's Instructions for Use

Loss as a result of a **Product Recall** arising from a failure by any party other than the **Insured** or the **Insured's Employees** to adhere to procedures prescribed by the **Insured** regarding the storage, consumption or use of any **Covered Product**;

10. Natural Deterioration

Loss as a result of a **Product Recall** occurring on account of any natural deterioration, decomposition or transformation of the chemical structure of any **Covered Product**, including any combination or interaction among ingredients, components or packaging, except that this Exclusion will not apply if the deterioration, decomposition or transformation is a direct result of a defect or deficiency in the manufacturing process for that **Covered Product**.

11. Prior Known Defects

- a **Loss** incurred as a result of a **Product Recall** where the **Product Defect** at issue in that **Product Recall** is the same or substantially the same as the **Product Defect** at issue in any **Product Recall** commencing before the **Policy Period**;
- b **Loss** incurred as a result of a **Product Recall** where the **Insured** was aware prior to the **Policy Period** of the **Product Defect** or circumstances which have resulted or are reasonably likely to result in the **Product Defect**;
- c **Loss** incurred in connection with any **Covered Product** first placed on the market after the **Insured** first become aware of any **Product Defect** reasonably likely to give rise to a **Product Recall** in respect of such **Covered Product**;

12. Re-design Costs

Loss in respect of the cost to design, re-design, engineer, re-engineer, recalibrate or retool any **Covered Product**; or

13. Shelf-Life

Loss as a result of a **Product Recall** due to the expiration of the designated life of the **Covered Product**.

CONDITIONS

The **Underwriters'** liability to indemnify in respect of any **Product Recall** will only arise if the **Insured** complies with the following conditions in respect of that **Product Recall**.

1. Notice of Product Recall

Any notice of a **Product Recall** under Part 1 of this Coverage Section, Product Recall, must provide detailed particulars and evidence of the **Product Recall**, including:

- a The precise identity of the **Covered Product** in question;
- b The party which effected the **Product Recall** and the steps which have been taken by such party to effect the **Product Recall**;
- c Where the **Product Recall** occurred;
- d The quantity of the **Covered Product** in question;
- e The parties in the distribution chain affected or which may be affected by the **Product Recall**;
- f The circumstances giving rise to the **Product Recall**;
- g A full description of the risks or potential risks that the **Covered Product** presents or may present; and
- h A description of all steps taken to prevent or mitigate the risks referred to in g. above.

The **Insured** must also provide the **Underwriters** with periodic and timely updates of all developments in connection with the **Product Recall**.

Further, if it reasonably appears to be in the best interests of the **Insured** or if it is required by law, the **Insured** must promptly notify any applicable enforcement authority of the **Product Recall** and provide all information in connection therewith.

The **Insured** must permit the **Underwriters** or its representatives to examine any of the **Covered**

Product in question (whether salvageable or otherwise) at the **Insured's** premises within reasonable business hours or upon delivery to the **Underwriters** or their representatives.

2. Calculation of Loss

The **Insured** must submit to the **Underwriters** as soon as reasonably practicable after any **Loss** is incurred an initial written statement of the **Loss**, providing initial calculations or projections of the amount of the **Loss** (including how those calculations or projections have been made and any assumptions which have been made).

The **Underwriters** may, in their discretion, appoint Loss adjusters or other representatives to assist in mitigation and / or calculation of **Loss**.

Thereafter, a final statement of all **Loss** must be submitted to the **Underwriters** in writing. The final statement of **Loss** must include detailed particulars and evidence of the **Loss**. The **Insured** must provide the **Underwriters** with documentary evidence, including true copies of the **Insured's** books of account, bills, invoices, vouchers and any other relevant documents that the **Underwriters** or its representatives may reasonably require.

3. Co-operation and Control

The **Insured** must fully co-operate with the **Underwriters** and the **Underwriters'** designated representatives (including any forensic accountants) in their investigation of the **Product Recall** and of the **Loss**.

4. Salvage

Any salvage or other recovery, after expenses incurred in salvage or recoveries are deducted, will accrue entirely to the benefit of the **Underwriters** until the sum paid by the **Underwriters** has been recovered. In case of damage to the **Covered Products** bearing a brand or trademark (or other such identifying characteristic), the salvage value of such damaged property will be determined after removal in the customary manner of all such brands or trademarks or other such identifying characteristics. The costs of such removal will be borne by the **Insured**.

The **Underwriters'** right to salvage must not be unreasonably restricted by the **Insured**. The **Insured** will retain the care, custody and control of all **Covered Products**. There will be no abandonment of any **Covered Products** to the **Underwriters**.

DEFINITIONS

- 1 **Defence Costs** means reasonable and necessary legal costs and expenses in the defence of a claim made against the **Insured** for **Third Party Damages**. It does not mean or include the salaries, wages, benefits or expenses of any **Employee** or the **Insured's** administrative expenses.
- 2 **Covered Product** means any product or good specified in the Schedule, including any container, packaging or labelling of, or instructions for use with, such product or good, which has been manufactured, sold or supplied by the **Insured** and is no longer in the physical possession of the **Insured** or its agents or **Employees**.
- 3 **Loss** means the following:
 - a **Product Recall Costs**;
 - b **Replacement Costs**;
 - c **Third Party Damages** which the **Insured** is legally liable to pay (including related claimant's legal costs);
 - d **Defence Costs**.
- 4 **Malicious Product Tampering** means any actual, alleged or threatened, alteration or contamination of the **Covered Product**, by any person, whether or not an **Employee** of the **Insured**, that is deliberate and malicious and which renders the **Covered Product** unfit or dangerous for its intended use or consumption or creates such impression to the public.
- 5 **Personal Injury** for the purposes of Part 1 of this Coverage Section, Product Recall, means bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time.
- 6 **Product Defect** means a defect or deficiency in the **Covered Product** which produces a dangerous condition when used for its manufactured purpose that results or is reasonably likely to result in **Personal Injury** or in **Property Damage** to physical property other than the **Covered Product**. **Product Defect** includes **Malicious Product Tampering** other than any **Malicious Product Tampering** arising from any criminal act or omission of any of the **Insured's** directors, officers or trustees.
- 7 **Product Packaging Defect** means a defect in the packaging or labelling of a **Covered Product** which results in the failure of the **Covered Product** to perform its intended purpose for which the **Insured** undertook their manufacture, construction, erection, assembly.
- 8 **Product Recall Costs** means any of the following costs and expenses incurred in respect of a **Product Recall** but only to the extent that they are reasonable and necessary:
 - a The costs of media or advertising to communicate information to any consumer or any party in the distribution chain about the **Product Recall**;
 - b The costs of transporting the **Recalled Product** from any consumer or any party in the distribution chain to any place the party effecting the **Product Recall** may designate;
 - c The costs to rent additional warehouse or storage space specifically for the **Recalled Product**;
 - d The costs in properly disposing of the unused packaging and point of purchase marketing material of the **Recalled Product** to the extent such material cannot be reasonably re-used;
 - e The costs in properly disposing of the **Recalled Product** other than those usually employed for refuse disposal, but only to the extent that specific methods of disposal are required to avoid **Bodily Injury** or **Property Damage**;
 - f The costs of hiring any additional employees, consultants or advisors specifically to address the **Product Recall**;
 - g The costs of overtime paid to any employees specifically to give effect to the **Product Recall**;
 - h The costs of travel, transportation or accommodation expenses directly attributable to the **Product Recall**.
- 9 **Product Recall** means the withdrawal or recall of a **Covered Product** which has been placed on the market.
- 10 **Recalled Product** means the **Covered Product** which is the subject of the **Product Recall**.
- 11 **Replacement Costs** means reasonable and necessary costs incurred to restore any **Recalled Product** to merchantable quality or to replace any **Recalled Product** that has been destroyed or is unfit for sale or for its intended use with a **Covered Product** of similar value.

12 Retroactive Date means the date specified as the Retroactive Date in the Schedule.

13 Third Party Damages means compensatory damages to compensate any party in the distribution chain in respect of the **Covered Product** (other than the **Insured**) for **Product Recall Costs** or **Replacement Costs** incurred by that party as a result of the **Product Recall** together with any legal liability on the **Insured's** part to pay that party's legal costs and expenses in respect of the **Product Recall**.

PART 2 - ERRORS AND OMISSIONS

Subject to the terms, conditions, limitations and exclusions of this Policy the **Underwriters** agree to indemnify the **Insured** for the **Compensation** and **Defence Costs** resulting from any **Claim** against the **Insured** arising out of any negligent act, error or omission committed or alleged to have been committed by or on behalf of the **Insured** in connection with the **Insured's Business** and **Insured's Products**, provided that:

- 1 such act, error or omission occurs after the **Retroactive Date**; and
- 2 occurs within the **Territorial Limits** in connection with the **Insured's Business**; and
- 3 the **Claim** is first made against the **Insured** and notified to **Underwriters** during the **Policy Period**.

LIMIT OF INDEMNITY

The Errors and Omissions Aggregate Limit specified in the Schedule is the maximum amount for which the **Underwriters** will be liable under Part 2 of this Coverage Section, Errors and Omissions, regardless of the number of **Insureds** or **Claims** during the **Policy Period**.

EXCESS

The cover provided by Part 2 of this Coverage Section, Errors and Omissions, will be subject to the Excess Amount specified in the Schedule

EXCLUSIONS

Part 2 of this Coverage Section, Errors and Omissions, will not cover, and the **Underwriters** will not be liable in any respect of, any:

1 Claims made or threatened or in any way intimated against the **Insured** before commencement of the **Policy Period**.

2 Claims arising from facts or circumstances notified under any previous insurance policy.

3 Claims arising from facts or circumstances noted on the proposal for this coverage or any previous proposal for insurance.

4 Claims arising from facts or circumstances existing prior to the **Policy Period** and which the **Insured** knew or reasonably to have known were likely to give rise to a claim against the **Insured**.

5 Claims arising from:

a Liability assumed by the **Insured** under contract or agreement, including any liquidated damages, contractual fines or penalties, or indemnities, or

b Liability by virtue of warranties or guarantees under any contract or agreement,

except that this Exclusion will not apply to liability for compensatory damages that would have attached in the absence of that contract or agreement;

6 Claims arising as a result of the misdirection or mislaying of goods.

7 Claims arising from actual or alleged infringement of patent, copyright, trade mark or trade name by the **Insured**

8 Claims arising from the provision of **Professional Services** by the **Insured** or arising from the **Financial Default** of the **Insured**.

9 Personal Injury or **Property Damage**

10 product recall costs

11 alleged or actual breach by an **Insured** of a duty owed in the capacity of a director, secretary or officer of a body corporate.

12 the issue by, or on behalf of, an **Insured** of any prospectus or any other form of public offering.

13 the insolvency, bankruptcy or liquidation of an **Insured**.

14 failure or omission to effect or maintain insurance.

15 amounts, costs or expense where cover is provided under any other Part or Coverage Section of this Policy.

DEFINITIONS

- 1 **Claim** means a written demand for **Compensation**;
- 2 **Compensation** for the purpose of this endorsement means monies paid or payable by judgment or settlement together with any legal liability on the **Insured's** part to pay a third party's legal costs and expenses for any negligent act, negligent error or omission in respect of which this Policy applies.
- 3 **Defence Costs** means all reasonable legal costs and expenses incurred by or on behalf of the **Insured** with the prior written agreement of the **Underwriters** (not to be unreasonably withheld), in the investigation, defence, adjustment, settlement or appeal of any **Claim**.
- 4 **Financial Default** means the failure or inability to meet legal obligations (or conditions) for payment of a loan or security, and otherwise refusal or inability to meet financial commitments.
- 5 **Professional Services** means advice, design, consultancy, specification, formula, supervision or other professional service given or undertaken by the **Insured** which:
 - a is not related to the **Insured's Product**; or
 - b is given or undertaken for a fee.
- 6 **Retroactive Date** means the date specified as the Retroactive Date in the Schedule

PART 3 - ENVIRONMENTAL AND POLLUTION DAMAGE

Subject to the terms, conditions, limitations and exclusions of this Policy, but notwithstanding Exclusion 5.15 Pollution, the **Underwriters** will indemnify the **Insured** for **Clean-up Costs** incurred by the **Insured**, **Claims for Loss**, and **Defence Costs** arising out of a **Pollution Incident** on, or migrating from, an **Insured Property**, provided that:

- 1 the **Pollution Incident** takes place in the **Territorial Limits** and commenced after the **Retroactive Date**; and
- 2 with respect to **Clean-up Costs**, the relevant authority has identified the occurrence of the **Pollution Incident** and written notice of identification of such **Pollution Incident** is first given by the enforcement authority to the **Insured** during the **Policy Period** and reported to the **Underwriter** as soon as reasonably practicable, but no later than 30 days after the end of the **Policy Period**; and

- 3 with respect to **Claims for Loss**, the **Claim** is first made against the **Insured** during the **Policy Period** and reported to the **Underwriter** as soon as reasonably practicable, but no later than 30 days after the end of the **Policy Period**

LIMIT OF INDEMNITY

The Environmental and Pollution Damage Aggregate Limit specified in the Schedule is the maximum amount for which the **Underwriters** will be liable under this Coverage Section 3, Environmental and Pollution Damage, regardless of the number of **Insureds**, **Claims**, **Pollution Incidents** or **Insured Property** identified as **Contaminated Land** during the **Policy Period**.

EXCESS

Each **Pollution Incident** indemnified under Part 3 of this Coverage Section, Environmental and Pollution Damage, will be subject to the Excess Amount specified in the Schedule.

The Excess Amount is the first amount of **Clean-up Costs** and/or **Loss** for which the **Insured**, and not the **Underwriters**, will be liable and in excess of which the cover provided under this Part 3 of this Coverage Section, Environmental and Pollution Damage, will apply.

EXCLUSIONS

Part 3 of this Coverage Section, Environmental and Pollution Damage, will not cover, and the **Underwriters** will not be liable in respect of, any:

1. 12 Months Post Notice

Clean-up Costs or **Loss** incurred in respect of any **Contaminated Land** incurred either

- a Before, or
- b more than 12 months after

the **Insured** first receives notice from the relevant enforcement authority that the **Insured Property** has been identified as **Contaminated Land**;

2. Contractual Liability

Liability to pay **Clean-up Costs** or **Loss** assumed under a contract or agreement, unless liability would have attached to the **Insured** in the absence of that contract or agreement;

3. Cyber

Clean-up Costs or **Loss** arising from or in connection with the use or operation by any person of any computer, computer system, computer software program, malicious code, computer virus or process or other electronic system as a means of intentionally causing harm or pollution (or any significant possibility thereof);

4. Intentional Non-Compliance

Clean-up Costs or **Loss** where the **Insured** or the **Executive** of the **Insured** has intentionally disregarded or deliberately, wilfully or dishonestly not complied with any law or regulation concerning health and safety or the environment or any notice, order or instruction of the relevant enforcement authority;

5. Fines or penalties

Criminal fines, criminal penalties, criminal assessments or reparation orders;

6. Insured vs Insured

A **Claim** by any **Insured** against any other person or entity who is also an **Insured** under this policy. This exclusion does not apply to **Claims** initiated by third parties or **Claims** that arise out of an indemnification given by one **Named Insured** to another **Named Insured** in an **Insured Contract**.

7. Lead/Asbestos

Clean-up Costs or **Loss** incurred in respect of lead based paint, asbestos or any asbestos containing materials or products in, on, or applied to any building or other structure. This exclusion does not apply to **clean-up costs** for the remediation of soil, surface water or groundwater.

8. Prior Known

Clean-up Costs or **Loss** incurred in respect of any **Contaminated Land** known by the **Executive** of the **Insured** or any **Responsible Person** to be **Contaminated Land** before the **Policy Period**;

Clean-up Costs or **Loss** incurred in respect of any **Insured Property** previously identified by the relevant enforcement authority as **Contaminated Land** and where the **Insured** received notice of that identification before the **Policy Period**;

Clean-up Costs or **Claims** reported under this **Policy Period** arising from the same, related or continuous

Pollution Incident from which a **Claim** or **Clean-up Costs** arose that was reported under any policy of which this policy is a renewal or replacement, whether or not such prior policy affords coverage for such **Claim** or **Clean-up Costs**.

9. Prior Occurring

Clean-up Costs or **Loss** incurred in respect of any **Pollution Incident** or **Contaminated Land** where the harm or **Pollution Incident** (or any significant possibility thereof) existed or commenced before the **Retroactive Date**;

10. Radioactive and Nuclear

Clean-up Costs or **Loss** directly or indirectly arising out of ionising radiation, radioactivity, radioactive substances or any other nuclear related hazard, including contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components;

11. Use and Sale of Insured Property

Clean-up Costs or **Loss** arising from any material change in use of the **Insured Property** during the **Policy Period**;

Clean-up Costs or **Loss** arising from any harm or pollution (or significant possibility thereof) commencing after the **Insured Property** has been sold, leased, given away, abandoned or operational control relinquished by the **Insured**;

Clean-up Costs or **Loss** arising from any redevelopment or proposed redevelopment or as part of any planning requirement;

Clean-up Costs or **Loss** arising from the use, ownership or maintenance of any **Underground Storage Tank**;

12. Voluntarily Incurred Clean-up Costs

Clean-up Costs or **Loss** arising from any remediation not required by **Environmental Laws**; or

13. War/terrorism

Clean-up Costs and **Loss** arising out of or in connection with war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, mutiny, insurrection, revolution, uprising, military or usurped power, or nationalisation, confiscation, requisition, commandeering, seizure,

dispossession of any property, whether permanent or temporary, by any authority or government, de facto or de jure, or any act of **Terrorism** or any action taken in controlling, preventing, suppressing or in any way relating to any act of **Terrorism**.

CONDITIONS

The **Underwriters'** liability to indemnify **Clean-up Costs** or **Loss** in respect of any **Contaminated Land** will only arise if the **Insured** complies with the following conditions in respect of that **Contaminated Land**:

- 1 Any notice under Part 3 of this Coverage Section, Environmental and Pollution Damage, must be given in writing to the **Underwriters** at the address specified in the Schedule providing a copy of all correspondence and other documents in connection with the identification of the **Insured Property** as **Contaminated Land** and the consequent remediation, including any remediation notice or other notices or orders from the enforcement authority, and any reports, investigations and surveys.
- 2 In addition, the **Insured** must provide to the **Underwriters** in connection with any **Clean-up Costs** for which indemnity is sought under Part 3 of this Coverage Section, copies of all invoices for services performed by legal and technical experts on behalf of the **Insured** for the remediation performed.
- 3 The **Insured** must permit the **Underwriters** or their representatives to inspect the **Insured Property** within reasonable business hours and provide the **Underwriters** access to all information they may reasonably require for the purposes of the cover provided under Part 3 of this Coverage Section, Environmental and Pollution Damage.
- 4 The **Underwriters** will not indemnify any **Clean-up Costs** incurred by the **Insured** or any **Clean-up Costs** the **Insured** reimburses the relevant enforcement authority without the **Underwriters'** prior written consent.
- 5 In the event of a claim which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a fair and proper allocation of **Loss** or **Clean-up Costs** covered under this **Policy**, taking into account the relative legal and financial exposures, and the relative benefits obtained by such parties.

With respect to **Claims** for **Loss**:

- 6 The **Underwriters** do not assume any duty to defend any **Claim** brought against the **Insured** under this **Policy**. However, the **Underwriters** shall have the right, but not the duty, to fully and effectively associate with the **Insureds** in the control, investigation, defence and settlement of any **Claim**, including but not limited to, the right to investigate, conduct settlement negotiations, and enter into the settlement of any **claim** that the **Underwriters** deems appropriate
- 7 The **Insured** shall not admit or assume any liability, incur any **Defence Costs**, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed). However, the **Underwriters'** consent is not required for the **Insured** to settle a **Claim** if the total settlement amount (including **Defence Costs**) is within the applicable Excess, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Underwriters**.
- 8 Each and every **Insured** shall give the **Underwriters** full cooperation and such information as the **Underwriters** may reasonably require relating to:
 - a the investigation and defence of any **Claim**; and
 - b the prosecution of any counterclaim, cross-claim or third-party claim.

The failure of any **Insured** natural person to give the **Underwriters** such cooperation and information shall not impair the rights of any other **Insured** natural person under this Policy.

DEFINITIONS

- 1 **Claim** means the receipt of a written demand seeking a remedy and alleging liability or responsibility on the part of the **Insured**, including any original legal or arbitral process, cross claim, third party notice alleging a **Pollution Incident**.
- 2 **Clean-up Costs** means reasonable and necessary costs incurred in performing remediation of **Contaminated Land** required by **Environmental Laws**.
- 3 **Contaminated Land** means "contaminated land" as that term is defined under the Resource Management Act 1991 (as amended from time to time).

- 4 Defence Costs** means reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with **Underwriters'** prior written consent, in the investigation, defence, adjustment, settlement or appeal of any **Claim** for **Loss**. **Defence Costs** shall not include internal or overhead expenses of the **Insured** or the costs of any **Insured's** time.
- 5 Environmental Laws** means any law or regulation concerning health and safety or environmental matters applicable to any **Contaminated Land**.
- 6 Executive** means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, or General Counsel (or if no such designations are applicable, the persons with equivalent status).
- 7 Insured Property** means any land, property or buildings within the **Territorial Limits** owned or leased by the **Insured**:
- for the purposes of the conduct of its business within the **Territorial Limits**; and/or
 - at the inception date of this Policy and at the time it is first identified by the relevant enforcement authority as **Contaminated Land**.
- 8 Loss** means amounts for which the **Insured** shall become legally liable to pay for **Loss** in respect of **Personal Injury** and **Physical Damage**.
- 9 Pollution incident** means the discharge, emission, seepage, migration, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapours, soot, fumes, acids, alkalis, chemicals, hazardous substances, petroleum hydrocarbons, waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered.
- 10 Physical Damage** means:
- Physical injury to or destruction of tangible property, including all resulting **Loss** of use and diminished value of that property. **Loss** of use of tangible property that is not physically injured or destroyed arising out of physical injury to or destruction of other tangible property
- 11 Responsible Person** means any person employed by the **Insured** responsible for environmental compliance.
- 12 Retroactive Date** means the date specified as the Retroactive Date in the Schedule.

13 Territorial Limits means New Zealand.

14 Underground Storage Tank means a storage tank which has at least 10% of its volume underground and includes underground piping connected to the tank.

15 All other defined terms have the meaning given to them in the General Definitions of this Policy.

PART 4 - CRISIS MANAGEMENT

Subject to the terms, conditions, limitations and exclusions of this Policy, the **Underwriters** will indemnify the **Insured** for reasonable and necessary **Crisis Management Costs** incurred by the **Insured** with the **Underwriters'** prior written consent in the management of a **Crisis Event** that has resulted in or is reasonably likely to result in a claim for **Damages** covered under any operative Section of this Policy, provided that the **Crisis Event**:

- commences during the **Policy Period**; and
- is notified to the **Underwriter** in writing as soon as reasonably practicable and in any event no later than 30 days after the end of the **Policy Period**.

LIMITS OF INDEMNITY

The Crisis Management Aggregate Sub-Limit specified in the Schedule is the maximum amount for which the **Underwriter** will be liable under this Extension, regardless of the number of **Insureds** or **Crisis Events** commencing during the **Policy Period**.

EXCESS

The cover provided by Part 4 of this Coverage Section, Crisis Management, is subject to the Crisis Management Excess specified in the Schedule, which will be the first amount of **Crisis Management Costs** for which the **Insured**, and not the **Underwriters**, will be liable and in excess of which the cover provided under Part 4 of this Coverage Section, Crisis Management will apply.

EXCLUSIONS

Part 4 of this Coverage Section, Crisis Management, will not cover, and the **Underwriters** will not be liable in respect of, any:

1. 30 Days Post Crisis

Crisis Management Costs incurred before or more than 30 days after the **Crisis Event** commences;

2. Industry Circumstances

Crisis Management Costs in respect of any **Crisis Event** arising from any circumstances (including any governmental regulations) which affect the industry in which the **Insured** conducts its business as a whole;

3. Changes in Market Circumstances

Crisis Management Costs arising from any changes in population, customer tastes, economic conditions or competitive environment; or

4. Fraud

Crisis Management Costs in respect of any **Crisis Event** arising from any fraudulent act or omission committed by any **Executive** of the **Insured**.

CONDITIONS

Any notice of any **Crisis Event** under Part 4 of this Coverage Section, Crisis Management, may be given by telephone. If the **Underwriters** receive notice by telephone, written notice will be deemed given on the date of that telephone call, provided that actual written notice is given by the **Insured** to the **Underwriters** as soon as reasonably practicable after that telephone call.

Any notice must include:

- 1 The circumstances giving rise to the **Crisis Event**;
- 2 The names and addresses of the injured persons or damaged property; and
- 3 The nature of the injury or damage in question and where the injury or damage occurred.

DEFINITIONS

- 1 **Consultant Costs** means costs incurred by a firm for which the **Underwriters** have given their prior written approval, engaged by the **Insured** to advise the **Insured** in respect a **Crisis Event**.
- 2 **Crisis Event** means an event that has resulted in materially adverse local, regional or national media coverage in respect of the **Insured's** business, provided that the event has, or is likely to, result in

indemnity being provided by **Underwriters** under any other coverage provision of this policy .

- 3 **Crisis Management Costs** means the following costs incurred in the management of a **Crisis Event** but only to the extent such costs are reasonable and necessary:

- a Medical expenses;
- b Funeral expenses;
- c Psychological counselling;
- d Temporary living expenses;
- e Expenses to secure the scene of a **Crisis Event**;
- f **Consultant Costs**;
- g Any other costs approved by the **Underwriters** in writing.

- 4 **Executive** means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President or General Counsel (or if no such designations are applicable, the persons with equivalent status).

All other defined terms have the meaning given to them in the General Definitions of this Policy.

PART 5 – CONSEQUENTIAL LOSS

Subject to the terms, conditions, limitations and exclusions of this Policy, the **Underwriters** will indemnify the **Insured** for **Consequential Loss** suffered during the **Indemnity Period** applicable to this Part 5 resulting from interruption to or interference with the **Insured's Business**. The interruption or interference must result from a **Covered Event** during the **Policy Period** in respect of which the **Underwriters** have accepted indemnity.

LIMIT OF INDEMNITY

- 1 In no case will the **Underwriters'** liability exceed 90% of the sum **Insured** in the Schedule and in the aggregate for the **Policy Period**.
- 2 The maximum amount payable by the **Underwriters** in respect of any one claim is 40% of the sum **Insured** during any 3 month period, or pro rata for different periods.
- 3 The maximum amount of any claim payable by the **Underwriters** shall be 90% of the actual **Loss** or 90% of the sum **Insured** whichever is the lesser amount. The **Insured** shall be deemed to be its own insurer for the remaining 10%.

BASIS OF SETTLEMENT

In assessing **Consequential Loss**, the **Underwriters** will make all adjustments which, in their discretion, fairly reflect trends, variations or other special circumstances in the **Insured's Business**, which would have affected the **Insured's Business** anyway either before or after the **Covered Event** so that the adjusted figures represent, as closely as is reasonably practicable, the financial performance of the **Insured's Business** which would have been obtained during the **Indemnity Period** but for the **Covered Event**.

EXCLUSIONS

This policy does not apply to:

- 1 fines, penalties or liquidated damages;
- 2 the costs of repairing or replacing loss or damage to real or personal property, and the costs of rewriting and reconstructing business records not otherwise covered under this policy;
- 3 financial loss normally covered under a Fire or Material Damage Business Interruption or Consequential Loss Insurance Policy;
- 4 the extra costs incurred in complying with any Act of Parliament, Regulation, Order in Council, By-law, New Zealand or International Standard, or any other industry or professional code of practice or compliance standard;

CONDITIONS

- 1 The **Insured** will take all reasonable care and precautions to prevent any **Covered Event**.
- 2 The **Insured** will give the **Underwriters** immediate written notice of any **Covered Event** which might give rise to a claim under this Policy, and will take and/or permit all steps which may be reasonably practicable to avoid or diminish any **Loss**.
- 3 Within a reasonable period after the **Indemnity Period** has expired, the **Insured** will deliver to the **Underwriters**:
 - a a written statement setting out the particulars of any claim, together with reasonable supporting documentation;
 - b details of other insurance (if any) covering the **Covered Event** and/or the **Loss**.

- 4 The **Insured** will make available to the **Underwriters**, or their representative on request:

- a such books of accounts and other business books, vouchers, invoices, balance sheets, and other document proofs, information, explanation and other evidence as may be reasonably required by or on behalf of the **Underwriters** for the purpose of investigating or verifying the claim;
- b a declaration on oath, or in other legal form, of the truth of the claim and/or any connected matters.

- 5 At the **Insured's** request, the **Underwriters** will make progress payments to the **Insured** during the **Indemnity Period**, provided that the requested progress payment is supported by the accountant or other representative appointed by the **Underwriters**.

- 6 At the request of the **Underwriters**, the **Insured** will do, and concur in doing and permit to be done, everything which the **Underwriters** may reasonably require to enable the **Underwriters** to exercise, at its own expense, any rights or remedies of the **Insured** in relation to any **Covered Event**.

- 7 If there is any other insurance covering the **Loss**, this policy will only provide cover in excess of the cover provided by the other insurance. This condition applies even if the other insurance has a condition to the same effect as above.

- 8 If any **Insured** acts fraudulently in respect of any claim, without prejudice to any other rights of the **Underwriters** all benefits under this policy are forfeited.

- 9 The cover under this Part 5 of this Coverage Section, **Consequential Loss**, ceases immediately if the **Insured**:

- a is put into receivership or liquidation;
- b commits an act of bankruptcy or is adjudicated bankrupt;
- c ceases to own or control the **Insured's Business**.

DEFINITIONS

- 1 **Consequential Loss** means

- a loss of Gross Profit and/or Increased Costs:
 - i The reduction in the **Income** that would normally have been earned during the

Indemnity Period if there had been no **Covered Event**

- ii The additional expenses reasonably incurred during the **Indemnity Period** to avoid or minimise a reduction in **Income** resulting from the **Covered Event** or to resume or maintain normal business activities;
 - iii An equitable allowance for any financial **Loss** suffered for a maximum period of 3 months after the **Indemnity Period** ends because the **Insured's** stocks have been used to maintain **Income** during the **Indemnity Period**;
 - iv The net loss resulting directly from the **Covered Event**, of collectable amounts owed to the **Insured** plus the reasonable costs incurred in establishing, tracing and recovering those debts;
 - v The reduction in value of undamaged stock, arising directly from the **Covered Event**, due solely to the **Insured's** inability to process or sell that stock normally, measured by the replacement cost of that stock, or if not replaced its market value, less any savings that can be achieved.
- b** Claims Preparation Costs:
- i Costs reasonably and necessarily incurred by an accountant appointed or approved by the **Underwriters** for the preparation of the claim.

From these amounts the **Underwriters** will deduct any savings made during the **Indemnity Period** in the **Business** costs and expenses resulting from the **Covered Event**.

2 Covered Event means

- a an **Occurrence** or other covered event during the **Policy Period** in respect of which the **Underwriters** have accepted indemnity under the General Liability coverage section of this policy; or
- b a **Claim** during the **Policy Period** in respect of which the **Underwriters** have accepted indemnity under the Statutory Liability coverage section of this policy; or
- c a **Claim** during the **Policy Period** in respect of which the **Underwriters** have accepted indemnity under the Employers Liability coverage section of this policy;
- d and which results in interruption or interference of the **Insured's Business**.

3 Indemnity Period means the period commencing at midnight on the day on which the **Insured** was first required to notify the **Underwriters** of the **Covered Event**, and expiring on the earlier of:

- a 12 months later or such other period as specified in the Schedule; or
- b when the **Insured's Business** returns to the level that the **Insured's Business** would have attained but for the **Covered Event**.

4 Income means revenue received or receivable in the course of the **Insured's Business** (including revenue for goods sold, services rendered and rent and expenses from tenants), less the cost of goods sold and any other expenses of the **Insured's Business** that vary with production and/or revenue.

5 Insured has the meaning provided in the Coverage Section of this **Policy** under which the **Underwriters** have accepted indemnity for a **Covered Event**.